

NOAA Technical Memorandum NOS OR&R 7



# How to Respond to Freedom of Information Act (FOIA) Requests: A Layperson's Guide

Seattle, Washington  
March 2001

**noaa**

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

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National Ocean Service

**Office of Response and Restoration**  
**National Ocean Service**  
**National Oceanic and Atmospheric Administration**  
**U.S. Department of Commerce**

NOAA is responsible for protecting and restoring marine and coastal environments impacted by spills and hazardous substance releases. The Office of Response and Restoration (OR&R) is the focal point for NOAA's spill preparedness, emergency response, and restoration programs. OR&R's Hazardous Materials Response Division and its contingent of on-scene Scientific Support Coordinators have earned a wide reputation for delivering scientifically valid solutions to the Federal On-Scene Coordinator (the U.S. Coast Guard in the coastal zone, or EPA in inland areas).

OR&R's Coastal Protection and Restoration Division and Damage Assessment Center are critical components of NOAA's natural resource trusteeship responsibilities. The CPR Division works closely with the U.S. Environmental Protection Agency to redress the environmental effects of hazardous waste sites across the United States. Coastal Resource Coordinators provide site-specific technical expertise in ecological risk assessment and coastal remediation issues. This expertise ranges from physical science to ecology, marine biology, and oceanography. In their NOAA trusteeship role, CRCs assess the longer-term risks to coastal resources (including threatened and endangered species) from Superfund-site contamination, support decision-making for site remedies and habitat restoration, and negotiate protective remedies with the responsible parties to ensure that cleanup, restoration, and recovery are appropriate and fully monitored.

While the HAZMAT and CPR divisions work to prevent and minimize injury to natural resources during spill response and waste site remediation activities, the Damage Assessment Center focuses on addressing the injury that remains after the cleanup or response. DAC's Rapid Assessment Program goes on-scene at oil or hazardous materials releases to assess damages to NOAA trust resources, including National Marine Sanctuaries and National Estuarine Research Reserves. DAC works with other trustees and NOAA's Office of General Counsel in pursuing compensation from responsible parties to restore injured resources. The compensation DAC receives is designed to benefit the natural resources injured by the release.

The Regional Programs section actively engages local and regional communities in integrating sound coastal resource management, oil spill prevention and response, and safe and efficient marine transportation. Administered collaboratively with the NOS Coastal Services Center, Regional Projects serves as liaison between NOS scientific and technical expertise and the needs of the maritime industry, port authorities, coastal resource managers, and other NOAA clients in the coastal zone. Regional Programs matches specific coastal-zone conditions and needs with tailored services, tools, and products from across NOS, including physical oceanographic real-time systems, electronic chart systems, coastal geographic information systems frameworks, photogrammetry, and digital hydrographic surveys.

*Michelle*



**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
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**MEMORANDUM**

**May 8, 2002**

To: FOIA Report Recipients  
From: John Kaperick, OR&R FOIA Liaison  
Re: Updated FOIA Report

Dear FOIA Professional:

I have updated the FOIA Report to include the new guidance from the Attorney General and to incorporate up to date FOIA regulations and legislation. I revised Appendix J due to new Homeland Security guidance regarding addresses. I added footer information regarding the date of update of the pages for better version control. Please follow the list below to update your report.

<u>Discard</u>	<u>Replace With</u>
Inside Cover and TOC	New Inside Cover and TOC
Report Pages 1 through 5	Report Pages 1 through 7
Appendix A Pages A-1 through A-13	Pages A-1 through A-14
Appendix B Pages B-1 through B-43	Pages B-1 through B-30
Appendix G Pages G-1 through G-6	Pages G-1 through G-5
Appendix I Pages I-1 through I-23	Pages I-1 through I-30
Appendix J Pages J-1 through J-4	Pages J-1 through J-3
Appendix K Pages K-1 through K-7	Pages K-1 through K-5



# How to Respond to Freedom of Information Act (FOIA) Requests: A Layperson's Guide

John A. Kaperick

NOAA Office of Response and Restoration  
7600 Sand Point Way Northeast  
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Office of Response and Restoration  
National Ocean Service  
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U.S. Department of Commerce  
Silver Spring, Maryland

#### NOTICE

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This report has been reviewed by the National Ocean Service of the National Oceanic and Atmospheric Administration (NOAA) and approved for publication. Such approval does not signify that the contents of this report necessarily represent the official position of NOAA or of the Government of the United States, nor does mention of trade names or commercial products constitute endorsement or recommendation for their use.

## Table of Contents

		Page
I.	Introduction to FOIA	
	What is it?	1
	What are the regulations associated with it?	1
	What is our responsibility?	1
II.	Receipt of request	
	Has the NOAA FOIA Office been notified?	1
	Notification/Polling process	2
	Do we have any records?	2
	Classification of requester	2
	Who will respond?	3
III.	Point Person Responsibilities	
	Coordination with the Office of General Counsel	3
	How much might we have?	3
	Cost estimate	3
	Requester contact	5
	Due date and extensions	5
	Response letter	5
IV.	Possible Requester Replies	
	No reply	6
	Reply by narrowing request	6
	Reply with full payment	6
	Reply by appeal	6
V.	Partial/Full Denials	
	GC Coordination	6
	Other Resources	6
	Who can sign?	6
VI.	Summary	7
VII.	Appendices	
	Appendix A	The Freedom of Information Act (5 USC 552 et seq)
	Appendix B	Department of Commerce FOIA Regulations (15 CFR, Part 4)
	Appendix C	DOC Administrative Order (DAO) 205-12
	Appendix D	DOC Administrative Order (DAO) 205-14
	Appendix E	NOAA Administrative Order (NAO) 205-14
	Appendix F	White House Memo
	Appendix G	Department of Justice Memos
	Appendix H	CD-244 Form
	Appendix I	The Privacy Act (5 USC 552a)
	Appendix J	Resources and Assistance Available
	Appendix K	Sample Letters and Memos

## I. Introduction

The Freedom of Information Act (FOIA) is the public's main avenue for accessing government information. Government agencies are required by law to respond to FOIA requests within twenty working days of receipt of the request. There can be serious consequences for not responding in a timely manner, including an appeal to the U.S. Department of Commerce Office of General Counsel (15 CFR 4.10) and/or judicial review (5 USC§552(a)(6)(C)). Requests must be processed in an effective and timely manner in order to meet these deadlines. This report clarifies issues related to responding to Freedom of Information Act requests and provides answers that can be used in response to FOIA requests.

The Freedom of Information Act, 5 USC§552 and Electronic FOIA amendments, is the legislation that governs these requests but those responding to them must also be aware of many other related judgments and directions. The Privacy Act (5 USC§552a), Department of Commerce regulations (15 CFR Part 4), DOC DAO 205-12, NOAA National Accounting Office 205-14, a memo from the U.S. Attorney General, and memos from the White House Council on Environmental Quality regarding FOIA must also guide the decision-making process. All of these are included as appendices to this report.

NOAA's responsibility in responding to FOIA requests is to release the greatest amount of information possible while safeguarding our agency's ability to achieve its mission. It can sometimes be a complex balancing act and requires in-depth research of exemptions and coordination with the Office of General Counsel, the NOAA FOIA Office, NOAA Ocean Service FOIA Officer, and/or the U.S. Department of Justice FOIA Hotline. All of these resources, as well as several FOIA-related web sites, are included in the appendices to this report.

## II. Receipt of Requests

Freedom of Information Act requests are supposed to be addressed and sent to the NOAA FOIA Office in Silver Spring, Maryland. It is extremely important to send any request received directly or through any channel that did not include the NOAA FOIA Office to them so that they can log the request into the system. They will also assign a response due date, and track and route the request to the correct NOAA office(s) for response. The NOAA FOIA Office sends the request, a copy of the CD-244 Form (FOIA Request and Action Record), and any other pertinent instructions to the "action office" (the office to which the request is assigned). It is very important to note and keep track of the due date assigned to the request and to respond on or before that date. A failure to respond by the due date can lead to serious and unnecessary consequences, including the release of records that could have been protected. It is also very important that the completed CD-244 be returned, along with a copy of the response letter, to the NOS FOIA Officer when the request is completed.

Once a properly routed request is received, the notification and/or polling process begins. An e-mail message is generally the best way for initial contact regarding a request being received and for determining which records exist in our offices. It is also important to bring the Office of General Counsel into the loop as soon as possible if we have records that we think may be exempt from disclosure or if the information request is for a site that has OGC involvement.

### III. Requester Classifications

If we may have records responsive to the request, we need to determine which category the requester falls into. The requester will be classified as a "commercial use requester," an "educational and non-commercial scientific institution requester," "representatives of the news media," or "all other requesters." Depending upon the classification, a requester may be required to pay none, some, or all of the "search, review, and duplication" costs for a request.

A "Commercial use request" is "...from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation." (15 CFR 4.11(b)(1))

An "Educational institution" is "...a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education and an institution of vocational education, that operates a program or programs of scholarly research." (15 CFR 4.11(b)(4))

A "Noncommercial scientific institution" is an "...institution that is not operated on a "commercial" basis as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry." (15 CFR 4.11(b)(5))

A "Representative of the news media, or news media requester" is "...any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public" (15 CFR 4.11(b)(6)). More information is contained in the CFR about this category.

The "all other requesters" category is any person or organization that does not fit into one of these categories.

After the records have been located and the requester has been classified, a determination is made regarding the estimated cost for the response (15 CFR 4.11(c)) and whether it exceeds \$20. We ask the requester for payment before we process the request and/or release any records. We also need to determine who will be responsible for sending the official response to the requester. This person should then become the main point of contact for the request.

#### IV. Point Person Responsibilities

It is very important to coordinate FOIA requests with the Office of General Counsel. Often the request involves records that may be in the possession of the General Counsel's office or that may be part of a case that is in settlement negotiations. Depending on the region involved, points of contact will vary, as will the approach to the response of the request. If the FOIA involves a current case, we often will pass the point responsibility to the Office of General Counsel since this type of request often involves either a partial or full denial of records.

The next step in the process is to determine the volume of "potentially responsive records" that we possess and the estimated level of effort to gather them, review them, and duplicate them. It is easy to make this determination if the person(s) who possess the records answer the question, "If I stacked these documents in one stack, how high would that stack be?"

Using the comparison of a ream of paper (500 sheets) being two inches thick, an estimate of the total volume is determined. Electronic mail (e-mail) messages are also subject to FOIA requests. If there are messages not included in the paper "records," we determine how much time it would take to print out all of the e-mail messages and what their volume would be. We then estimate the amount of hours to gather and review the records. With this information, and the classification of the requester complete, a cost estimate can be prepared.

#### V. Cost Estimates

The cost estimate is prepared to determine the level of effort required to respond to a FOIA request (15 CFR 4.11(c)). If the cost is more than \$20, the requester is to be notified of the cost and required to pay of the full amount of the cost estimate before the release of any records. The specifics of what category pays for what are included in a table at 15 CFR 4.11(c)(1).

##### "Commercial Use Requesters" Cost Estimate

This category is required to pay the full cost of search, review and duplication of records. A "Manual search" is charged at the "Actual salary rate of employee involved, plus 16 percent of salary rate" (15 CFR 4.11(c)(2)(i)). A "Computerized search" is charged at the "Actual direct cost, including operator time." (15 CFR 4.11(c)(2)(ii)) "Review of records (including redaction)" is charged at the "Actual salary rate of the employee conducting review, plus 16 percent of salary rate."

The point person must get the hourly rates of each employee, including himself/herself, who is either working on the request or has records responsive to it. Each of these hourly figures is multiplied by 1.16 to get the hourly rate chargeable under 15 CFR. These figures are multiplied by either the actual hours spent on the request, if known, or the estimated hours of each employee. Any costs accrued under the "Computerized search" category should be added to the "Manual search" and "Review" totals to get the total cost for the search and review. The sum of the page counts of all who hold responsive records is then multiplied by \$0.16 to get the paper copy duplication cost for the request. Any costs accrued under the "Other reproduction" category are added to the paper copy duplication cost to get the total duplication cost. The search and review totals are then added to the duplication total to determine the cost estimate amount.

**"Educational and Noncommercial scientific institution requesters" and  
"Representatives of the news media" Cost Estimates**

These categories are charged only for duplication costs after the first 100 pages, so the total page count is adjusted down by 100 before being multiplied by \$0.16. Any costs accrued under the "Other reproduction" category are added to the paper-copy duplication cost to get the total duplication cost. This would be the total amount for the cost estimate in these categories.

**"All Other Requesters" Cost Estimates**

This category is charged for search (after the first two hours) and duplication (after the first 100 pages.) A "Manual search" is charged at the "Actual salary rate of employee involved, plus 16 percent of salary rate" (15 CFR 4.11(c)(2)(i)). A "Computerized search" is charged at the "Actual direct cost, including operator time." (15 CFR 4.11(c)(2)(ii)) The point person must get the hourly rates of each employee, including themselves, who is either working on the request or has records responsive to it. Each of these hourly figures should be multiplied by 1.16 to get the hourly rate chargeable under 15 CFR. These figures are multiplied by either the actual or the estimated hours of "Manual search" time only for each employee. There is a two-hour deduction from the search time for this category of requester.

Any costs accrued under the "Computerized search" category should be added to the "Manual search" total to get the total cost for the search. This category is also only charged for paper copy duplication costs after the first 100 pages, so the total page count should be adjusted down by 100 before being multiplied by \$0.16. Any costs accrued under the "Other reproduction" category are added to the paper-copy duplication cost to get the total duplication cost. The search total is then added to the duplication total to determine the cost estimate amount.

#### VI. Response Letters and/or Requester Contact

The requester may need to be contacted regarding clarification of the request, to attempt to narrow the scope of the request, to seek an extension of the due date on the request, or to answer questions the requester may have regarding the request. Any important information discussed with the requester should be memorialized with a memo to the file, a letter to the requester, or both. Documentation of all conversations is essential if a FOIA is ever revisited or appealed at a later date.

The response letter to a FOIA request can be as simple as a cost estimate with a request for payment of the total (15 CFR 4.11(a)). The request for payment should include a due date for the requester to pay prior to the request being closed (sample letter in Appendix J). The requester should also be informed that the check should be made payable to the "Treasury of the United States" and sent directly to the NOAA FOIA Office and reference the NOAA FOIA Number assigned to the request. If the requester does not respond with payment by the due date assigned, the request is closed. The requester is only given the records requested without payment of fees in cases where the fees do not exceed \$20 or a fee waiver has been granted.

A response stating that we have "no responsive records" is sent if the polling process determines that our records do not fit within the scope of the request. This response can be interpreted as an "adverse determination" and should be treated as such, including the statement of the requester's right to appeal being included in the response letter. As stated in 15 CFR, Part 4, Appendix B, the NOAA Ocean Service Assistant Administrator or some other authorized party letter must sign the letter. The letter should be drafted by the point person and sent forward electronically to the NOS FOIA Officer to be printed and signed by the authorized official and sent to the requester. It is important to also request a copy of this letter for the file.

The other cases of "adverse determination" are responses with either a partial or full denial of the records requested. This can be very complex and must be coordinated with the Office of General Counsel, the NOAA FOIA Office, and the NOS FOIA Officer. There needs to be a "sound legal basis" for withholding records from a requester.

As stated by the Attorney General in his October 12, 2001 FOIA Memorandum, "Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information."

We should exercise good judgment in determining exemptions and accurately describe what is withheld and under what exemption. We should also continue the "discretionary disclosure" of marginally protected records whose release poses no real harm to our agency or any other agencies or businesses. The point person may be asked to draft the withholding letter citing the appeal procedures. The NOS Assistant Administrator is the only person within NOS who has the authority to sign such a letter.

#### VII. Possible Requestor Replies

The requestor can reply to our response in several different ways, including no reply, reply by narrowing, reply with full payment, or reply by appeal.

A reply where the scope of the request is narrowed is another possible response. Often, the requester is looking for something specific and will accept that in exchange for not having to pay the full cost estimate. This may require telephone contact and negotiation with the requester. It also requires a letter memorializing the conversation for both the requester and the file.

A reply with full payment puts the request back to active status. We then must coordinate the search, review, and duplication of potentially responsive records and coordinate with the Office of General Counsel on the responsiveness and privilege review of the records. We can make recommendations in this process but the final determination rests with the Office of General Counsel.

A reply by appeal elevates the request to the Department of Commerce Office of General Counsel. We must then coordinate with them and provide whatever assistance they require of us. It is very important that we have a well-documented file on all requests to assure our best chance of positive results of the appeal.

#### VIII. Partial/Full Denials

Partial and full denials should always be coordinated with the Office of General Counsel. If this is not possible, the Department of Justice FOIA Hotline and the NOAA FOIA Office can also provide assistance. Ultimately, if a FOIA request goes to court, it is the Department of Justice attorneys that would defend us. Partial and full denials can only be signed by the NOS Assistant Administrator or the General Counsel for NOAA, or others listed in 15 CFR, Part 4, Appendix B.

IX. Summary

FOIA requests are received by Federal agencies, routed through the NOAA FOIA Office, the line office, and the action office. The action office is responsible for determining whether they have records described in the request, how many there are, how long it might take to find them, reviewing them for responsiveness and privileged content, and duplicating them.

The action office chooses a point person to coordinate the response, elicit the assistance of OGC if necessary, and respond to the requester. The most important element of proper FOIA response is documentation. It is critical to document all the steps taken and their result for any future questions or appeals.

**Appendix A**

**The Freedom of Information Act (5 USC § 552)**

**As Amended**

THE FREEDOM OF INFORMATION ACT

TITLE 5--GOVERNMENT ORGANIZATION AND EMPLOYEES

PART I--THE AGENCIES GENERALLY

CHAPTER 5--ADMINISTRATIVE PROCEDURE

SUBCHAPTER II--ADMINISTRATIVE PROCEDURE

Sec. 552. Public information; agency rules, opinions, orders, records, and proceedings

- (a) Each agency shall make available to the public information as follows:
  - (1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--
    - (A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;
    - (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;
    - (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;
    - (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and
    - (E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

5 U.S.C. § 552

- (2) Each agency, in accordance with published rules, shall make available for public inspection and copying--
- (A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
  - (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;
  - (C) administrative staff manuals and instructions to staff that affect a member of the public;
  - (D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and
  - (E) a general index of the records referred to under subparagraph (D); unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such

Laws in effect as of January 2, 2001

A-2

April 2002 Update

index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if--

- (i) it has been indexed and either made available or published as provided by this paragraph; or
  - (ii) the party has actual and timely notice of the terms thereof.
- (3) (A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.
- (B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.
- (C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.
- (D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.
- (4) (A) (i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees

5 U.S.C. § 552

for all agencies.

- (ii) Such agency regulations shall provide that--
  - (I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;
  - (II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and
  - (III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.
- (iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the 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.
- (iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section--
  - (I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or
  - (II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.
- (v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

Laws in effect as of January 2, 2001

A-4

April 2002 Update

- (vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.
- (vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.
- (B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).
- (C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.
- [(D) Repealed. Pub. L. 98-620, title IV, Sec. 402(2), Nov. 8, 1984, 98 Stat. 3357.]
- (E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.
- (F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to

Laws in effect as of January 2, 2001

A-5

April 2002 Update

5 U.S.C. § 552

determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

- (G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.
- (5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.
- (6) (A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--
  - (i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and
  - (ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.
- (B) (i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.
- (ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed

Laws in effect as of January 2, 2001

A-6

April 2002 Update

under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests--

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C) (i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain

Laws in effect as of January 2, 2001

A-7

April 2002 Update

5 U.S.C. § 552

jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

- (ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.
  - (iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.
- (D) (i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.
- (ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.
  - (iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.
- (E) (i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records--
- (I) in cases in which the person requesting the records demonstrates a compelling need; and
  - (II) in other cases determined by the agency.
- (ii) Notwithstanding clause (i), regulations under this subparagraph must ensure--
- (I) that a determination of whether to provide expedited processing shall be made, and

Laws in effect as of January 2, 2001

A-8

April 2002 Update

5 U.S.C. § 552

notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

- (II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.
- (iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.
- (iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.
- (v) For purposes of this subparagraph, the term "compelling need" means--
  - (I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
  - (II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.
- (vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.
- (F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.
- (b) This section does not apply to matters that are--

Laws in effect as of January 2, 2001

A-9

April 2002 Update

5 U.S.C. § 552

- (1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
- (2) related solely to the internal personnel rules and practices of an agency;
- (3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or

Laws in effect as of January 2, 2001

A-10

April 2002 Update

supervision of financial institutions; or

- (9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

- (c) (1) Whenever a request is made which involves access to records described in subsection (b) (7) (A) and--
- (A) the investigation or proceeding involves a possible violation of criminal law; and
  - (B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.
- (2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.
- (3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b) (1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.
- (d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.
- (e) (1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and

5 U.S.C. § 552

which shall include--

- (A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;
  - (B) (i) the number of appeals made by persons under subsection(a) (6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and
    - (ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b) (3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;
  - (C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;
  - (D) the number of requests for records received by the agency and the number of requests which the agency processed;
  - (E) the median number of days taken by the agency to process different types of requests;
  - (F) the total amount of fees collected by the agency for processing requests; and
  - (G) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.
- (2) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.
- (3) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the

Laws in effect as of January 2, 2001

A-12

April 2002 Update

year in which each such report is issued, that such reports are available by electronic means.

- (4) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.
  - (5) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a) (4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.
- (f) For purposes of this section, the term--
- (1) ``agency'' as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and
  - (2) ``record'' and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.
- (g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including--
- (1) an index of all major information systems of the agency;
  - (2) a description of major information and record locator systems maintained by the agency; and
  - (3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.

5 U.S.C. § 552

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383; Pub. L. 90-23, Sec. 1, June 5, 1967, 81 Stat. 54; Pub. L. 93-502, Secs. 1-3, Nov. 21, 1974, 88 Stat. 1561-1564; Pub. L. 94-409, Sec. 5(b), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 95-454, title IX, Sec. 906(a)(10), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 98-620, title IV, Sec. 402(2), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 99-570, title I, Secs. 1802; 1803, Oct. 27, 1986, 100 Stat. 3207-48, 3207-49; Pub. L. 104-231, Secs. 3-11, Oct. 2, 1996, 110 Stat. 3049-3054.)

**Appendix B**

**Department of Commerce Regulations (15 CFR, Part 4)**

**§ 4.1**

**15 CFR Subtitle A (1-1-02 Edition)**

SOURCE: 66 FR 65632, Dec. 20, 2001, unless otherwise noted.

**Subpart A—Freedom of Information Act**

**§ 4.1 General.**

(a) The information in this part is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552). This part sets forth the procedures the Department of Commerce (Department) and its components follow to make publicly available the materials and indices specified in 5 U.S.C. 552(a)(2) and records requested under 5 U.S.C. 552(a)(3). Information routinely provided to the public as part of a regular Department activity (for example, press releases issued by the Office of Public Affairs) may be provided to the public without following this part.

(b) As used in this subpart, *component* means any office, division, bureau or other unit of the Department listed in Appendix A to this part (except that a regional office of a larger office or other unit does not constitute a separate component).

**§ 4.2 Public reference facilities.**

(a) The Department maintains public reference facilities (listed in Appendix A to this part) that contain the records the FOIA requires to be made regularly available for public inspection and copying; furnishes information; receives and processes requests for records under the FOIA; and otherwise assists the public concerning Department operations under the FOIA.

(b) Each component of the Department shall determine which of its records are required to be made available for public inspection and copying, and make those records available either in its own public reference facility or in the Department's Central Reference and Records Inspection Facility. Each component shall maintain and make available for public inspection and copying a current subject-matter index of its public inspection facility records. Each index shall be updated regularly, at least quarterly, with respect to newly included records. In accordance with 5 U.S.C. 552(a)(2), the De-

partment has determined that it is unnecessary and impracticable to publish quarterly or more frequently and distribute copies of the index and supplements thereto.

(c) Each component shall make public inspection facility records created on or after November 1, 1996 available electronically through the Department's "FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>). Information available at the site shall include:

(1) Each component's index of its public inspection facility records, which indicates which records are available electronically; and

(2) The general index referred to in paragraph (d)(3) of this section.

(d) The Department shall maintain and make available for public inspection and copying:

(1) A current index providing identifying information for the public as to any matter that is issued, adopted, or promulgated after July 4, 1997, and that is retained as a record and is required to be made available or published. Copies of the index are available upon request after payment of the direct cost of duplication;

(2) Copies of records that have been released and that the component that maintains them determines, because of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records;

(3) A general index of the records described in paragraph (d)(2) of this section;

(4) Final opinions and orders, including concurring and dissenting opinions made in the adjudication of cases;

(5) Those statements of policy and interpretations that have been adopted by a component and are not published in the FEDERAL REGISTER; and

(6) Administrative staff manuals and instructions to staff that affect a member of the public.

**§ 4.3 Records under the FOIA.**

(a) Records under the FOIA include all Government records, regardless of format, medium or physical characteristics, and include electronic records and information, audiotapes, videotapes, and photographs.

**Office of the Secretary, Commerce**

**§ 4.4**

(b) Under the FOIA, the Department has no obligation to create, compile, or obtain from outside the Department a record to satisfy a request. In complying with a request for electronic data, whether the Department creates or compiles records (as by undertaking significant programming work) or merely extracts them from an existing database may be unclear. The Department shall in any case undertake reasonable efforts to search for the information in electronic format.

(c) Department officials may, upon request, create and provide new records pursuant to user fee statutes, such as the first paragraph of 15 U.S.C. 1525, or in accordance with authority otherwise provided by law. Such creation and provision of records is outside the scope of the FOIA.

(d) Components shall preserve all correspondence pertaining to the requests they receive under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by Title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Components shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

**§ 4.4 Requirements for making requests.**

(a) A request for records of the Department which are not customarily made available to the public as part of the Department's regular informational services must be in writing (and may be sent by mail, facsimile, or E-mail), and shall be processed under the FOIA, regardless whether the FOIA is mentioned in the request. Requests should be mailed to the Department component identified in Appendix A to this part that maintains those records, or may be sent by facsimile or E-mail to the numbers or addresses, respectively, listed at the Department's "FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>).<sup>1</sup> If the proper com-

<sup>1</sup>The United States Patent and Trademark Office (USPTO), which is established as an agency of the United States within the De-

partment cannot be determined, the request should be sent to the central facility identified in Appendix A to this part. The central facility will forward the request to the component(s) it believes most likely to have the requested records. For the quickest handling, the request (and envelope, if the request is mailed) should be marked "Freedom of Information Act Request."

(b) For requests for records about oneself, § 4.24 contains additional requirements. For requests for records about another individual, either a written authorization signed by the individual permitting disclosure of his or her records to the requester or proof that the individual is deceased (for example, a copy of a death certificate or an obituary) facilitates processing the request.

(c) The records requested must be described in enough detail to enable Department personnel to locate them with a reasonable amount of effort. If possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record, and the name and location of the office where the record is located. Also, if records about a court case are sought, the title of the case, the court in which the case was filed, and the nature of the case should be included. If known, any file designations or descriptions of the requested records should be included. In general, the more specifically the request describes the records sought, the greater the likelihood that the Department will be able to locate those records. If a component determines that a request does not reasonably describe records, it shall inform the requester what additional information is needed or how the request is otherwise insufficient, to enable the requester to modify the request to meet the requirements of this section.

partment of Commerce, operates under its own FOIA regulations at 37 CFR part 102, subpart A. Accordingly, requests for USPTO records should be sent directly to the USPTO.

Department of Commerce Freedom of Information Act Regulations

§4.5

15 CFR Subtitle A (1-1-02 Edition)

§4.5 Responsibility for responding to requests.

§4.6 Time limits and expedited processing.

(a) *In general.* Except as stated in paragraph (b) of this section, the proper component of the Department to respond to a request for records is the component that first receives the request and has responsive records, or the component to which the Departmental Freedom of Information Officer assigns lead responsibility for responding to the request. Records responsive to a request shall include only those records within the Department's possession and control as of the date the proper component receives the request.

(a) *In general.* Components ordinarily shall respond to requests according to their order of receipt.

(b) *Consultations and referrals.* If a component receives a request for a record in its possession in which another Federal agency subject to the FOIA has the primary interest, the component shall refer the record to that agency for direct response to the requester. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it. A component shall consult with another Federal agency before responding to a requester if the component receives a request for a record in which another Federal agency subject to the FOIA has a significant interest, but not the primary interest; or another Federal agency not subject to the FOIA has the primary interest or a significant interest (see §4.8 for additional information about referrals of classified information).

(b) *Initial response and appeal.* Subject to paragraph (c)(1) of this section, an initial response shall be made within 20 working days (i.e., excluding Saturdays, Sundays, and legal public holidays) of the receipt of a request for a record under this part by the proper component identified in accordance with §4.5(a), and an appeal shall be decided within 20 working days of its receipt by the Office of the General Counsel.

(c) *Notice of referral.* Whenever a component refers a document to another Federal agency for direct response to the requester, it ordinarily shall notify the requester in writing of the referral and inform the requester of the name of the agency to which the document was referred.

(c) *Unusual circumstances.* (1) In unusual circumstances as specified in paragraph (c)(2) of this section, an official listed in Appendix B to this part may extend the time limits in paragraph (b) of this section by notifying the requester in writing as soon as practicable of the unusual circumstances and of the date by which processing of the request is expected to be completed. If the extension is for more than ten working days, the component shall provide the requester an opportunity either to modify the request so that it may be processed within the applicable time limit, or to arrange an alternative time frame for processing the request or a modified request.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals shall be handled in chronological order, based on when the FOIA request was received by the first Federal agency.

(2) As used in this section, *unusual circumstances* means, but only to the extent reasonably necessary to properly process the particular request:

(e) *Agreements regarding consultations and referrals.* Components may make agreements with other Federal agencies to eliminate the need for consultations or referrals for particular types of records.

(1) The need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another component or Federal agency having a substantial interest in the determination of the request.

(3) If a component reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a

Office of the Secretary, Commerce

§ 4.7

single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, the component may aggregate them. Multiple requests involving unrelated matters will not be aggregated.

(d) *Multitrack processing.* (1) A component may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (e) of this section.

(2) A component using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. A component doing so shall contact the requester by telephone, E-mail, or letter, whichever is most efficient in each case.

(e) *Expedited processing.* (1) Requests and appeals shall be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) The loss of substantial due process rights;

(iii) A matter of widespread and exceptional media interest involving questions about the Government's integrity which affect public confidence; or

(iv) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing should be sent to the component listed in Appendix A to this part that maintains the records requested.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for

requesting expedited processing. For example, a requester within the category described in paragraph (e)(1)(iv) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category described in paragraph (e)(1)(iv) of this section must also establish a particular urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally.

(4) Within ten calendar days of its receipt of a request for expedited processing, the proper component shall decide whether to grant it and shall notify the requester of the decision. Solely for purposes of calculating the foregoing time limit, any request for expedited processing shall always be considered received on the actual date of receipt by the proper component. If a request for expedited processing is granted, the request shall be given priority and processed as soon as practicable, subject to § 4.11(1). If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 4.7 Responses to requests.

(a) *Grants of requests.* If a component makes a determination to grant a request in whole or in part, it shall notify the requester in writing. The component shall inform the requester in the notice of any fee to be charged under § 4.11 and disclose records to the requester promptly upon payment of any applicable fee. Records disclosed in part shall be marked or annotated to show the applicable FOIA exemption(s) and the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if feasible.

(b) *Adverse determinations of requests.* If a component makes an adverse determination regarding a request, it shall notify the requester of that determination in writing. An adverse determination is a denial of a request in any

**§ 4.8**

respect, namely: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA (except that a determination under § 4.11(j) that records are to be made available under a fee statute other than the FOIA is not an adverse determination); a determination against the requester on any disputed fee matter, including a denial of a request for a reduction or waiver of fees; or a denial of a request for expedited processing. Each denial letter shall be signed by an official listed in Appendix B to this part, and shall include:

- (1) The name and title or position of the denying official;
- (2) A brief statement of the reason(s) for the denial, including applicable FOIA exemption(s);
- (3) An estimate of the volume of records or information withheld, in number of pages or some other reasonable form of estimation. This estimate need not be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable FOIA exemption; and
- (4) A statement that the denial may be appealed, and a list of the requirements for filing an appeal under § 4.10(b).

**§ 4.8 Classified Information.**

In processing a request for information classified under Executive Order 12958 or any other executive order concerning the classification of records, the information shall be reviewed to determine whether it should remain classified. Ordinarily the component or other Federal agency that classified the information should conduct the review, except that if a record contains information that has been derivatively classified by a component because it contains information classified by another component or agency, the component shall refer the responsibility for responding to the request to the component or agency that classified the

**15 CFR Subtitle A (1-1-02 Edition)**

underlying information. Information determined to no longer require classification shall not be withheld on the basis of FOIA exemption (b)(1) (5 U.S.C. 552(b)(1)), but should be reviewed to assess whether any other FOIA exemptions should be invoked. Appeals involving classified information shall be processed in accordance with § 4.10(c).

**§ 4.9 Business Information.**

(a) *In general.* Business information obtained by the Department from a submitter will be disclosed under the FOIA only under this section.

(b) *Definitions.* For the purposes of this section:

(1) *Business information* means commercial or financial information, obtained by the Department from a submitter, which may be protected from disclosure under FOIA exemption (b)(4) (5 U.S.C. 552(b)(4)).

(2) *Submitter* means any person or entity outside the Federal Government from which the Department obtains business information, directly or indirectly. The term includes corporations; state, local and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information should designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers protected from disclosure under FOIA exemption (b)(4). These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer period.

(d) *Notice to submitters.* A component shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information whenever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity under paragraph (f) of this section to object to disclosure of any specified portion of that information. Such written notice shall be sent via certified mail, return receipt requested, or similar means. The notice shall either describe the business information requested or include copies of the requested records containing the

**Office of the Secretary, Commerce**

**§4.10**

information. If notification of a large number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification.

(e) *When notice is required.* Notice shall be given to the submitter whenever:

(1) The submitter has designated the information in good faith as protected from disclosure under FOIA exemption (b)(4); or

(2) The component has reason to believe that the information may be protected from disclosure under FOIA exemption (b)(4).

(f) *Opportunity to object to disclosure.* A component shall allow a submitter seven working days (i.e., excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the written notice described in paragraph (d) of this section to provide the component with a statement of any objection to disclosure. The statement must identify any portions of the information the submitter requests to be withheld under FOIA exemption (b)(4), and describe how each qualifies for protection under the exemption: that is, why the information is a trade secret, or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* A component shall consider a submitter's objections and specific grounds under the FOIA for nondisclosure in deciding whether to disclose business information. If a component decides to disclose business information over a submitter's objection, the component shall give the submitter written notice via certified mail, return receipt requested, or similar means, which shall include:

(1) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(2) A description of the business information to be disclosed; and

(3) A statement that the component intends to disclose the information

seven working days from the date the submitter receives the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The component determines that the information should not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, in which case the component shall provide the submitter written notice of any final decision to disclose the information seven working days from the date the submitter receives the notice.

(i) *Notice to submitter of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the component shall promptly notify the submitter.

(j) *Corresponding notice to requester.* Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the component shall also notify the requester. Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the component shall notify the requester.

**§4.10 Appeals from initial determinations or untimely delays.**

(a) If a request for records is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse initial determination regarding any other matter under this subpart (as described in §4.7(b)), the requester may file a written appeal, which must be received by the Office of General Counsel within thirty calendar days of the date of the written denial or, if there has been no determination, may be submitted anytime after the due date, including the last extension under §4.6(c), of the determination.

Department of Commerce Freedom of Information Act Regulations

§4.11

15 CFR Subtitle A (1-1-02 Edition)

(b) Appeals shall be decided by the Assistant General Counsel for Administration (AGC-Admin), except that appeals from requests initially denied by the AGC-Admin shall be decided by the General Counsel. Appeals should be addressed to the AGC-Admin, or the General Counsel if the records were initially denied by the AGC-Admin. The address of both is: U.S. Department of Commerce, Office of General Counsel, Room 5875, 14th Street and Constitution Avenue NW, Washington, DC 20230. Both the letter and the appeal envelope should be clearly marked "Freedom of Information Appeal". The appeal must include a copy of the original request, the initial denial, if any, and a statement of the reasons why the records requested should be made available and why the initial denial, if any, was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided.

(c) Upon receipt of an appeal involving records initially denied on the basis of FOIA exemption (b)(1), the records shall be forwarded to the Deputy Assistant Secretary for Security (DAS) for a declassification review. The DAS may overrule previous classification determinations in whole or in part if continued protection in the interest of national security is no longer required, or no longer required at the same level. The DAS shall advise the AGC-Admin, or the General Counsel, as appropriate, of his or her decision.

(d) If an appeal is granted, the person who filed the appeal shall be immediately notified and copies of the releasable documents shall be made available promptly thereafter upon receipt of appropriate fees determined in accordance with §4.11.

(e) If no determination on an appeal has been sent to the requester within the twenty working day period specified in §4.6(b) or the last extension thereof, the requester is deemed to have exhausted all administrative remedies with respect to the request, giving rise to a right of judicial review under 5 U.S.C. 552(a)(6)(C). If the requester initiates a court action against the Department based on the provision in this paragraph, the administrative appeal process may continue.

(f) The determination on an appeal shall be in writing and, when it denies records in whole or in part, the letter to the requester shall include:

(1) A brief explanation of the basis for the denial, including a list of the applicable FOIA exemptions and a description of how they apply;

(2) A statement that the decision is final for the Department;

(3) Notification that judicial review of the denial is available in the district court of the United States in the district in which the requester resides, or has his or her principal place of business, or in which the agency records are located, or in the District of Columbia; and

(4) The name and title or position of the official responsible for denying the appeal.

§4.11 Fees.

(a) *In general.* Components shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except when fees are limited under paragraph (d) of this section or when a waiver or reduction of fees is granted under paragraph (k) of this section. A component shall collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. Components shall determine, whenever reasonably possible, the use to which a requester will put the requested records. If it appears that the requester will put the records to a commercial use, or if a component has reasonable cause to doubt a requester's asserted non-commercial use, the component shall provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses a component incurs in providing a particular service. Such expenses would include, for example, the labor costs of

Office of the Secretary, Commerce

§4.11

the employee performing the service (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits). Not included in direct costs are overhead expenses such as the costs of space, heating, or lighting of the facility in which the service is performed.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies may take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. A component shall honor a requester's specified preference of form or format of disclosure if the component can reproduce the record in the requested form or format with reasonable effort.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution, and that the records are sought to further scholarly research rather than for a commercial use.

(5) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research rather than for a commercial use.

(6) *Representative of the news media, or news media requester* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the pub-

lic. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only if they can qualify as disseminators of "news") that make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure, for example, redacting it and marking any applicable exemptions. Review costs are recoverable even if a record ultimately is not disclosed. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible.

(c) *Fees*. In responding to FOIA requests, components shall charge the fees summarized in chart form in paragraphs (c)(1) and (c)(2) of this section and explained in paragraphs (c)(3) through (c)(5) of this section, unless a waiver or reduction of fees has been granted under paragraph (k) of this section.

(1) The four categories and chargeable fees are:

Department of Commerce Freedom of Information Act Regulations

§4.11

15 CFR Subtitle A (1-1-02 Edition)

Category	Chargeable fees
(i) Commercial Use Requesters .....	Search, Review, and Duplication.
(ii) Educational and Non-commercial Scientific Institution Requesters .....	Duplication (excluding the cost of the first 100 pages).
(iii) Representatives of the News Media .....	Duplication (excluding the cost of the first 100 pages).
(iv) All Other Requesters .....	Search and Duplication (excluding the cost of the first 2 hours of search and 100 pages).

(2) Uniform fee schedule.

Service	Rate
(i) Manual search .....	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search .....	Actual direct cost, including operator time.
(iii) Duplication of records:	
(A) Paper copy reproduction .....	\$ .16 per page
(B) Other reproduction (e.g., computer disk or printout, microfilm, microfiche, or microform) .....	Actual direct cost, including operator time.
(iv) Review of records (including redaction) .....	Actual salary rate of employee conducting review, plus 16 percent of salary rate.

(3) *Search.* (1) Search fees shall be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (d) of this section. Components shall charge for time spent searching even if they do not locate any responsive records or if they withhold any records located as entirely exempt from disclosure. Search fees shall be the direct costs of conducting the search by the involved employees.

(1) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(3) of this section) are entitled to the cost equivalent of two hours of manual search time without charge.

(4) *Duplication.* Duplication fees shall be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be \$.16 cents per page. For copies produced by computer, such as tapes or printouts, components shall charge the direct costs, including operator time, of producing the copy. For other forms of duplication, components shall charge the direct costs of that duplication.

(5) *Review.* Review fees shall be charged to requesters who make a commercial use request. Review fees shall be charged only for the initial record review, in which a component determines whether an exemption applies to a particular record at the initial request level. No charge shall be imposed for review at the administrative appeal level for an exemption already applied. However, records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies, and the costs of that review are chargeable. Review fees shall be the direct costs of conducting the review by the involved employees.

(d) *Limitations on charging fees.*

(1) No search fee shall be charged for requests from educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, components shall provide without charge:

(1) The first 100 pages of duplication (or the cost equivalent); and

(1) The first two hours of search (or the cost equivalent).

(4) If a total fee calculated under paragraph (c) of this section is \$20.00 or less for any request, no fee shall be

Office of the Secretary, Commerce

§4.11

charged. If such total fee is more than \$20.00, the full amount of such fee shall be charged.

(5) The provisions of paragraphs (d) (3) and (4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than \$20.00.

(e) *Notice of anticipated fees over \$20.00.* If a component determines or estimates that the total fee to be charged under this section will be more than \$20.00, the component shall notify the requester of the actual or estimated fee, unless the requester has stated in writing a willingness to pay a fee as high as that anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee. If the component has notified a requester that the actual or estimated fee is more than \$20.00, the component shall not consider the request received for purposes of calculating the time limit in §4.6(b) to respond to a request, or process it further, until the requester agrees to pay the anticipated total fee. Any agreement to pay should be memorialized in writing. A notice under this paragraph shall offer the requester an opportunity to contact Departmental personnel to discuss modifying the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, if a component decides, as a matter of administrative discretion, to comply with a request for special services, the component shall charge the direct cost of providing them. Such services could include certifying that records are true copies or sending records by other than ordinary mail.

(g) *Charging interest.* Components shall charge interest on any unpaid bill starting on the 31st calendar day following the date of billing the requester. Interest charges shall be assessed at the rate provided in 31 U.S.C. 3717 and accrue from the date of the billing until the component receives payment. Components shall take all

steps authorized by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, to effect payment, including offset, disclosure to consumer reporting agencies, and use of collection agencies.

(h) *Aggregating requests.* If a component reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Among the factors a component shall consider in deciding whether to aggregate are the closeness in time between the component's receipt of the requests, and the relatedness of the matters about which the requests are made. A component may generally presume that multiple requests that involve related matters made by the same requester or a closely related group of requesters within a 30 calendar day period have been made in order to avoid fees. If requests are separated by a longer period, a component shall aggregate them only if a solid basis exists for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters shall not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (1)(2) and (3) of this section, a component shall not require the requester to make an advance payment: a payment made before work is begun or continued on a request. Payment owed for work already completed (i.e., a payment before copies are sent to a requester) is not an advance payment.

(2) If a component determines or estimates that a total fee to be charged under this section will be more than \$250.00, the component shall not consider the request received for purposes of calculating the time limit in §4.6(b) to respond to a request, or process it further, until it receives payment from the requester of the entire anticipated fee.

(3) If a requester has previously failed to pay a properly charged FOIA fee to any component or other Federal agency within 30 calendar days of the date of billing, a component shall require the requester to pay the full amount

**§4.11**

**15 CFR Subtitle A (1-1-02 Edition)**

due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or continues to process a pending request from that requester. For purposes of calculating the time limit in §4.6(b) to respond to a request, the component shall not consider the request received until it receives full payment of all applicable fees and interest in this paragraph.

(4) Upon the completion of processing of a request, if a specific fee is determined to be payable and appropriate notice has been given to the requester, a component shall make records available to the requester only upon receipt of full payment of the fee.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute (except for the FOIA) that specifically requires an agency to set and collect fees for particular types of records. If records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, components shall inform requesters how to obtain records from those sources. Provision of such records is not handled under the FOIA.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge, or at a charge reduced below that established under paragraph (c) of this section, if the requester asks for such a waiver in writing and the responsible component determines, after consideration of information provided by the requester, that the requester has demonstrated that:

(i) 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

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, components shall consider the following factors:

(1) *The subject of the request:* whether the subject of the requested records concerns the operations or activities of

the Government. The subject of the requested records must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) *The informative value of the information to be disclosed:* whether the disclosure is "likely to contribute" to an understanding of Government operations or activities. The disclosable portions of the requested records must be meaningfully informative about Government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure:* whether disclosure of the requested information 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. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media satisfies this consideration. Merely providing information to media sources is insufficient to satisfy this consideration.

(iv) *The significance of the contribution to public understanding:* whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities. The public's understanding of the subject in question prior to the disclosure must be significantly enhanced by the disclosure.

(3) To determine whether the second fee waiver requirement (i.e., that disclosure is not primarily in the commercial interest of the requester) is met, components shall consider the following factors:

(1) *The existence and magnitude of a commercial interest:* whether the requester has a commercial interest that would be furthered by the requested disclosure. Components shall consider

**Office of the Secretary, Commerce**

**§4.21**

any commercial interest of the requester (with reference to the definition of "commercial use request" in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(1) *The primary interest in disclosure:* whether any identified commercial interest of the requester is sufficiently great, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified if the public interest standard (paragraph (k)(1)(1) of this section) is satisfied and the public interest is greater than any identified commercial interest in disclosure. Components ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market Government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) If only some of the records to be released satisfy the requirements for a fee waiver, a waiver shall be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k)(2) and (3) of this section, insofar as they apply to each request.

**Subpart B—Privacy Act**

**§ 4.21 Purpose and scope.**

(a) This subpart establishes policies and procedures for implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a). The main objectives of the subpart are to facilitate full exercise of rights conferred on individuals under the Act, and to protect the privacy of individuals on whom the Department maintains records in systems of records under the Act.

(b) The Department shall act promptly and in accordance with the Act upon receipt of any inquiry, request or appeal from a citizen of the United States

or an alien lawfully admitted for permanent residence into the United States, regardless of the individual's age. Further, the Department shall maintain only such information on individuals as is relevant and necessary to the performance of its lawful functions; maintain that information with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness in determinations made by the Department about the individual; obtain information from the individual to the extent practicable; and take every reasonable step to protect that information from unwarranted disclosure. The Department shall maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized to do so by statute or by the individual about whom the record is maintained, or unless to do so is pertinent to and within the scope of an authorized law enforcement activity. An individual's name and address shall not be sold or rented by the Department unless such action is specifically authorized by law.

(c) This subpart applies to all components of the Department. Components may promulgate supplementary orders and rules not inconsistent with this subpart.

(d) The Assistant Secretary for Administration is delegated responsibility for maintaining this subpart, for issuing such orders and directives internal to the Department as are necessary for full compliance with the Act, and for publishing all required notices concerning systems of records.

(e) Matters outside the scope of this subpart include:

(1) Requests for records that do not pertain to the requester, or to the individual about whom the request is made if the requester is the parent or guardian of the individual;

(2) Requests involving information pertaining to an individual that is in a record or file but not within the scope of a system of records notice published in the FEDERAL REGISTER;

(3) Requests to correct a record if a grievance procedure is available to the individual either by regulation or

**§ 4.22**

through a provision in a collective bargaining agreement with the Department or a component of the Department, and the individual has initiated, or expressed in writing the intention of initiating, such a grievance procedure; and

(4) Requests for employee-employer services and counseling that were routinely granted prior to enactment of the Act, including, but not limited to, test calculations of retirement benefits, explanations of health and life insurance programs, and explanations of tax withholding options.

(f) Any request for records that pertains to the requester, or to the individual about whom the request is made if the requester is the parent or guardian of the individual, shall be processed under the Act and this subpart and under the Freedom of Information Act and the Department's implementing regulations at subpart A of this part, regardless whether the Act or the Freedom of Information Act is mentioned in the request.

**§ 4.22 Definitions.**

(a) All terms used in this subpart which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this subpart:

(1) *Act* means the "Privacy Act of 1974, as amended (5 U.S.C. 552a)".

(2) *Appeal* means a request by an individual to review and reverse an initial denial of a request from that individual for correction or amendment.

(3) *Component* means any office, division, bureau or other unit of the Department listed in Appendix A to this part (except that a regional office of a larger office or other unit does not constitute a separate component).

(4) *Department* means the Department of Commerce.

(5) *Inquiry* means either a request for general information regarding the Act and this subpart or a request from an individual (or that individual's parent or guardian) that the Department determine whether it has any record in a system of records that pertains to that individual.

(6) *Person* means any human being and also shall include, but is not limited to, corporations, associations, partnerships, trustees, receivers, per-

**15 CFR Subtitle A (1-1-02 Edition)**

sonal representatives, and public or private organizations.

(7) *Privacy Officer* means those officials, identified in Appendix B to this part, who are authorized to receive and act upon inquiries, requests for access, and requests for correction or amendment.

(8) *Request for access* means a request from an individual or an individual's parent or guardian to see a record pertaining to that individual in a particular system of records.

(9) *Request for correction or amendment* means a request from an individual or an individual's parent or guardian that the Department change (by correction, amendment, addition or deletion) a particular record pertaining to that individual in a system of records.

**§ 4.23 Procedures for making inquiries.**

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit an inquiry to the Department. The inquiry should be made either in person or by mail addressed to the appropriate component identified in Appendix A to this part or to the official identified in the notification procedures paragraph of the systems of records notice published in the FEDERAL REGISTER.<sup>2</sup> If an individual believes the Department maintains a record pertaining to him or her but does not know which system of records might contain such a record and/or which component of the Department maintains the system of records, assistance in person or by mail will be provided at the first address listed in Appendix A to this part.

(b) Inquiries submitted by mail should include the words "PRIVACY ACT INQUIRY" in capital letters at the top of the letter and on the face of the envelope. If the inquiry is for general information regarding the Act and

<sup>2</sup>The United States Patent and Trademark Office (USPTO), which is established as an agency of the United States within the Department of Commerce, operates under its own PA regulations at 37 CFR part 102, subpart B. Accordingly, requests concerning records maintained by the USPTO should be sent directly to the USPTO.

**Office of the Secretary, Commerce**

**§4.23**

this subpart, no particular information is required. The Department reserves the right to require compliance with the identification procedures appearing at §4.24(d). If the inquiry is a request that the Department determine whether it has a record pertaining to the individual, the following information should be submitted:

(1) Name of individual whose record is sought;

(2) Statement that individual whose record is sought is either a U.S. citizen or an alien lawfully admitted for permanent residence;

(3) Identifying data that will help locate the record (for example, maiden name, occupational license number, period or place of employment, etc.);

(4) Record sought, by description and by record system name, if known;

(5) Action requested (that is, sending information on how to exercise rights under the Act; determining whether requested record exists; gaining access to requested record; or obtaining copy of requested record);

(6) Copy of court guardianship order or minor's birth certificate, as provided in §4.24(d)(3), but only if requester is guardian or parent of individual whose record is sought;

(7) Requester's name (printed), signature, address, and (optional) telephone number;

(8) Date; and,

(9) Certification of request by notary or other official, but only if

(1) Request is for notification that requested record exists, for access to requested record, or for copy of requested record;

(11) Record is not available to any person under 5 U.S.C. 552; and

(111) Requester does not appear before an employee of the Department for verification of identity.

(c) Any inquiry which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in paragraph (b) of this section will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Officer. An inquiry which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring the time period for response until ac-

tual receipt by the Privacy Officer. In each instance when an inquiry so forwarded is received, the Privacy Officer shall notify the individual that his or her inquiry was improperly addressed and the date the inquiry was received at the proper address.

(d)(1) Each inquiry received shall be acted upon promptly by the responsible Privacy Officer. Every effort will be made to respond within ten working days (i.e., excluding Saturdays, Sundays and legal public holidays) of the date of receipt at the proper address. If a response cannot be made within ten working days, the Privacy Officer shall send an acknowledgment during that period providing information on the status of the inquiry and asking for such further information as may be necessary to process the inquiry. The first correspondence sent by the Privacy Officer to the requester shall contain the Department's control number assigned to the request, as well as a statement that the requester should use that number in all future contacts with the Department. The Department shall use that control number in all subsequent correspondence.

(2) If the Privacy Officer fails to send an acknowledgment within ten working days, as provided in paragraph (d)(1) of this section, the requester may ask the Assistant General Counsel for Administration to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(e) An individual shall not be required to state a reason for or otherwise justify his or her inquiry.

(f) Special note should be taken that certain agencies are responsible for publishing notices of systems of records having Government-wide application to other agencies, including the Department. The agencies known to be publishing these general notices and the types of records covered therein appear in Appendix C to this part. These general notices do not identify the Privacy Officers in the Department to whom inquiries should be presented or mailed. The provisions of this section, and particularly paragraph (a) of this section, should be followed in making inquiries with respect to such records.

**§4.24**

Such records in the Department are subject to the provisions of this part to the extent indicated in Appendix C to this part. The exemptions, if any, determined by the agency publishing a general notice shall be invoked and applied by the Department after consultation, as necessary, with that other agency.

**§4.24 Procedures for making requests for records.**

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request to the Department for access to records. The request should be made either in person or by mail addressed to the appropriate office listed in Appendix A to this part.

(b) Requests submitted by mail should include the words "PRIVACY ACT REQUEST" in capital letters at the top of the letter and on the face of the envelope. Any request which is not addressed as specified in paragraph (a) of this section or which is not marked as specified in this paragraph will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Officer. A request which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring time periods for response until actual receipt by the Privacy Officer. In each instance when a request so forwarded is received, the Privacy Officer shall notify the individual that his or her request was improperly addressed and the date the request was received at the proper address.

(c) If the request follows an inquiry under §4.23 in connection with which the individual's identity was established by the Department, the individual need only indicate the record to which access is sought, provide the Department control number assigned to the request, and sign and date the request. If the request is not preceded by an inquiry under §4.23, the procedures of this section should be followed.

(d) The requirements for identification of individuals seeking access to records are:

(1) *In person.* Each individual making a request in person shall be required to

**15 CFR Subtitle A (1-1-02 Edition)**

present satisfactory proof of identity. The means of proof, in the order of preference and priority, are:

(i) A document bearing the individual's photograph (for example, driver's license, passport or military or civilian identification card);

(ii) A document, preferably issued for participation in a Federally-sponsored program, bearing the individual's signature (for example, unemployment insurance book, employer's identification card, national credit card, and professional, craft or union membership card); and,

(iii) A document bearing neither the photograph nor the signature of the individual, preferably issued for participation in a Federally-sponsored program (for example, Medicaid card). If the individual can provide no suitable documentation of identity, the Department will require a signed statement asserting the individual's identity and stipulating that the individual understands the penalty provision of 5 U.S.C. 552a(1)(3) recited in §4.32(a). In order to avoid any unwarranted disclosure of an individual's records, the Department reserves the right to determine the adequacy of proof of identity offered by any individual, particularly if the request involves a sensitive record.

(2) *Not in person.* If the individual making a request does not appear in person before a Privacy Officer or other employee authorized to determine identity, a certification of a notary public or equivalent officer empowered to administer oaths must accompany the request under the circumstances prescribed in §4.23(b)(9). The certification in or attached to the letter must be substantially in accordance with the following text:

City of \_\_\_\_\_ County of \_\_\_\_\_, ss (Name of individual), who affixed (his) (her) signature below in my presence, came before me, a (title), in and for the aforesaid County and State, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and established (his) (her) identity to my satisfaction. My commission expires \_\_\_\_\_.  
(Signature)

(3) *Parents of minors and legal guardians.* An individual acting as the parent of a minor or the legal guardian of the individual to whom a record pertains shall establish his or her personal identity in the same manner prescribed in

**Office of the Secretary, Commerce**

**§4.25**

either paragraph (d)(1) or (d)(2) of this section. In addition, such other individual shall establish his or her identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the court's order. For purposes of the Act, a parent or legal guardian may represent only a living individual, not a decedent. A parent or legal guardian may be accompanied during personal access to a record by another individual, provided the provisions of §4.25(f) are satisfied.

(e) If the provisions of this subpart are alleged to impede an individual in exercising his or her right to access, the Department will consider, from an individual making a request, alternative suggestions regarding proof of identity and access to records.

(f) An individual shall not be required to state a reason for or otherwise justify his or her request for access to a record.

**§4.25 Disclosure of requested records to individuals.**

(a)(1) The responsible Privacy Officer shall act promptly upon each request. Every effort will be made to respond within ten working days (i.e., excluding Saturdays, Sundays and legal public holidays) of the date of receipt. If a response cannot be made within ten working days due to unusual circumstances, the Privacy Officer shall send an acknowledgment during that period providing information on the status of the request and asking for any further information that may be necessary to process the request. "Unusual circumstances" shall include circumstances in which:

(1) A search for and collection of requested records from inactive storage, field facilities or other establishments is required;

(1) A voluminous amount of data is involved;

(1) Information on other individuals must be separated or expunged from the particular record; or

(1) Consultations with other agencies having a substantial interest in the determination of the request are necessary.

(2) If the Privacy Officer fails to send an acknowledgment within ten working days, as provided in paragraph (a)(1) of this section, the requester may ask the Assistant General Counsel for Administration to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(b) Grant of access: (1) *Notification.* An individual shall be granted access to a record pertaining to him or her, unless the provisions of paragraph (g)(1) of this section apply. The Privacy Officer shall notify the individual of a determination to grant access, and provide the following information:

(1) The methods of access, as set forth in paragraph (b)(2) of this section;

(1) The place at which the record may be inspected;

(1) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection. In no event shall the earliest date be later than thirty calendar days from the date of notification;

(1) The estimated date by which a copy of the record will be mailed and the fee estimate pursuant to §4.31. In no event shall the estimated date be later than thirty calendar days from the date of notification;

(1) The fact that the individual, if he or she wishes, may be accompanied by another individual during personal access, subject to the procedures set forth in paragraph (f) of this section; and,

(1) Any additional prerequisites for granting access to a specific record.

(2) *Methods of access.* The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(1) Inspection in person may be had in the office specified by the Privacy Officer granting access, during the hours indicated in Appendix A to this part;

Department of Commerce Freedom of Information Act Regulations

§4.25

15 CFR Subtitle A (1-1-02 Edition)

(ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the Privacy Officer determines that a suitable facility is available, that the individual's access can be properly supervised at that facility, and that transmittal of the records to that facility will not unduly interfere with operations of the Department or involve unreasonable costs, in terms of both money and manpower; and,

(iii) Copies may be mailed at the request of the individual, subject to payment of the fees prescribed in §4.31. The Department, at its own initiative, may elect to provide a copy by mail, in which case no fee will be charged the individual.

(c) Access to medical records is governed by the provisions of §4.26.

(d) The Department shall supply such other information and assistance at the time of access as to make the record intelligible to the individual.

(e) The Department reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election would be appropriate, for example, when the record is in an automated data medium such as tape or disc, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example, 5 U.S.C. 552a(k)(2)). In no event shall original records of the Department be made available to the individual except under the immediate supervision of the Privacy Officer or his or her designee.

(f) Any individual who requests access to a record pertaining to that individual may be accompanied by another individual of his or her choice. "Accompanied" includes discussing the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual in writing. The authorization shall include the name of the other individual, a specific description of the record to which access is sought, the Department control number assigned to the request, the date, and the signature of the individual to whom the record pertains. The other individual shall sign the authorization in the presence of

the Privacy Officer. An individual shall not be required to state a reason or otherwise justify his or her decision to be accompanied by another individual during personal access to a record.

(g) Initial denial of access: (1) *Grounds.* Access by an individual to a record that pertains to that individual will be denied only upon a determination by the Privacy Officer that:

(i) The record is exempt under §4.33 or 4.34, or exempt by determination of another agency publishing notice of the system of records, as described in §4.23(f);

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of §4.26 pertaining to medical records temporarily have been invoked; or,

(iv) The individual unreasonably has failed to comply with the procedural requirements of this part.

(2) *Notification.* The Privacy Officer shall give notice of denial of access to records to the individual in writing, and the notice shall include the following information:

(i) The Privacy Officer's name and title or position;

(ii) The date of the denial;

(iii) The reasons for the denial, including citation to the appropriate section of the Act and this part;

(iv) The individual's opportunities, if any, for further administrative consideration, including the identity and address of the responsible official. If no further administrative consideration within the Department is available, the notice shall state that the denial is administratively final; and,

(v) If stated to be administratively final within the Department, the individual's right to judicial review provided under 5 U.S.C. 552a(g)(1), as limited by 5 U.S.C. 552a(g)(5).

(3) *Administrative review.* If a Privacy Officer issues an initial denial of a request, the individual's opportunities for further consideration shall be as follows:

(1) As to denial under paragraph (g)(1)(i) of this section, two opportunities for further consideration are available in the alternative:

(A) If the individual contests the application of an exemption to the

**Office of the Secretary, Commerce**

**§4.27**

records, the review procedures in §4.25(g)(3)(1) shall apply; or,

(B) If the individual challenges the validity of the exemption itself, the individual must file a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e). If the exemption was determined by the Department, such petition shall be filed with the Assistant Secretary for Administration. If the exemption was determined by another agency (as described in §4.23(f)), the Department will provide the individual with the name and address of the other agency and any relief sought by the individual shall be that provided by the regulations of the other agency. Within the Department, no such denial is administratively final until such a petition has been filed by the individual and disposed of on the merits by the Assistant Secretary for Administration.

(ii) As to denial under paragraphs (g)(1)(ii) of this section, (g)(1)(iv) of this section or (to the limited extent provided in paragraph (g)(3)(1)(A) of this section) paragraph (g)(1)(1) of this section, the individual may file for review with the Assistant General Counsel for Administration, as indicated in the Privacy Officer's initial denial notification. The individual and the Department shall follow the procedures in §4.28 to the maximum extent practicable.

(iii) As to denial under paragraph (g)(1)(iii) of this section, no further administrative consideration within the Department is available because the denial is not administratively final until expiration of the time period indicated in §4.26(a).

(n) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

**§4.26 Special procedures: Medical records.**

(a) No response to any request for access to medical records from an individual will be issued by the Privacy Officer for a period of seven working days (i.e., excluding Saturdays, Sundays and legal public holidays) from the date of receipt.

(b) For every request from an individual for access to medical records, the Privacy Officer shall:

(1) Inform the individual of the waiting period prescribed in paragraph (a) of this section;

(2) Seek from the individual the name and address of the individual's physician and/or psychologist;

(3) Seek from the individual written consent for the Department to consult the individual's physician and/or psychologist, if the Department believes such consultation is advisable;

(4) Seek written consent from the individual for the Department to provide the medical records to the individual's physician or psychologist, if the Department believes access to the record by the individual is best effected under the guidance of the individual's physician or psychologist; and,

(5) Forward the individual's medical record to the Department's medical officer for review and a determination on whether consultation with or transmittal of the medical records to the individual's physician or psychologist is warranted. If consultation with or transmittal of such records to the individual's physician or psychologist is determined to be warranted, the Department's medical officer shall so consult or transmit. Whether or not such a consultation or transmittal occurs, the Department's medical officer shall provide instruction to the Privacy Officer regarding the conditions of access by the individual to his or her medical records.

(c) If an individual refuses in writing to give the names and consents set forth in paragraphs (c)(2) through (c)(4) of this section, the Department shall give the individual access to said records by means of a copy, provided without cost to the requester, sent registered mail, return receipt requested.

**§4.27 Procedures for making requests for correction or amendment.**

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request for correction or amendment to the Department. The request should be made either in person

**§4.28**

or by mail addressed to the Privacy Officer who processed the individual's request for access to the record, and to whom is delegated authority to make initial determinations on requests for correction or amendment. The offices of Privacy Officers are open to the public between the hours of 9 a.m. and 4 p.m. Monday through Friday (excluding Saturdays, Sundays, and legal public holidays).

(b) Requests submitted by mail should include the words "PRIVACY ACT REQUEST" in capital letters at the top of the letter and on the face of the envelope. Any request that is not addressed as specified in paragraph (a) of this section or that is not marked as specified in this paragraph will be so addressed and marked by Department personnel and forwarded immediately to the responsible Privacy Officer. A request that is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring the time period for response until actual receipt by the Privacy Officer. In each instance when a request so forwarded is received, the Privacy Officer shall notify the individual that his or her request was improperly addressed and the date the request was received at the proper address.

(c) Since the request, in all cases, will follow a request for access under §4.25, the individual's identity will be established by his or her signature on the request and use of the Department control number assigned to the request.

(d) A request for correction or amendment should include the following:

(1) Specific identification of the record sought to be corrected or amended (for example, description, title, date, paragraph, sentence, line and words);

(2) The specific wording to be deleted, if any;

(3) The specific wording to be inserted or added, if any, and the exact place at which it is to be inserted or added; and,

(4) A statement of the basis for the requested correction or amendment, with all available supporting documents and materials that substantiate the statement. The statement should

**15 CFR Subtitle A (1-1-02 Edition)**

identify the criterion of the Act being invoked, that is, whether the information in the record is unnecessary, inaccurate, irrelevant, untimely or incomplete.

**§4.28 Agency review of requests for correction or amendment.**

(a)(1)(i) Not later than ten working days (i.e., excluding Saturdays, Sundays and legal public holidays) after receipt of a request to correct or amend a record, the Privacy Officer shall send an acknowledgment providing an estimate of time within which action will be taken on the request and asking for such further information as may be necessary to process the request. The estimate of time may take into account unusual circumstances as described in §4.25(a). No acknowledgment will be sent if the request can be reviewed, processed and the individual notified of the results of review (either compliance or denial) within the ten working days. Requests filed in person will be acknowledged in writing at the time submitted.

(i) If the Privacy Officer fails to send the acknowledgment within ten working days, as provided in paragraph (a)(1)(i) of this section, the requester may ask the Assistant General Counsel for Administration to take corrective action. No failure of a Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(2) Promptly after acknowledging receipt of a request, or after receiving such further information as might have been requested, or after arriving at a decision within the ten working days, the Privacy Officer shall either:

(i) Make the requested correction or amendment and advise the individual in writing of such action, providing either a copy of the corrected or amended record or, in cases in which a copy cannot be provided (for example, erasure of information from a record maintained only in magnetically-recorded computer files), a statement as to the means by which the correction or amendment was effected; or,

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

Office of the Secretary, Commerce

§ 4.29

(A) The Privacy Officer's name and title or position;

(B) The date of the denial;

(C) The reasons for the denial, including citation to the appropriate sections of the Act and this subpart; and,

(D) The procedures for appeal of the denial as set forth in § 4.29, including the address of the Assistant General Counsel for Administration.

(3) The term *promptly* in this section means within thirty working days (i.e., excluding Saturdays, Sundays and legal public holidays). If the Privacy Officer cannot make the determination within thirty working days, the individual will be advised in writing of the reason for the delay and of the estimated date by which the determination will be made.

(b) Whenever an individual's record is corrected or amended pursuant to a request from that individual, the Privacy Officer shall notify all persons and agencies to which the corrected or amended portion of the record had been disclosed prior to its correction or amendment, if an accounting of such disclosure required by the Act was made. The notification shall require a recipient agency maintaining the record to acknowledge receipt of the notification, to correct or amend the record, and to apprise any agency or person to which it had disclosed the record of the substance of the correction or amendment.

(c) The following criteria will be considered by the Privacy Officer in reviewing a request for correction or amendment:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information to be corrected or amended;

(3) The relevance and necessity of the information in terms of the purpose for which it was collected;

(4) The timeliness and currency of the information in light of the purpose for which it was collected;

(5) The completeness of the information in terms of the purpose for which it was collected;

(6) The degree of risk that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and,

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual.

(d) The Department will not undertake to gather evidence for the individual, but does reserve the right to verify the evidence the individual submits.

(e) Correction or amendment of a record requested by an individual will be denied only upon a determination by the Privacy Officer that:

(1) The individual has failed to establish, by a preponderance of the evidence, the propriety of the correction or amendment in light of the criteria set forth in paragraph (c) of this section;

(2) The record sought to be corrected or amended is part of the official record in a terminated judicial, quasi-judicial or quasi-legislative proceeding to which the individual was a party or participant;

(3) The information in the record sought to be corrected or amended, or the record sought to be corrected or amended, is the subject of a pending judicial, quasi-judicial or quasi-legislative proceeding to which the individual is a party or participant;

(4) The correction or amendment would violate a duly enacted statute or promulgated regulation; or,

(5) The individual unreasonably has failed to comply with the procedural requirements of this part.

(f) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

**§ 4.29 Appeal of initial adverse agency determination on correction or amendment.**

(a) If a request for correction or amendment is denied initially under § 4.28, the individual may submit a written appeal within thirty working days (i.e., excluding Saturdays, Sundays and legal public holidays) of the date of the initial denial. If an appeal

Department of Commerce Freedom of Information Act Regulations

§4.29

15 CFR Subtitle A (1-1-02 Edition)

is submitted by mail, the postmark is conclusive as to timeliness.

(b) An appeal should be addressed to the Assistant General Counsel for Administration, U.S. Department of Commerce, Room 5875, 14th and Constitution Avenue, NW., Washington, DC 20230. An appeal should include the words "PRIVACY APPEAL" in capital letters at the top of the letter and on the face of the envelope. An appeal not addressed and marked as provided herein will be so marked by Department personnel when it is so identified, and will be forwarded immediately to the Assistant General Counsel for Administration. An appeal which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring the time periods in this section until actual receipt by the Assistant General Counsel for Administration. In each instance when an appeal so forwarded is received, the Assistant General Counsel for Administration shall notify the individual that his or her appeal was improperly addressed and the date on which the appeal was received at the proper address.

(c) The individual's appeal shall be signed by the individual, and shall include a statement of the reasons why the initial denial is believed to be in error, and the Department's control number assigned to the request. The Privacy Officer who issued the initial denial shall furnish to the Assistant General Counsel for Administration the record the individual requests to be corrected or amended, and all correspondence between the Privacy Officer and the requester. Although the foregoing normally will comprise the entire record on appeal, the Assistant General Counsel for Administration may seek any additional information necessary to ensure that the final determination is fair and equitable and, in such instances, disclose the additional information to the individual to the greatest extent possible, and provide an opportunity for comment thereon.

(d) No personal appearance or hearing on appeal will be allowed.

(e) The Assistant General Counsel for Administration shall act upon the appeal and issue a final determination in

writing not later than thirty working days (i.e., excluding Saturdays, Sundays and legal public holidays) from the date on which the appeal is received, except that the Assistant General Counsel for Administration may extend the thirty days upon deciding that a fair and equitable review cannot be made within that period, but only if the individual is advised in writing of the reason for the extension and the estimated date by which a final determination will issue. The estimated date should not be later than the sixtieth working day after receipt of the appeal unless unusual circumstances, as described in §4.25(a), are met.

(f) If the appeal is determined in favor of the individual, the final determination shall include the specific corrections or amendments to be made and a copy thereof shall be transmitted promptly to the individual and to the Privacy Officer who issued the initial denial. Upon receipt of such final determination, the Privacy Officer shall promptly take the actions set forth in §4.28(a)(2)(1) and (b).

(g) If the appeal is denied, the final determination shall be transmitted promptly to the individual and state the reasons for the denial. The notice of final determination also shall inform the individual that:

(1) The individual has a right under the Act to file with the Assistant General Counsel for Administration a concise statement of reasons for disagreeing with the final determination. The statement ordinarily should not exceed one page and the Department reserves the right to reject an excessively lengthy statement. It should provide the Department control number assigned to the request, indicate the date of the final determination and be signed by the individual. The Assistant General Counsel for Administration shall acknowledge receipt of such statement and inform the individual of the date on which it was received;

(2) Any such disagreement statement submitted by the individual would be noted in the disputed record, and filed with it;

(3) The purposes and uses to which the statement would be put are those applicable to the record in which it is

**Office of the Secretary, Commerce**

**§4.30**

noted, and that a copy of the statement would be provided to persons and agencies to which the record is disclosed subsequent to the date of receipt of such statement;

(4) The Department would append to any such disagreement statement a copy of the final determination or summary thereof, which also would be provided to persons and agencies to which the disagreement statement is disclosed; and

(5) The individual has a right to judicial review of the final determination under 5 U.S.C. 552a(g)(1)(A), as limited by 5 U.S.C. 552a(g)(5).

(h) In making the final determination, the Assistant General Counsel for Administration shall employ the criteria set forth in §4.28(c) and shall deny an appeal only on the grounds set forth in §4.28(e).

(i) If an appeal is partially granted and partially denied, the Assistant General Counsel for Administration shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

(j) Although a copy of the final determination or a summary thereof will be treated as part of the individual's record for purposes of disclosure in instances where the individual has filed a disagreement statement, it will not be subject to correction or amendment by the individual.

(k) The provisions of paragraphs (g)(1) through (g)(3) of this section satisfy the requirements of 5 U.S.C. 552a(e)(3).

**§4.30 Disclosure of record to person other than the individual to whom it pertains.**

(a) The Department may disclose a record pertaining to an individual to a person other than the individual to whom it pertains only in the following instances:

(1) Upon written request by the individual, including authorization under §4.25(f);

(2) With the prior written consent of the individual;

(3) To a parent or legal guardian under 5 U.S.C. 552a(h);

(4) When required by the Act and not covered explicitly by the provisions of 5 U.S.C. 552a(b); and

(5) When permitted under 5 U.S.C. 552a(b)(1) through (12), as follows:<sup>3</sup>

(i) To those officers and employees of the agency that maintains the record who have a need for the record in the performance of their duties;

(ii) Required under 5 U.S.C. 552;

(iii) For a routine use as defined in 5 U.S.C. 552a(a)(7);

(iv) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the U.S. Code;

(v) To a requester who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(vi) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States, or the designee of the Archivist, to determine whether the record has such value;

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record, specifying the particular portion desired and the law enforcement activity for which the record is sought;

(viii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

<sup>3</sup> 5 U.S.C. 552b(b)(4) has no application within the Department.

**§4.31**

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(x) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(xi) Pursuant to the order of a court of competent jurisdiction; or

(xii) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e).

(b) The situations referred to in paragraph (a)(4) of this section include the following:

(1) 5 U.S.C. 552a(c)(4) requires dissemination of a corrected or amended record or notation of a disagreement statement by the Department in certain circumstances;

(2) 5 U.S.C. 552a(d) requires disclosure of records to the individual to whom they pertain, upon request; and

(3) 5 U.S.C. 552a(g) authorizes civil action by an individual and requires disclosure by the Department to the court.

(c) The Privacy Officer shall make an accounting of each disclosure by him of any record contained in a system of records in accordance with 5 U.S.C. 552a(c)(1) and (2). Except for a disclosure made under 5 U.S.C. 552a(b)(7), the Privacy Officer shall make such accounting available to any individual, insofar as it pertains to that individual, upon any request submitted in accordance with §4.24. The Privacy Officer shall make reasonable efforts to notify any individual when any record in a system of records is disclosed to any person under compulsory legal process, promptly upon being informed that such process has become a matter of public record.

**§4.31 Fees.**

(a) The only fee to be charged to an individual under this part is for duplication of records at the request of the individual. Components shall charge a fee for duplication of records under the Act in the same way in which they charge a duplication fee under §4.11, except as provided in this section. Accordingly, no fee shall be charged or

**15 CFR Subtitle A (1-1-02 Edition)**

collected for: search, retrieval, or review of records; copying at the initiative of the Department without a request from the individual; transportation of records; or first-class postage.

(b) The Department shall provide an individual one copy of each record corrected or amended pursuant to the individual's request without charge as evidence of the correction or amendment.

(c) As required by the United States Office of Personnel Management in its published regulations implementing the Act, the Department shall charge no fee for a single copy of a personnel record covered by that agency's Government-wide published notice of systems of records.

**§4.32 Penalties.**

(a) The Act provides, in pertinent part:

Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. (5 U.S.C. 552a(i)(3)).

(b) A person who falsely or fraudulently attempts to obtain records under the Act also may be subject to prosecution under such other criminal statutes as 18 U.S.C. 494, 495 and 1001.

**§4.33 General exemptions.**

(a) Individuals may not have access to records maintained by the Department but which were provided by another agency which has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, the Department will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

(b) The general exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

Office of the Secretary, Commerce

§4.34

(1) *Individuals identified in Export Transactions*—COMMERCE/ITA-1. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a(b), (c)(1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (1). These exemptions are necessary to ensure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to maintain the integrity of the law enforcement process, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, to prevent interference with law enforcement proceedings, to avoid disclosure of investigative techniques, and to avoid endangering law enforcement personnel. Section 12(c) of the Export Administration Act of 1979, as amended, also protects this information from disclosure.

(2) *Fisheries Law Enforcement Case Files*—COMMERCE/NOAA-5. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e) (4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (1). These exemptions are necessary to ensure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with law enforcement proceedings, to avoid the disclosure of investigative techniques, to avoid the endangering of law enforcement personnel, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

(3) *Investigative and Inspection Records*—COMMERCE/DEPT-12. Pursuant to 5 U.S.C. 552a(j)(2), these records are hereby determined to be exempt from all provisions of the Act, except 5 U.S.C. 552a (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (1). These exemptions are necessary to ensure the proper operation of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidence,

to prevent interference with law enforcement proceedings, to avoid the disclosure of investigative techniques, to avoid the endangering of law enforcement personnel, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process.

§4.34 Specific exemptions.

(a)(1) Certain systems of records under the Act that are maintained by the Department may occasionally contain material subject to 5 U.S.C. 552a(k)(1), relating to national defense and foreign policy materials. The systems of records published in the FEDERAL REGISTER by the Department that are within this exemption are:

COMMERCE/ITA-1, COMMERCE/ITA-2, COMMERCE/ITA-3, COMMERCE/NOAA-11, COMMERCE/PAT-TM-4, COMMERCE/DEPT-12, COMMERCE/DEPT-13, and COMMERCE/DEPT-14.

(2) The Department hereby asserts a claim to exemption of such materials wherever they might appear in such systems of records, or any systems of records, at present or in the future. The materials would be exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f), because the materials are required by Executive order to be kept secret in the interest of the national defense and foreign policy.

(b) The specific exemptions determined to be necessary and proper with respect to systems of records maintained by the Department, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for the exemption, are as follows:

(1) Exempt under 5 U.S.C. 552a(k)(1). The systems of records exempt hereunder appear in paragraph (a) of this section. The claims for exemption of COMMERCE/DEPT-12, COMMERCE/ITA-1, and COMMERCE/NOAA-11 under this paragraph are subject to the condition that the general exemption claimed in §4.33(b)(3) is held to be invalid.

(2)(i) Exempt under 5 U.S.C. 552a(k)(2). The systems of records exempt (some only conditionally), the

Department of Commerce Freedom of Information Act Regulations

§4.34

15 CFR Subtitle A (1-1-02 Edition)

sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Individuals identified in Export Administration compliance proceedings or investigations—COMMERCE/ITA-1, but only on condition that the general exemption claimed in §4.33(b)(1) is held to be invalid;

(B) Individuals involved in export transactions—COMMERCE/ITA-2;

(C) Fisheries Law Enforcement Case Files—COMMERCE/NOAA-11, but only on condition that the general exemption claimed in §4.33(b)(2) is held to be invalid;

(D) Investigative and Inspection Records—COMMERCE/DEPT-12, but only on condition that the general exemption claimed in §4.33(b)(3) is held to be invalid;

(E) Investigative Records—Persons Within the Investigative Jurisdiction of the Department—COMMERCE/DEPT-13;

(F) Litigation, Claims and Administrative Proceeding Records—COMMERCE/DEPT-14; and

(1) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The reasons for asserting the exemption are to prevent subjects of investigation from frustrating the investigatory process; to ensure the proper functioning and integrity of law enforcement activities; to prevent disclosure of investigative techniques; to maintain the ability to obtain necessary information; to fulfill commitments made to sources to protect their identities and the confidentiality of information; and to avoid endangering these sources and law enforcement personnel. Special note is taken that the proviso clause in this exemption imports due process and procedural protections for the individual. The existence and general character of the information exempted shall be made known to the individual to whom it pertains.

(3)(1) Exempt under 5 U.S.C. 552a(k)(4). The systems of records exempt, the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Agriculture Census Records for 1974 and 1978—COMMERCE/CENSUS-1;

(B) Individual and Household Statistical Surveys and Special Census Studies Records—COMMERCE/CENSUS-3;

(C) Minority-Owned Business Enterprises Survey Records—COMMERCE/CENSUS-4;

(D) Population and Housing Census Records of the 1960 and Subsequent Censuses—COMMERCE/CENSUS-5;

(E) Population Census Personal Service Records for 1900 and All Subsequent Decennial Censuses—COMMERCE/CENSUS-6; and

(F) Special Censuses of Population Conducted for State and Local Government—COMMERCE/CENSUS-7.

(G) Statistical Administrative Records System—COMMERCE/CENSUS-8.

(1) The foregoing are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G) (H), and (I), and (f). The reasons for asserting the exemption are to comply with the prescription of Title 13 of the United States Code, especially sections 8 and 9 relating to prohibitions against disclosure, and to avoid needless consideration of these records whose sole statistical use comports fully with a basic purpose of the Act, namely, that no adverse determinations are made from these records as to any identifiable individual.

(4)(1) Exempt under 5 U.S.C. 552a(k)(5). The systems of records exempt (some only conditionally), the sections of the Act from which exempted, and the reasons therefor are as follows:

(A) Applications to U.S. Merchant Marine Academy (USMMA)—COMMERCE/MA-1;

(B) USMMA Midshipman Medical Files—COMMERCE/MA-17;

(C) USMMA Midshipman Personnel Files—COMMERCE/MA-18;

(D) USMMA Non-Appropriated fund Employees—COMMERCE/MA-19;

(E) Applicants for the NOAA Corps—COMMERCE/NOAA-4;

(F) Commissioned Officer Official Personnel Folders—COMMERCE/NOAA-7;

(G) Conflict of Interest Records, Appointed Officials—COMMERCE/DEPT-3;

(H) Investigative and Inspection Records—COMMERCE/DEPT-12, but

Department of Commerce Freedom of Information Act Regulations

Office of the Secretary, Commerce

Pt. 4, App. A

only on condition that the general exemption claimed in §4.33(b)(3) is held to be invalid;

(I) Investigative Records—Persons Within the Investigative Jurisdiction of the Department—COMMERCE/DEPT-13; and

(J) Litigation, Claims, and Administrative Proceeding Records—COMMERCE/DEPT-14.

(1) The foregoing are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f). The reasons for asserting the exemption are to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

(c) At the present time, the Department claims no exemption under 5 U.S.C. 552a(k) (3), (6) and (7).

APPENDIX A TO PART 4—FREEDOM OF INFORMATION PUBLIC INSPECTION FACILITIES, AND ADDRESSES FOR REQUESTS FOR RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND REQUESTS FOR CORRECTION OR AMENDMENT UNDER THE PRIVACY ACT

Each address listed below is the respective component's mailing address for receipt and processing of requests for records under the Freedom of Information Act and Privacy Act, for requests for correction or amendment under the Privacy Act and, unless otherwise noted, its public inspection facility for records available to the public under the Freedom of Information Act. Requests should be addressed to the component the requester knows or has reason to believe has possession of, control over, or primary concern with the records sought. Otherwise, requests should be addressed to the Central Reference and Records Inspection Facility. The telephone number for each component is included after its address. Public inspection facilities are open to the public Monday through Friday (excluding Saturdays, Sundays, and legal public holidays) between 9 a.m. and 4 p.m. local time of the facility at

issue. Certain public inspection facility records of components are also available electronically through the Department's "FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>), as described in §4.2(b). The Departmental Freedom of Information Officer is authorized to revise this appendix to reflect changes in the information contained in it. Any such revisions shall be posted at the Department's "FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>).

(1) Department of Commerce Freedom of Information Central Reference and Records Inspection Facility, U.S. Department of Commerce, Room 6022, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-4115. This facility serves the Office of the Secretary, all other components of the Department not identified below, and those components identified below that do not have separate public inspection facilities.

(2) Bureau of the Census, Policy Office, U.S. Department of Commerce, Federal Building 3, Room 2430, Suitland, Maryland 20233; (301) 457-2520. This agency maintains a separate public inspection facility in Room 2455, Federal Building 3, Suitland, Maryland 20233.

(3) Bureau of Economic Analysis/Economics and Statistics Administration, Office of the Under Secretary for Economic Affairs, Department of Commerce, Room 4836, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-3306. This component does not maintain a separate public inspection facility.

(4) Bureau of Export Administration, Office of Administration, U.S. Department of Commerce, Room 6883, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-0500. This component does not maintain a separate public inspection facility.

(5) Economic Development Administration, Office of the Chief Counsel, U.S. Department of Commerce, Room 7005, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-4687. Regional EDA offices (none of the following regional EDA offices maintains a separate public inspection facility):

(i) Philadelphia Regional Office, EDA, U.S. Department of Commerce, Curtis Center, Suite 140 South, Independence Square West, Philadelphia, Pennsylvania 19106; (215) 597-7896.

(ii) Atlanta Regional Office, EDA, U.S. Department of Commerce, 401 West Peachtree Street, NW, Suite 1820, Atlanta, GA 30308; (404) 730-3006.

(iii) Denver Regional Office, EDA, U.S. Department of Commerce, Room 670, 1244 Speer Boulevard, Denver, Colorado 80204; (303) 844-4716.

(iv) Chicago Regional Office, EDA, U.S. Department of Commerce, 111 North Canal

Department of Commerce Freedom of Information Act Regulations

Pt. 4, App. B

15 CFR Subtitle A (1-1-02 Edition)

Street, Suite 855, Chicago, IL 60606; (312) 353-8580.

(v) Seattle Regional Office, EDA, U.S. Department of Commerce, Jackson Federal Building, Room 1856, 915 Second Avenue, Seattle WA 98174; (206) 220-7701.

(vi) Austin Regional Office, EDA, U.S. Department of Commerce, 327 Congress Avenue, Suite 200, Austin, Texas 78701; (512) 381-8169.

(6) International Trade Administration, Office of Organization and Management Support, U.S. Department of Commerce, Room 4001, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-3032.

(7) Minority Business Development Agency, Data Resources Division, U.S. Department of Commerce, Room 5084, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-2025. This agency does not maintain a separate public inspection facility.

(8) National Institute of Standards and Technology, Management and Organization Division, Administration Building, Room A525, 100 Bureau Drive, Gaithersburg, Maryland 20899; (301) 975-4054. This agency maintains a separate public inspection facility in Room E-106, Administration Building, Gaithersburg, Maryland.

(9) National Oceanic and Atmospheric Administration, Public Reference Facility (OFax2) 1315 East West Highway (SSMC3), Room 10730, Silver Spring, Maryland 20910; (301) 713-3540.

(10) National Technical Information Service, Office of Administration, 5285 Port Royal Road, Springfield, Virginia 22161; (703) 605-6449. This agency does not maintain a separate public inspection facility.

(11) National Telecommunications and Information Administration, Office of the Chief Counsel, U.S. Department of Commerce, Room 4713, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-1816. This component does not maintain a separate public inspection facility.

(12) Office of Inspector General, Counsel to the Inspector General, U.S. Department of Commerce, Room 7892, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-5992. This component does not maintain a separate public inspection facility.

(13) Technology Administration, Office of the Under Secretary, U.S. Department of Commerce, Room 4835, 14th and Constitution Avenue, NW, Washington, DC 20230; (202) 482-1984. This component does not maintain a separate public inspection facility.

APPENDIX B TO PART 4— OFFICIALS AUTHORIZED TO DENY REQUESTS FOR RECORDS UNDER THE FREEDOM OF INFORMATION ACT, AND REQUESTS FOR RECORDS AND REQUESTS FOR CORRECTION OR AMENDMENT UNDER THE PRIVACY ACT

The officials of the Department listed below and their superiors have authority, with respect to the records for which each is responsible, to deny requests for records under the FOIA,<sup>1</sup> and requests for records and requests for correction or amendment under the PA. In addition, the Departmental Freedom of Information Officer and the Freedom of Information Officer for the Office of the Secretary have the foregoing FOIA and PA denial authority for all records of the Department, and the Departmental Freedom of Information officer is authorized to assign that authority, on a case-by-case basis only, to any of the officials listed below, if the records responsive to a request include records for which more than one official listed below is responsible. The Departmental Freedom of Information Officer is authorized to revise this appendix to reflect changes in designation of denial officials. Any such revisions shall be posted at the Department's "FOIA Home Page" link found at the Department's World Wide Web site (<http://www.doc.gov>).

OFFICE OF THE SECRETARY

*Office of the Secretary:* Executive Secretary; Freedom of Information Officer

*Office of Business Liaison:* Director

*Office of Public Affairs:* Director; Deputy Director; Press Secretary; Deputy Press Secretary

Assistant Secretary for Legislative and Intergovernmental Affairs; Deputy Assistant Secretary for Legislative and Intergovernmental Affairs

*Office of the Inspector General:* Counsel to the Inspector General; Deputy Counsel to the Inspector General

*Office of the General Counsel:* Deputy General Counsel; Assistant General Counsel for Administration

*Office of Executive Support:* Director

<sup>1</sup>The foregoing officials have sole authority under §4.7(b) to deny requests for records in any respect, including, for example, denying requests for reduction or waiver of fees.

Department of Commerce Freedom of Information Act Regulations

**Office of the Secretary, Commerce**

**Pt. 4, App. B**

**ASSISTANT SECRETARY FOR ADMINISTRATION**

*Office of Civil Rights:* Director  
*Office of Budget:* Director  
*Office of Management and Organization:* Director  
*Office of Chief Information Officer:* Director  
*Office of Executive Budgeting and Assistance Management:* Director  
*Office of Executive Assistance Management:* Director; Grants Officer  
Departmental Freedom of Information Officer.  
*Office of Financial Management:* Director  
*Office of Human Resources Management:* Director; Deputy Director.  
*Office of Administrative Services:* Director  
*Office of Security:* Director, Deputy Director  
*Office of Acquisition Management:* Director  
*Office of Acquisition Services:* Director  
*Office of Small and Disadvantaged Business Utilization:* Director

**BUREAU OF EXPORT ADMINISTRATION**

Under Secretary  
Deputy Under Secretary  
Director, Office of Administration  
Director, Office of Planning, Evaluation and Management  
Assistant Secretary for Export Administration  
Deputy Assistant Secretary for Export Administration  
Director, Office of Strategic Industries and Economic Security  
Director, Office of Nonproliferation Controls and Treaty Compliance  
Director, Office of Strategic Trade and Foreign Policy Controls  
Director, Office of Exporter Services  
Assistant Secretary for Export Enforcement  
Deputy Assistant Secretary for Export Enforcement  
Director, Office of Export Enforcement  
Director, Office of Enforcement Analysis  
Director, Office of Antiboycott Compliance

**ECONOMICS AND STATISTICS ADMINISTRATION**

*Office of Administration:* Director  
*Bureau of Economic Analysis:* Director  
*Bureau of the Census:* Chief, Policy Office

**ECONOMIC DEVELOPMENT ADMINISTRATION**

Freedom of Information Officer

**INTERNATIONAL TRADE ADMINISTRATION**

Under Secretary for International Trade  
Deputy Under Secretary for International Trade  
Counselor to the Department  
Director, Trade Promotion Coordinating Committee Secretariat  
Director, Office of Public Affairs  
Director, Office of Legislative and Intergovernmental Affairs

*Administration*

Chief Financial Officer and Director of Administration  
Director, Office of Organization and Management Support  
Director, Office of Human Resources Management  
Director, Office of Information Resources Management  
ITA Freedom of Information Officer

*Import Administration*

Assistant Secretary for Import Administration  
Deputy Assistant Secretary for Antidumping and Countervailing Duty Enforcement I  
Deputy Assistant Secretary for Antidumping and Countervailing Duty Enforcement II  
Deputy Assistant Secretary for Antidumping and Countervailing Duty Enforcement III  
Director for Policy and Analysis  
Director, Office of Policy  
Director, Office of Accounting  
Director, Central Records Unit  
Director, Foreign Trade Zones Staff  
Director, Statutory Import Programs Staff  
Director, Office of Antidumping Countervailing Duty Enforcement I  
Director, Office of Antidumping Countervailing Duty Enforcement II  
Director, Office of Antidumping Countervailing Duty Enforcement III  
Director, Office of Antidumping Countervailing Duty Enforcement IV  
Director, Office of Antidumping Countervailing Duty Enforcement V  
Director, Office of Antidumping Countervailing Duty Enforcement VI  
Director, Office of Antidumping Countervailing Duty Enforcement VII  
Director, Office of Antidumping Countervailing Duty Enforcement VIII  
Director, Office of Antidumping Countervailing Duty Enforcement IX

*Market Access and Compliance*

Assistant Secretary for Market Access and Compliance  
Deputy Assistant Secretary for Agreements Compliance  
Deputy Assistant Secretary for the Middle East and North Africa  
Deputy Assistant Secretary for Europe  
Deputy Assistant Secretary for the Western Hemisphere  
Deputy Assistant Secretary for Asia and the Pacific  
Deputy Assistant Secretary for Africa  
Director, Office of Policy Coordination  
Director, Office of Multilateral Affairs  
Director, Trade Compliance Center  
Director, Office of the Middle East and North Africa  
Director, Office of European Union and Regional Affairs

Department of Commerce Freedom of Information Act Regulations

**Pt. 4, App. B**

Director, Office of Eastern Europe, Russia and Independent States  
Director, Office of Latin America and the Caribbean  
Director, Office of NAFTA and Inter-American Affairs  
Director, Office of China Economic Area  
Director, Office of the Pacific Basin  
Director, Office of South Asia and Oceania  
Director, Office of Japan  
Director, Office of Africa

*Trade Development*

Assistant Secretary for Trade Development  
Deputy Assistant Secretary for Transportation and Technology Industries  
Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries  
Deputy Assistant Secretary for Service Industries and Finance  
Deputy Assistant Secretary for Basic Industries  
Deputy Assistant Secretary for Information Technology Industries  
Deputy Assistant Secretary for Environmental Technologies Industries  
Deputy Assistant Secretary for Tourism Industries  
Director, Office of Export Promotion Coordination  
Director, Trade Information Center  
Director, Office of Trade and Economic Analysis  
Director, Advocacy Center  
Director, Office of Planning, Coordination and Resource Management  
Director, Office of Aerospace  
Director, Office of Automotive Affairs  
Director, Office of Microelectronics, Medical Equipment and Instrumentation  
Director, Office of Textiles and Apparel  
Director, Office of Consumer Goods  
Director, Office of Environmental Technologies  
Director, Office of Export Trading Company Affairs  
Director, Office of Finance  
Director, Office of Service Industries  
Director, Office of Metals, Materials and Chemicals  
Director, Office of Energy, Infrastructure and Machinery  
Director, Office of Electronic Commerce  
Director, Office of Information Technologies  
Director, Office of Telecommunications Technologies

*U.S. and Foreign Commercial Service*

Assistant Secretary and Director General  
Deputy Director General  
Deputy Assistant Secretary for International Operations  
Deputy Assistant Secretary for Export Promotion Services  
Deputy Assistant Secretary for Domestic Operations

**15 CFR Subtitle A (1-1-02 Edition)**

Director, Office of Information Systems  
Director, Office of Planning  
Director, Office of Foreign Service Human Resources  
Director for Europe  
Director for Western Hemisphere  
Director for East Asia and the Pacific  
Director, Multilateral Development Bank Operations  
Director, Office of Public/Private Initiatives  
Director, Office of Export Information and Marketing Services  
Director, Office of Operations

**MINORITY BUSINESS DEVELOPMENT ADMINISTRATION**

Freedom of Information Officer

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

Under Secretary  
Assistant Secretary  
Director, Office of Public and Constituent Affairs  
Director, Office of Marine and Aviation Operations  
General Counsel  
Assistant Administrator for Ocean Services and Coastal Zone Management  
Assistant Administrator for Fisheries  
Assistant Administrator for Weather Services  
Assistant Administrator for Satellite and Information Services  
Assistant Administrator for Oceanic and Atmospheric Research  
Office of Finance and Administration: Chief Financial Officer/Chief Administrative Officer  
Director, Acquisition and Grants Office  
Director, Systems Acquisition Office  
Director, Human Resources Management Office  
Director, Office of Finance  
Director, Budget Office  
Director, Facilities Office  
Director, Information Systems Management Office  
Director, Eastern Administrative Support Center  
Director, Central Administrative Support Center  
Director, Mountain Administrative Support Center  
Director, Western Administrative Support Center  
Freedom of Information Officer

**NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION**

Deputy Assistant Secretary  
Chief Counsel  
Deputy Chief Counsel

**TECHNOLOGY ADMINISTRATION**

Under Secretary for Technology

Department of Commerce Freedom of Information Act Regulations

**Office of the Secretary, Commerce**

**§ 4a.4**

Deputy Under Secretary for Technology  
 Assistant Secretary for Technology Policy  
 Chief Counsel  
 Deputy Chief Counsel  
 Senior Counsel for Internet Technology  
*National Institute of Standards and Technology*: Director for Administration and Chief Financial Officer; Chief, Management and Organization Division; NIST Counsel.  
*National Technical Information Service*: Director; Deputy Director; Chief Financial Offi-

cer/Associate Director for Finance and Administration.

**APPENDIX C TO PART 4—SYSTEMS OF RECORDS NOTICED BY OTHER FEDERAL AGENCIES AND APPLICABLE TO RECORDS OF THE DEPARTMENT AND APPLICABILITY OF THIS PART THERE-TO**

Category of records	Other Federal Agency
Federal Personnel Records .....	Office of Personnel Management. <sup>1</sup>
Federal Employee Compensation Act Program Program .....	Department of Labor. <sup>2</sup>
Equal Employment Opportunity Appeal Complaints .....	Equal Employment Opportunity Commission. <sup>3</sup>
Formal Complaints/Appeals of Adverse Personnel Actions .....	Merit Systems Protection Board. <sup>4</sup>

<sup>1</sup> The provisions of this part do not apply to these records covered by notices of systems of records published by the Office of Personnel Management for all agencies. The regulations of OPM alone apply.

<sup>2</sup> The provisions of this part apply only initially to these records covered by notices of systems of records published by the U.S. Department of Labor for all agencies. The regulations of that Department attach at the point of any denial for access or for correction or amendment.

<sup>3</sup> The provisions of this part do not apply to these records covered by notices of systems of records published by the Equal Employment Opportunity Commission for all agencies. The regulations of the Commission alone apply.

<sup>4</sup> The provisions of this part do not apply to these records covered by notices of systems of records published by the Merit Systems Protection Board for all agencies. The regulations of the Board alone apply.

**PART 4a—CLASSIFICATION, DECLASSIFICATION, AND PUBLIC AVAILABILITY OF NATIONAL SECURITY INFORMATION**

classification shall be applied only to protect the national security.

**Sec.**

4a.1 General.

**§ 4a.2 Deputy Assistant Secretary for Security.**

The Deputy Assistant Secretary for Security (DAS) is responsible for implementing E.O. 12958 and this part.

4a.2 Deputy Assistant Secretary for Security.

4a.3 Classification levels.

**§ 4a.3 Classification levels.**

Information may be classified as national security information by a designated original classifier of the Department if it is determined that the information concerns one or more of the categories described in § 1.5 of E.O. 12958. The levels established by E.O. 12958 (Top Secret, Secret, and Confidential) are the only terms that may be applied to national security information. Except as provided by statute, no other terms shall be used within the Department for the three classification levels.

4a.4 Classification authority.

4a.5 Duration of classification.

4a.6 General.

4a.7 Mandatory review for declassification.

4a.8 Access to classified information by individuals outside the Government.

**AUTHORITY:** E.O. 12958; 47 FR 14874, April 6, 1982; 47 FR 15557, April 12, 1982.

**SOURCE:** 66 FR 65650, Dec. 20, 2001, unless otherwise noted.

**§ 4a.1 General.**

Executive Order 12958 provides the only basis for classifying information within the Department of Commerce (Department), except as provided in the Atomic Energy Act of 1954, as amended. The Department's policy is to make information concerning its activities available to the public, consistent with the need to protect the national defense and foreign relations of the United States. Accordingly, security

**§ 4a.4 Classification authority.**

Authority to originally classify information as Secret or Confidential may be exercised only by the Secretary of Commerce and by officials to whom such authority is specifically delegated. No official of the Department is authorized to originally classify information as Top Secret.

**Appendix C**

**Department of Commerce Administrative Order (DAO) 205-12**

DEPARTMENT ADMINISTRATIVE ORDER 205-12 - PUBLIC INFORMATION

**Section 1. Purpose**

.01 This order, and the rules and other materials which implement it, are designed to carry out the responsibilities of the Department of Commerce under the Freedom of Information Act, as amended (5 U.S.C. 552), hereinafter referred to as 'the Act.' 02. This revision updates and clarifies the provisions of the order (dated June 29, 1967) which it supersedes, in light of the amendments to the Act which become effective February 19, 1975. Section 7, 'Compulsory Process Requesting Documents or Testimony' contained in the superseded order, is now found in Department Administrative Order 218-5, to be published separately in the Federal Register.

**Section 2. Authorities**

This order is issued pursuant to the Act: 5 U.S.C. 553; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; and other authority vested by law in the Secretary applicable to the dissemination of records and other information of the Department and charges for services related thereto.

**Section 3. Policies**

.01 The Department of Commerce, in fulfilling its statutory missions to foster, promote and develop the foreign and domestic commerce of the United States and to administer the specific programs entrusted to it, regularly develops, collects, analyzes, and disseminates facts, statistics, consensus, charts, scientific findings, technology, and other information, and performs other services, in order to assist the business community and other segments of the public, according to their needs and interest. This information which the Department develops, collates, and disseminates is generally made readily available, either without charge or by purchase, to the affected persons and to anyone else who may be interested, through publications, reprints or regulations (by subscription or otherwise), press releases, special reports, correspondence and personal interviews or conferences with staff, speeches, and other media. It is the policy of the Department to continue its regular practices of disseminating information to the public prepared as a part of its program responsibilities, to the fullest extent legally permissible and economically feasible, and to continue to handle public requests for such information (which may include records) in the usual manner through its regular facilities and channels, as distinguished from those requests for records subject to 5 U.S.C. 552(a)(3) which are to be made and handled in accord with the rules established in and pursuant to subsections 5.03 and 5.04 of this order. In carrying out this policy, the officials designated in subsection 4.01 of this order shall:

- (a) Establish and continue an effective program of communicating to the public the useful information obtained or developed in the fulfillment of their organizational missions;
- (b) publicize the availability of such informational materials in their rules or by other practical means so that the public shall utilize the regular informational programs of the Department, rather than resorting to the formal procedures for requesting records established pursuant to 5 U.S.C. 552(a)(3); and
- (c) insure that any such information which is given to individuals or special groups shall also be made available to the general public in accord with subsections 5.01 and 5.02 of this order, when and to the extent such information is subject to publication or inspection under 5 U.S.C. 552(a)(1), (2), or (5).

.02 Officials responsible for determining, in accord with the Act and this order:

- (a) What materials are to be published in the Federal Register;
- (b) What and how materials are to be made available for public inspection and copying, including indexing; and
- (c) What and how records which are requested are to be made available; shall, where discretion exists in making such determinations, take an affirmative and constructive view of the requirements of the Act. Accordingly, in making rules and specific determinations, they shall among other factors;
  - (1) Provide such information to the affected public as well as enable it to deal effectively and knowledgeably with their organizations;
  - (2) keep within the limits of demonstrable need the use of the legal authorities which permit the withholding of information and records;
  - (3) apply principles of equal treatment to requests for records;
  - (4) consider disclosure to be the rule rather than the exception;
  - (5) consider the public convenience as well as the efficient conduct of their organizations' business;
  - (6) act in a timely manner; and
  - (7) be guided by materials prepared by the Department of Justice and the Office of General Counsel of the Department, and by applicable court decisions.

#### **Section 4. Delegation of authority**

.01 The Secretary of Commerce is responsible for the effective administration of the Act and other laws applicable to the dissemination of records and other information of the Department. Aside from the Secretary's retaining authority for his immediate office, or as he otherwise may act, authority is hereby delegated to the following officials of the Department to decide initially whether or not to make publicly available records and other information subject to the Act which are in the possession of their organizations, in accord with the provisions of the Act, this order and rules supplementing it, other applicable law, and as may be otherwise provided by the Secretary:

a. Secretarial Officers, for their respective offices and for the Department staff units reporting to them (as defined in Department Organization Order 1-1, 'Mission and Organization of the Department of Commerce' (35 FR 19704, December 27, 1970)), as amended.

b. Heads of operating units of the Department (as defined in Department Organization Order 1-1).

.02 Although the officials having authority under subsection 4.01 of this section may permit employees within their organizations to make records and information publicly available under the Act, they shall redelegate authority initially to deny such records and information only to a limited number of officers or employees under them without power of further redelegation.

.03 The authority to make final decisions on appeal of initially denied requests for records is hereby delegated to the General Counsel of the Department without power of further redelegation.

.04 The General Counsel of the Department, and his designees, shall provide legal services to enable the officials designated in subsections 4.01 and 4.02 of this section to discharge their respective duties and responsibilities under and pursuant to this order, and shall make legal interpretations of questions arising thereunder. The General Counsel shall also act as the focal point within the Department for consultation or other communication with the Department of Justice with respect to any actions to be taken in connection with the Act, this order, and rules implementing it.

.05 Program officials shall provide all support and assistance necessary to enable the General Counsel to perform the functions delegated in this order. This shall include (i) keeping the Office of the General Counsel informed of Freedom of Information Act requests received by the unit; (ii) providing prompt responses to Office of the General Counsel instructions, or requests for assistance; (iii) as requested, allowing the Office of the General Counsel access to relevant records; and (iv) promptly consulting with the Office of the General Counsel regarding any legal issues which arise during the processing of a request.

b. The Office of the Inspector General shall comply with the provisions of this order except that the Office of the Inspector General need not allow the Office of the General Counsel access to records to the extent that (i) information contained therein might reveal the identity of a confidential source, or (ii) the Inspector General determines that disclosure to Office of the General Counsel would interfere with an audit, investigation, or prosecution.

#### **Section 5. Functions and responsibilities**

.01 Publication in the Federal Register (5 U.S.C. 552(a)(1) of the Act). a. The following information of the Department and its component organizations shall be separately stated and currently published in the Federal Register for the guidance of the public.

1. Descriptions of the central and field organizations and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may secure information, make submittals or request, or obtain decisions;
2. Statements of the general course and method by which functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;
3. Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;
4. Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by their agencies; and
5. Each amendment, revision, or repeal of the foregoing.

b. The information contained in paragraph 5.01a of this subsection shall be published in the Federal Register in the form of or included in:

1. Department Organization Orders, including any supplements and appendices thereto. The Assistant Secretary for Administration shall cause such materials to be published in the Federal Register. The Department Organization Orders and their supplements and appendices contain, among other information, the descriptions of the various organizations, the descriptions of the various organizations of the

Department, and in many instances the other information indicated in subparagraphs 5.01a.1 and 2. of this subsection.

2. Department Administrative Orders, including any supplements or appendices thereto.

3. Other Office of the Secretary or operating unit directives.

4. Rules and orders contained in the various Titles of the Code of Federal Regulations assigned to the Office of the Secretary and to the operating units of the Department.

5. General notices.

6. Other forms of publications when incorporated by reference in the Federal Register with the approval of the Director of the Federal Register.

c. Officials responsible for determining what materials are to be submitted for publication in the Federal Register pursuant to 5 U.S.C. 552(a)(1) shall consider, among other factors, in making such determinations:

1. That those matters which fall within one or more of the exemptions contained in 5 U.S.C. 552(b) need not be published. However, it may be decided, in accord with subsection 3.02 of this order, that publication even of such matters should in some instances and respects be made.

2. That matters which are reasonably available to the class of persons affected thereby and which have been or are to be incorporated by reference in the Federal Register with the approval of the Director of the Federal Register are deemed to be published in the Federal Register. In such cases, the standards and procedures for incorporation by reference established by the Director of the Federal Register (See 1 CFR Part 51; 37 FR 23614, November 4, 1972) shall be followed.

3. That matters to which members of the public do not have to resort or by which they are not to be adversely affected, or which do not impose burdens, obligations, conditions, or limitations upon persons affected, need not be published in the Federal Register under 5 U.S.C. 552(a)(1). However, the policy considerations expressed in subsection 3.02 of this order may in certain instances suggest the publication of such matters.

4. That no person shall in any manner be required to resort to or be adversely affected by any matter required to be published in the Federal Register under 5 U.S.C. 552(a)(1) when it is not so published. However, actual and timely notice given to such a person having such actual notice is equally bound as one having constructive notice by Federal Register publication. Nevertheless, such actual notice should as a matter of policy be in addition to, rather than instead of, publication.

5. That 'currently publish' as provided in 5 U.S.C. 552(a)(1) means promptly at the time that the action occurs.

.02 Availability of materials for inspection and copying; indexing (5 U.S.C. 552(a)(2) and (5) of the Act).

a. The head of each operating unit of the Department shall for his unit, and the Assistant Secretary for Administration shall for the officials, officers and units referred to in paragraph 4.01 a. of this order, in accordance with rules which they shall cause to be published in the Federal Register, make available for public inspection and copying the following materials, unless such materials are promptly published and copies offered for sale:

1. Final opinion (including concurring and dissenting opinions), as well as orders, made in the adjudication of cases.

2. Those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register.

3. Administrative staff manuals and instructions to staff that affect a member of the public.

4. Where applicable, a record of the final votes of each member of an agency in every proceeding when the agency has more than one member. (The terms 'agency proceeding' and 'agency' are defined in 5 U.S.C. 551, as amended by 5 U.S.C. 552(e).

5. An index, currently maintained, which provides identifying information for the public as to any matter (a) which has been issued, adopted, or promulgated since July 4, 1967, and

(b) which is required to be made available or published pursuant to 5 U.S.C. 552(a)(2). It is hereby determined, subject to subsequent redetermination by the Assistant Secretary for Administration pursuant to changed circumstances, that it is unnecessary and impracticable to publish quarterly or more frequently and distribute (by sale or otherwise) copies of each such index and supplements thereto. Copies of such indexes shall be provided upon request at a cost not to exceed the direct cost of duplication.

b. The rules published in the Federal Register under paragraph 5.02a of this subsection shall include provisions for the time, place, copying fees, and any procedures applicable to making such materials available at facilities or otherwise for public inspection and copying.

c. The Assistant Secretary for Administration shall establish and maintain a centralized public reference facility for the inspection and copying of materials subject to 5 U.S.C. 552(a)(2) and (5). The head of an operating unit may, with the approval of the Assistant Secretary for Administration, establish for this organization a separate place for making the materials subject to 5 U.S.C. 552(a)(2) and (5) available to the public for inspection and copying, and publish appropriate rules applicable thereto approved by the Assistant Secretary for Administration.

d. The officials responsible for determining the materials to be available for public inspection and copying under paragraph 5.02a of this subsection shall consider, among other factors, in promulgating the published rules or in making such determinations:

1. That those matters which fall within one or more of the exemptions contained in 5 U.S.C. 552(b) are not required to be made available. Nonetheless, they may be made available in any particular respect if it is determined that this would better serve the public interest.

2. That they may, to the extent required to prevent a clearly unwarranted invasion of personal privacy, delete identifying details from an opinion, statement of policy, interpretation, staff manual or instruction, or other materials, when it is made available or published. However, in each case the justification for the deletion shall be explained fully in writing. Such action is to be taken in order to provide the public with those information materials called for under 5 U.S.C. 552(a)(2), while at the same time protecting the medical, family or other personal privacy rights of the individuals involved in such agency materials. Agency explanations for deletions of identifying details should provide such information as can be furnished without defeating the purpose of the deletion provision. When an agency has a number of recurring deletion situations, it may in its implementing rules or other public notice specify the applicable reasons for such deletions, and cite the rule in the preamble to each of the covered documents, rather than contain the complete explanation in each document. 3. That distinction should be made between those materials

(a) which do and which do not affect any member of the public, and

(b) which are and which are not to be relied upon, used or cited as precedent by the agency against any private person or party. Those materials specified in 5 U.S.C. 552(a)(2) which affect the public and which have precedential effect shall be made available for inspection and copying, and also included in the index, as provided in this order. However, since the basic purpose of this section of the Act is to disclose to the interested members of the public essential information which will enable them to deal effectively and knowingly with an agency, materials which provide such information should be included in the appropriate facilities.

4. That an advisory interpretation made by an agency on a specific set of facts which is requested by and addressed to a particular person need not be made generally available under paragraph 5.02a. of this subsection if it is not to be cited or relied upon by any official of the agency as a precedent in the disposition of other cases. Nonetheless, if it may serve any useful public purpose, any such interpretation may be made publicly available upon the deletion of identifying details to the extent necessary to protect personal privacy.

5. That the agency is not precluded using as precedent against any affected person those matters specified in subparagraphs 1.3. of paragraph 5.02a of this subsection as to which a person has actual and timely notice of the terms thereof, even though they have not been indexed and either made available or published. If the agency practice is to furnish such notices, it is more desirable that it do so in addition to, rather than instead of, indexing and making them publicly available hereunder, in recognition of the purpose of 5 U.S.C. 552(a)(2) to make the end product materials of the administrative process available to the public.

6. That matters which are published in the Federal Register in accordance with 5 U.S.C. 552(a)(1) are not required to be made available under 5 U.S.C. 552(a)(2) for public inspection and copying nor need they be indexed (the Federal Register has its own index). However, to the extent that it would be useful and practicable to index and provide such published information to the public for ready reference, it should be included.

7. That an index provides sufficient identifying information for the public if a person who exercises diligence may familiarize himself with the materials through use of the index.

8. That an alternative to making materials available to the public for inspection and copying is to promptly publish and offer them for sale to the public. Such published materials, however, are subject to the indexing requirement. If it would help the public and it is practical to do so, a copy of such published materials should also be made available in any facilities established for public inspection, and if permissible, copies of the publications should be made available for sale therein.

9. That materials required to be made available or published under 5 U.S.C. 552(a)(2), but which were adopted or issued by an agency prior to July 4, 1967, may at any time be used, relied upon or cited as precedent by the agency irrespective of whether they are listed in the agency's index. Officials, however, may, to the extent they deem it practicable and helpful to the public, also index such materials in whole or in part.

03. Availability of records upon request (5 U.S.C. 552(a) (3), (4), and (6) of the Act). a. The Assistant Secretary for Administration shall cause to be published in the Federal Register rules stating the time, place, fees and procedures to be followed, with respect to making records of the Department promptly available to any person requesting them, as provided in 5 U.S.C. 552(a) (3), (4) and (6).

b. The rules published in the Federal Register pursuant to paragraph 5.03a. of this subsection shall, insofar as is practicable, be complete, precise, and workable, suitable for the information of agency personnel and the public alike, and shall include provisions, among other matters, for the following: 1. Information as to the place to make requests, when requests will be deemed received by the Department for purposes of the time limits contained in 5 U.S.C. 552(a)(6), the timely handling of requests, and the making of initial determinations concerning the availability of the records requested.

2. Timely notice to the requester, as applicable, that a requested record does not exist, has been disposed of as provided by law, or is not in the possession or control of the Department.

3. A procedure whereby the time limits for responding to requests for records or appeals from denials may be extended, as authorized by 5 U.S.C. 552(a)(6)(B), and wherein a failure of the agency to respond in a timely manner may be considered a denial of the request.

4. Consultation with other operating units or offices within the Department, or with other Federal executive agencies, when there is a mutual agency interest or concern in the record or its contents and there is a question as to its availability. The determination as to availability should be made by the predominantly interested agency, if there is one. When a record requested from the Department is the exclusive concern of another executive agency, the request shall be promptly referred to that other agency, and the requester so notified.

5. A procedure for administrative appeal of a request for a record initially denied in whole or in part. The appeal procedure shall include provisions which insure that: (i) The requester may file an appeal, in writing, within thirty days of receipt of an initial denial; (ii) an appeal shall be considered received when properly addressed to the General Counsel; (iii) appeals shall be decided without right of the requester for a personal appearance, oral argument, or hearing; (iv) timely decisions on appeals or other notices concerning them shall be made in writing, and communicated to the requester; (v) if the decision is wholly or partly in favor of the requester, the General Counsel shall make the particular records of information available to the requester or order that such be done; and to the extent that the decision is adverse to the requester, it shall briefly state the reason for the decision and the identity of the official responsible for making it, (vi) whenever applicable, requesters shall be effectively notified of their right to seek judicial review.

6. A schedule of fees as authorized by the Act, with procedures which (i) put requesters of records on timely notice as to substantial search and copying fees estimated to be incurred with respect to a request; (ii) attempt to insure that requester pay the chargeable fees for work to be done; (iii) which provide for appropriate waiver or reduction of fees; and (iv) which do not intend to discourage requests for records under the Act. Work, services, publications, or documents which the agency as part of its regular mission has been performing or producing or will be performed or produced for members of the public or for those who are engaged in the transaction of official business of or with the Government, without charge, by user charge, or by publication or subscription charge, are to be distinguished from those records properly requested under 5 U.S.C. 552(a)(3) and the fees charged thereunder.

c. The officials designated in subsections 4.01 and 4.02 of this order who are responsible for initially determining whether any records properly requested under the Act may be made available, shall include in their consideration:

1. Whether the records are of the type referred to in subsection 3.01 of this order, and the request is to be handled in accord with the policy set forth therein;

2. Whether the records are subject to 5 U.S.C. 552(a) (1), (2), or (5) and have been otherwise made publicly available pursuant to paragraphs 5.01a or 5.02a of this section;

3. Whether the requester has complied with the published rules covering the making of requests and the payment of fees;

4. Whether the records or information contained in them are matters which fall within one or more of the exemptions contained in 5 U.S.C. 552(b), and if so whether they are not to be disclosed or whether, if such discretion exists, it would nevertheless be in the public interest to make the record or information available in whole or in part;

5. Whether any reasonably segregable portion of the record can be disclosed after deletion of the portions which it is determined should not be disclosed.

d. The officials who establish a facility as provided in paragraph 5.02 of this section may utilize the facility to:

1. Receive and assist in processing requests for records;

2. Receive from officials the requested records which are made available, maintain custody of them and supervise their inspection and copying by requesters;

3. Arrange for making certified and other copies of available records;

4. Collect and account for fees established for services connected with the requests;

5. Return records after inspection to their place of custody;

6. Act as a central communication center between the requesters and the organizations involved in recordkeeping and officials making determinations as to their availability; and

7. Provide reasonable assistance to persons requesting records, including explanations of the applicable procedure and other rules, and making referrals to sources of information available under regular informational programs of the Department.

e. The Assistant Secretary for Administration shall establish such standard forms, procedures and instructions as he deems necessary for processing requests for records, maintaining records of related expenditures, and obtaining information for the Departmental report required by 5 U.S.C. 552(d).

04. Special review requirements. -

a. The General Counsel or one of his designees shall be consulted before any initial denial is issued.

b. As provided in paragraph 7.03c. of DAO 205-12, the Operating Unit Public Affairs Office shall receive a copy of each request at the same time as the Action Office. If the Public Affairs Officer wishes to monitor and/or comment on any response to a particular request prior to transmittal, the Officer shall notify the Action Office within three (3) working days after receiving a copy of the request. The Action Office shall cooperate with the Public Affairs Officer in this effort; and give due consideration to any recommendations or comments from the Officer. In addition, the Director of the Office of Public Affairs or his or her designee shall be informed before any decision on an appeal from an initial denial is issued.

c. As provided in Part B, Chapter IV, subsection 5.06f. of the Department's Handbook of Security Regulations and Procedures, appeals of initial denials based, even in part, on the ground that the matter is exempted from disclosure under 5 U.S.C. 552(b)(1) (classified information) shall be referred to the Departmental Information Security Program Committee. That Committee shall conduct a declassification review and determine if the record(s) involved may be made available to the public.

d. Whenever, on appeal from an initially denied request, the General Counsel and the concerned Secretarial Officer or operating unit head cannot agree on whether applicable exemptions should be waived, as provided in subsection 03c.4. of this section, the matter shall be promptly referred to the Secretary for resolution.

.05 Annual Report (5 U.S.C. 552(d) of the Act).

a. The Assistant Secretary for Administration shall prepare and transmit to the Congress on or before March 1 of each year the annual report by the Act.

b. To assist in the preparation of the report, each official specified in subsection 4.01 of this order, shall, no later than January 31 of each year, provide the Assistant Secretary for Administration with the information specified in the Act and such other information as he may require.

#### **Section 6. Supplementary rules**

.01 The Secretary may from time to time issue such supplementary rules or instructions as he deems appropriate to carry out the purposes of this order.

.02 Each duly authorized official may issue rules covering his respective area of responsibility designed to implement this order, and which are consistent herewith and with any rules issued by the Assistant Secretary for Administration.

#### **Section 7. Effect on other orders**

This order supersedes Department Administrative Order 205-12 of June 29, 1967, as amended. Any other prior orders, rules, or instructions, or parts thereof, the provisions of which are inconsistent or in conflict with the provisions of this order, are hereby constructively amended or superseded.

**Appendix D**

**Department of Commerce Administrative Order (DAO) 205-14**

Effective Date: June 30, 1975

PROCESSING REQUESTS UNDER THE FREEDOM OF INFORMATION ACT

SECTION 1. PURPOSE.

This order prescribes detailed instructions for the internal handling and processing of Freedom of Information Act requests received pursuant to DAO 205-12 and 15 CFR Part 4.

SECTION 2. AUTHORITY.

This order is issued pursuant to the provisions of subparagraph 5.03e., of DAO 205-12.

SECTION 3. SCOPE AND APPLICABILITY.

This order applies to all officers, employees, and organizational components (including operating units and staff offices) of the Department, and to the processing of FOIA requests received anywhere in the Department.

SECTION 4. REFERENCES. (Not included in this appendix)

For use in connection with these instructions, the following materials are attached hereto. Processing cannot be effected without a good working knowledge of the Rules.

Attachment. 1 - The Act, as amended.

Attachment. 2 - The Rules, i.e., Part 4, Title 15, of the Code of Federal Regulations, with

o an appended copy of DAO 205-12;

o an appended listing of the Department's FOIA facilities; and

o an appended listing of Commerce officials authorized to make initial denials of requests for records.

Attachment. 3 - An exhibit copy of Form CD 244, "FOIA Request and Action Record."

SECTION 5. "FOIA REQUEST" DEFINED.

.01 Included. For the purposes of this order, an FOIA request is:

a. Any request by a member of the public (including media representatives) or non-Federal institution to inspect or copy any of the types of materials or indexes explained in paragraph 5.02, of DAO 205-12. These are frequently referred to as "(a) (2) requests" or sometimes as "(a) (5) requests" --- terms which derive from the respective sections of the Act.

b. Any written request for copies of records under the Act which is received from a member of the public (including media representatives) or non-Federal institution. These are referred to as "(a) (3) requests." Section 4.5 of the Rules applies, and paragraph 5.03 of DAO 205-12 pertains.

.02 Excluded.

a. Information requests received by telephone are not deemed to be FOIA requests but, as appropriate, the requester should be courteously referred to an appropriate FOIA facility for assistance.

b. Requests for records or information customarily made available to the public through the Federal Register or as part of the Department's regular information dissemination activities are not considered to be FOIA requests. When a request for records of this type is received, the material should be promptly furnished or the requester informed where it can be obtained (4.6(a) (1)).

c. Requests for records or information that are normally provided by the Department under laws other than the Act (e.g., user charge statutes, per DAO 203-5) are not considered to be FOIA requests. Requests of this type should be promptly referred to the appropriate office charged with compliance with the particular law, and the requester should be promptly notified how the request is being handled (4.6(a) (1)).

#### SECTION 6. PRIORITY FACTORS.

Every FOIA request shall be processed and handled on a priority basis at all times. Written requests should be transmitted from point to point within the Department by "hand carry" or by automatic facsimile equipment, whenever practical.

.01 Initial Receipt and Action Factor.

a. According to subject matter and type ("(a) (2)" or "(a) (3)," for example) every FOIA request received in any office, mail room, or other activity of the Department shall be immediately referred or delivered to the receiving activity's FOIA facility for processing, i.e., control and action assignment, or transfer. If the appropriate facility cannot be readily determined, the person receiving the request shall contact the nearest FOIA facility or operating unit legal office for guidance.

b. If an FOIA written request is not properly identified as such, the receiving office, mail room, or other activity shall clearly and prominently mark it "Freedom of Information Request" before delivering it to an FOIA facility. (See 4.5(b) of the Rules.)

.02 "Officially Received" Time Factor.

Since the act contains specific limitations on the length of time the Department can use in responding to the FOIA request for records, the date a request is officially received is a critical factor. Accordingly, an (a)(3) request is deemed to be officially received only when it reaches the appropriate FOIA facility, as explained in 4.5(b) of the Rules.

SECTION 7. CONTROLLING AND ACTING ON AN (a) (3) REQUEST.

.01 General.

a. Control. Each (a) (3) request shall be controlled by an FOIA facility of the Department, shall be acted on by the facility or by an office or activity (the "Action Office") to which it is assigned by the facility, and shall be accounted for on a Form CD 244.\* This section prescribes relevant procedures and the responsibilities of those involved, and provides sequential instructions for filling out the Form.

b. Form CD 244. In addition to facilitating control over a request, this Form is designed to provide an historical record for purposes of reference, public inspection, and statutory annual reporting. (This statutory reporting requirement will be dealt with in a separate issuance.) The Form is interleaved in 3 copies: White, Yellow, and Pink; it is stocked by the Department Forms store; and each FOIA facility should keep a supply on hand.

c. Applicable Rules. The Rules (at Attachment 2, hereto) shall apply throughout in the handling of all requests. In this order, the pertinent rule is referenced (sometimes parenthetically) by its section or subsection number, e.g., "4.6" or "(4.6(b) (2))," and it should be referred to if a questions or problem arise. If the Rules do not resolve the matter, the operating unit legal office or the Assistant General Counsel for Administration should be contacted.

.02 Accountability and Initial Processing of an (a) (3) Request.

The official receipt and initial processing of an (a) (3) request is the responsibility of the appropriate FOIA facility, and shall be recorded on Part I of the Form, as explained in subparagraphs a. through j. of this paragraph.

a. Item 1 - DOC/FOIA Facility. Attachment 2 hereto pertains. The Department's central facility shall use its abbreviation, CFFIR. Other facilities shall use the abbreviation of their operating unit (DIBA, SESA, etc.), plus further standard identification in the case of a facility in the field.

b. Item 2 - Request Number. Use the calendar year plus sequential numbering: 75-1, 75-2, 75-3, etc. (This number plus the Item 1 entry should provide a unique identification for every (a) (3) request received in the Department.)

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\*Operating units or FOIA facilities wishing to use the Form to keep a record of (a) (2) requests may do so, but only if any numbering system they might employ is separate and distinct from the system prescribed for (a) (3) requests in subparagraph .02b. of this section.

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c. Item 3 - Name, address, etc. The requester's name and address is obviously necessary. The requester's phone number is optional with the requester, but its inclusion could help the Department provide faster service if a question arise concerning the request.

d. Item 4 - Description of records requested. Be explicit, but brief; 4.5(c) of the Rules applies.

e. Item 5 - Facility data is self-explanatory.

f. Item 6 - Request returned or requester contacted. If the facility's review finds the request so defective as to be obviously incapable of processing, this item should be checked and a brief statement of the defect and the facility's action shall be recorded on the reverse side of the White Copy. The applicable subsection of the Rules should be cited. Examples of when this item would be checked are:

1. The request was so broad that the facility knew the Department could not respond. In this situation the facility would contact the requester and help him refine his request (4.6(a) (5)); and

2. The request was obviously for records of another executive agency. In this situation the facility would refer the request to that agency and promptly notify the requester of this referral (4.6(a) (4)).

g. Item 7 - Request fulfilled by facility. The facility shall complete this item if it grants a request directly and does not assign it to another activity. (For example, when the request is for a copy of a releasable record which is on hand at the facility and which can be readily reproduced.) If item 7 is used, the facility should also complete such Part II items as may be appropriate.

h. Item 8 - Action Assignment. As a mater of policy, action on any given request should be assigned to the head, by title, of the lowest possible organizational level known to have control of the records requested and authority to make them available to the requester, i.e., a disclosure decision. In application, operating unit FOIA facilities shall assign action in accordance with the operating unit's FOIA instructions; at Department level, the CFFIF shall assign action to the director of the appropriate staff office. Any doubts or questions as to the appropriate Action Office should first be resolved over the phone by facility personnel in order to avoid the loss of critical time which an erroneous assignment could incur. (Note: Action should never be assigned to an individual by name, but a facility having certain knowledge that requests for records on a given topic are always reassigned by the Action Office head to a specific individual, may -- if operating unit instructions permit -- send an information copy of the request to the individual concurrent with transmittal of the official copy to the Action Office head.)

i. Item 9 - Due date. By law, this can be no later than the tenth working day from the date the appropriate facility receives the request.

j. Item 10 - Comments or instructions. This may be used in any manner the facility desires and operating unit instructions permit. For example, a facility could use this block to advise the Action Office that the requester is delinquent in payment of previously due FOIA fees, 4.9(c), or to advise that the request is for records in two or more operating units or Departmental staff offices and that Section 8 of this order applies.

.03 Transmittal for Action.

After completing the first part of the Form, the facility shall:

a. Detach the Pink Copy and place it in a 9-day tickles file (which shall be maintained in every facility) together with a copy of the original request; and,

b. Attach the original request to the White and Yellow copies and effect prompt delivery to the Action Office.

.04 Acting On and Responding to an (a) (3) Request.

Acting on a request is the process of reaching an "initial determination" to grant or deny (wholly or partially) the request. Section 4.6 of the Rules apply; and the Action Office shall complete the second part of the Form as explained in subparagraphs a. through g. of this paragraph.

a. Item 11 - Action Office data is self-explanatory.

b. Item 12 - Fee Provisions. See 4.9 of the Rules.

1. Make an estimate of the Collectible Costs and enter it in pencil in the first column of Item 15; then complete lines a. and b. of Item 12.

2. Under certain circumstances as explained in 4.9(b), fees may be waived or reduced. If the provisions of 4.9(b) pertain, line c. of Item 12 shall be checked and a proper explanation attached to the Form.

3. The last two lines of Item 12, d. and e., need posting only when 4.9(c) (6) is applied.

c. Item 13 - Trolling of Time Provisions. At this point, the entries on lines a. and b. of Item 12 and the estimate total in Item 15 shall be compared, and the requirements of 4.9(c) (1) through (3) applied to the comparison. If any of the requirements are found to pertain, the provisions of 4.9(c) (4) and (5) shall be applied; the appropriate Item 13 entry shall be checked; and the time limitations of the FOIA shall be tolled (i.e., suspended) as 4.9(c) (5) provides. (Note: Any action to toll the time under the FOIA could become a legal issue. Whenever Item 13 is used, therefore, the Action Office shall immediately advise the requester (4.9(c) (4)); keep a complete and accurate record or log of its actions; and keep the FOIA Facility concurrently informed.)

d. Item 14 - Initial Determination: This decision on whether or not to grant the request is the important part of the Action Office's responsibility under the Act. Section 4.6 of the Rules apply; and paragraph 5.03 of DAO 205-12 pertains. There are three steps: evaluation, implementation, and summarization, as explained below.

1. Evaluation. Careful evaluation of a request involves a number of factors which are explained in detail in the Rules. These factors and the pertinent parts of Section 4.6 of the Rules are as follows:

--valid FOIA request? (a) (1);

--reasonably described and locatable records? (a) (2);

--records exist under Action Office control? (a) (3);

--records are in or controlled by another Commerce unit (a) (3) or Federal agency? (a) (4);

--request for a broad group or category of records? (a) (5); (Also see Section 8 of this order.);

--availability of records determinable within 10 days? (b);

--"unusual circumstances" prevail? (b) (2). If so, note the special actions required and keep FOIA facility fully informed.

Special Note: If an Action Office has reason to believe that other organizations within the Department have records that are covered it shall immediately bring the matter to the attention of its FOIA facility for coordinated actions, and for possible application of Section 8 of this order.

2. Implementation. After the requested records have been located and reviewed as necessary, the responsible official shall decide either to grant the request in its entirety or to recommend a partial or total denial of the request. If the request is granted, 4.6(b) (4) applies. If a denial is recommended, rule 4.6(b) (5) and paragraph 5.04 of DAO 205-12 apply.

3. Summarization. All elements of the evaluation and implementation shall be summarized in Item 14, of the Form. As a minimum, this summary shall:

--state what decision was reached;

--give the date and means by which the requester was informed of this initial determination,

as well as the date, means, purpose, and response to any other contact with the requester;

--describe and explain any "unusual circumstances," delays, or time extensions 4.6(b) (2));

--show the amount of search fees and copying fees collected;

--include the name, position, and phone number of all Commerce officers or employees who were involved or consulted;

--when a request is granted, give the approximate date when the records will be sent to the requester;

--when a request is denied, in whole or in part, include a copy (by attachment) of the reply sent to the requester (4.6(b) (5)); and

--such other information as deemed appropriate.

e. Item 15 - Collectible Costs. This is self-explanatory. The Uniform Fee Schedule (4.9) applies.

f. Item 16 - Non-collectible costs. If a request involved services for which no fees can be charged, explain the services and estimate the costs and the time of each Department employee involved. Such services include, but are not limited to: (1) man-hours spend in examining requested records to determine whether they are exempt from mandatory disclosure (Section 552(b) of the Act) or whether, even if exemptible, they should nevertheless be made available in whole or in part;

(2) deleting exempted matter from records so that the remaining portions may be made available;

(3) resolving legal, policy, or other issues affecting access to requested records; and (4) monitoring an inspection of records made available to a requester. Note: The cost of any fees which have been waived under the law shall also be shown and identified in Item 16. It is desirable to track these costs for budgetary reasons.

g. Item 17 - Signature and Filing. After the Form is filled out and reviewed for accuracy and completeness, it shall be signed by the head of the Action Office or his designee, the White Copy shall be returned to the facility with the original of the request and other attachments, as appropriate, and the Yellow retained by the Action Office. In addition, if the request was denied wholly or partially, the head of the Action office shall forward one well reproduced copy of the denial letter to the Assistant General Counsel for Administration, per 4.6(b) (6).

#### SECTION 8. REQUESTS INVOLVING TWO OR MORE OPERATING UNITS.

If an FOIA facility receives a request for records, ((a) (3) of the Act) which could possibly encompass records in two or more units of the Department, it shall immediately transfer the request to the Department's Central Reference and Records Inspection Facility. Upon receipt of such a request (either directly or from an operating unit facility), CRRIF shall ascertain and assign lead responsibility to the predominantly interested unit, which shall coordinate and control the processing of the request for the Department.

SECTION 9. APPEALS OF INITIAL DETERMINATIONS.

Should a requester appeal an initial determination which denied his request (in whole or in part), the provisions of Section 4.8 of the Rules apply, paragraph 5.04 of DAO 205-12 pertains, and the Action Office shall - after the appeal is resolved -- send a summary of the appeal and the results to the FOIA facility where the CD-244 is on file, for addition to the file.

This summary must include:

- a. The result of the appeal;
- b. The reason for the action, if the appeal is denied; and
- c. The name and title of the Commerce official responsible for the appeal's denial.

SECTION 10. GUIDANCE AND SPECIAL REVIEW REQUIREMENTS.

FOIA facility or Action Office questions of a legal or interpretive nature are to be directed to the legal office for each Department operating unit, which may consult with the Assistant General Counsel for Administration. Questions of an administrative or procedural nature are to be directed to the Director, Departmental Office of Organization and Management Systems. No initial denial of requests for records or appeal denials shall be made without the participation of the legal and other officials provided in paragraph 5.04 of the basic order.

(signed) \_\_\_\_\_

Acting Assistant Secretary for Administration

Index Changes

Add: FOIA Requests 205-14

Freedom of Information Act, Processing Requests Under The 205-14

Procedures Under The Freedom of Information Act 205-14

**Appendix E**

**NOAA Administrative Order (NAO) 205-14**

## **PROCESSING REQUESTS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)**

Issued 3/28/94; Effective 3/14/94

### **SECTION 1. PURPOSE.**

This Order provides guidance to all National Oceanic and Atmospheric Administration (NOAA) elements for processing requests under the Freedom of Information Act (FOIA).

### **SECTION 2. REFERENCES.**

- .01 Department Administrative Order (DAO) 205-14, Processing Requests Under the Freedom of Information Act, as amended.
- .02 DAO 205-12, Public Information, as amended.
- .03 15 Code of Federal Regulations (CFR), Part 4, dated January 1, 1993, as amended.

### **SECTION 3. AUTHORITY.**

- .01 **Authority to Release Information.** Individuals at the Branch Chief level or above may release information for FOIA requests.
- .02 **Authority to Initially Deny FOIA Information.** NOAA's FOIA Officer, the Director, Procurement, Grants, and Administrative Services Office, and the Director, Systems Program Office may initially deny FOIA requests. Other NOAA officials authorized to initially deny FOIA information are listed in Appendix 3, 15 CFR Part 4 (attachment 1).

### **SECTION 4. RESPONSIBILITIES.**

- .01 The Office of Administration, Administrative Services Division, Paperwork Management Branch (PMB) serves as NOAA's Central FOIA facility. A PMB designee serves as NOAA FOIA Officer.
- .02 The NOAA FOIA Officer shall:
  - a. coordinate all FOIA inquiries;
  - b. maintain the NOAA FOIA Control System that shows receipt, status, and resolution of FOIA requests;
  - c. initiate Form CD-244, FOIA Information and Action Record, for requests sent to the NOAA FOIA facility;
  - d. assign due dates for completion of all FOIA requests within the 10-working-day response time established by the FOIA;
  - e. forward FOIA requests to action offices for response to the requester;
  - f. receive copies of answers to FOIA requests that action offices send to the requester;
  - g. ensure that action offices comply with the 10-working-day response time established by the FOIA;
  - h. forward fees collected for processing FOIA requests to the Finance Services Division, Information Systems and Finance Office; and
  - i. prepare and submit the FOIA Annual Report to Congress to the Departmental FOIA Officer.
- .03 **FOIA Liaison Personnel** shall:
  - a. maintain a log of all FOIA requests in their offices. The log shall include the NOAA control number assigned by the NOAA FOIA Officer, name of requester, receipt date, due date, person to whom the FOIA is assigned, fulfillment date, exemption information, fees charged, and fees paid date;
  - b. complete the Form CD-244 as required (see attachment 2);
  - c. assign the FOIA to the appropriate action office for response;
  - d. ensure that all FOIA requests are completed within the 10-working-day timeframe mandated by FOIA. If extensions are necessary, notify the requester and the NOAA FOIA Officer, and document in writing who approved the extension and the extension date;
  - e. provide the NOAA FOIA Officer with regular status of outstanding FOIA requests;
  - f. notify the NOAA FOIA Officer when he/she is no longer performing FOIA liaison duties; and
  - g. supply the NOAA FOIA Officer with the replacement's name.

**.04 FOIA Action Offices shall:**

- a. complete the Form CD-244 as outlined in attachment 2;
- b. search for records responsive to FOIA requests;
- c. review records to determine what information is releasable and what information should be withheld under the FOIA exemptions;
- d. calculate the charges associated with answering individual FOIA requests and notify the requester of any fees due according to 15 CFR Part 4 and show these amounts on the Form CD-244;
- e. notify the requester of any fees due before processing FOIA requests;
- f. notify the requester by letter that prepayment is required before FOIA information is released if the amount is greater than \$250, or if the requester has not paid for previous FOIA requests;
- g. respond to all assigned FOIA requests within the 10-working-day response time established by the FOIA;
- h. notify the NOAA FOIA Officer if a FOIA request was misdirected or incorrectly assigned to his/her office, or if an extension of a 10-working-day timeframe is needed;
- i. send the NOAA FOIA Officer the completed Form CD-244 and a copy of the response letter for all FOIA requests; and
- j. notify the NOAA FOIA Officer if a partial or full denial is recommended and document what concurrences were obtained. Before an initial denial is issued, the operating unit must include a memorandum to the file which demonstrates that it has addressed the issue of "foreseeable harm." The memo must document that the action office considered discretionary disclosure and document the harm which would result from disclosure.

**SECTION 5. PROCEDURES.**

.01 All FOIA requests, whether received at NOAA headquarters or NOAA field locations, MUST be controlled and assigned a FOIA number and due date by the NOAA FOIA Officer. It is critical that the NOAA FOIA Officer be notified of all FOIA requests upon receipt. FOIA requests which are the exclusive primary concern of other Federal agencies will be sent to the NOAA FOIA Officer. The NOAA FOIA Officer will send the request to the appropriate Federal agency for their direct response to the requester.

.02 NOAA headquarters offices shall send all misdirected or initially received FOIA requests to the NOAA FOIA Officer. The NOAA FOIA Officer will assign a NOAA FOIA number, enter the FOIA request into the FOIA control system, initiate a Form CD-244, FOIA Request and Action Record, and assign the request to the appropriate FOIA liaison personnel for that organization. The FOIA Officer will mail the white and yellow copies of the Form CD-244 and a photocopy of the requester's letter to the FOIA liaison for further assignment.

.03 NOAA field locations shall call the NOAA FOIA Officer for a NOAA control number and due date when FOIA requests are received directly. The FOIA field liaison initiates Form CD-244 (see attachment 2 for instructions), and FAXES a copy of the typed Form CD-244 and requester's incoming letter to the Paperwork Management Branch.

.04 After the FOIA requests are fulfilled, the FOIA action offices and the FOIA liaison personnel shall ensure that the Form CD-244 is properly completed. The completed Form CD-244 and a copy of the response letter sent to the requester shall be returned to the NOAA FOIA Officer.

.05 The NOAA FOIA Officer will enter all completed FOIA requests in the NOAA FOIA Control System and maintain copies of all FOIA requests at the NOAA Public Reference Facility, 6010 Executive Boulevard, Room 714, WSC-5, Rockville, MD 20852.

.06 Denials or partial denials of information may be issued by officials listed in 15 CFR, Part 4, Appendix C. Assigned offices must indicate the reasons for the denial and cite the appropriate FOIA exemption upon which the denial is based on the Form CD-244 and in the response letter to the requester.

.07 All checks or money orders received from requesters for processing FOIA requests must be made payable to the United States Treasury, must be identified by FOIA number, and sent to the NOAA FOIA Officer.

.08 FOIA liaison or FOIA action offices with questions about proposed denials are encouraged to contact the NOAA FOIA Officer. If there are nonroutine legal questions regarding any FOIA request, the NOAA FOIA Officer will contact the appropriate Office of General Counsel for further guidance.

**SECTION 6. FOIA REQUESTS FOR AGENCY RECORDS  
ORIGINATING FROM OR INVOLVING THE WHITE HOUSE.**

.01 FOIA requests for agency records which originated in the White House or which involve the White House shall be sent to the NOAA FOIA Officer. FOIA documents which are the exclusive primary concern of other agencies shall be referred to those agencies by the NOAA FOIA Officer for direct response to the requester.

.02 The NOAA FOIA Officer shall be contacted for further instructions for processing White House FOIA requests.

**SECTION 7. EFFECT ON OTHER ISSUANCES.**

None.

**SIGNED,**

*Director, Office of Administration*

Office of Primary Interest:

Paperwork Management Branch (OA332)  
Administrative Services Division  
Procurement, Grants, and Administrative Services Office  
Office of Administration

**Appendix F**

**White House Memo**

**THE WHITE HOUSE**

WASHINGTON

October 4, 1993

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

SUBJECT: The Freedom of Information Act

I am writing to call your attention to a subject that is of great importance to the American public and to all Federal departments and agencies the administration of the Freedom of Information Act, as amended (the "Act"). The Act is a vital part of the participatory system of government. I am committed to enhancing its effectiveness in my Administration.

For more than a quarter century now, the Freedom of Information Act has played a unique role in strengthening our democratic form of government. The statute was enacted based upon the fundamental principle that an informed citizenry is essential to the democratic process and that the more the American people know about their government the better they will be governed. Openness in government is essential to accountability and the Act has become an integral part of that process.

The Freedom of Information Act, moreover, has been one of the primary means by which members of the public inform themselves about their government. As Vice President Gore made clear in the National Performance Review, the American people are the Federal Government's customers. Federal departments and agencies should handle requests for information in a customer-friendly manner. The use of the Act by ordinary citizens is not complicated, nor should it be. The existence of unnecessary bureaucratic hurdles has no place in its implementation.

I therefore call upon all Federal departments and agencies to renew their commitment to the Freedom of Information Act, to its underlying principles of government openness, and to its sound administration. This is an appropriate time for all agencies to take a fresh look at their administration of the Act, to reduce backlogs of Freedom of Information Act requests, and to conform agency practice to the new litigation guidance issued by the Attorney General, which is attached.

Further, I remind agencies that our commitment to openness requires more than merely responding to requests from the public. Each agency has a responsibility to distribute information on its own initiative, and to enhance public access through the use of electronic information systems. Taking these steps will ensure compliance with both the letter and spirit of the Act.

WILLIAM J. CLINTON

Go to: [FOIA Home Page](#)//[Justice Department Home Page](#)

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*Updated page November 9, 1999*  
*usdoj/oip/pam*

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**Appendix G**

**Department of Justice Memos**

Office of the Attorney General  
Washington, D. C. 20530

October 12, 2001

MEMORANDUM FOR HEADS OF ALL FEDERAL DEPARTMENTS AND AGENCIES

FROM: John Ashcroft, Attorney General

SUBJECT: The Freedom of Information Act

As you know, the Department of Justice and this Administration are committed to full compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2000). It is only through a well-informed citizenry that the leaders of our nation remain accountable to the governed and the American people can be assured that neither fraud nor government waste is concealed.

The Department of Justice and this Administration are equally committed to protecting other fundamental values that are held by our society. Among them are safeguarding our national security, enhancing the effectiveness of our law enforcement agencies, protecting sensitive business information and, not least, preserving personal privacy.

Our citizens have a strong interest as well in a government that is fully functional and efficient. Congress and the courts have long recognized that certain legal privileges ensure candid and complete agency deliberations without fear that they will be made public. Other privileges ensure that lawyers' deliberations and communications are kept private. No leader can operate effectively without confidential advice and counsel. Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), incorporates these privileges and the sound policies underlying them.

I encourage your agency to carefully consider the protection of all such values and interests when making disclosure determinations under the FOIA. Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information.

In making these decisions, you should consult with the Department of Justice's Office of Information and Privacy when significant FOIA issues arise, as well as with our Civil Division on FOIA litigation matters. When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.

This memorandum supersedes the Department of Justice's FOIA Memorandum of October 4, 1993, and it likewise creates no substantive or procedural right enforceable at law.

Office of the Attorney General  
Washington, D.C. 20530

May 1, 1997

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES  
FROM: THE ATTORNEY GENERAL  
SUBJECT: THE FREEDOM OF INFORMATION ACT

As you know, the President signed legislation last fall to amend and strengthen the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as a means of public access to information about the activities of the departments and agencies of the Federal Government.

I am writing to bring to your attention the significant new requirements of this legislation that take effect at different times this year, and also to reemphasize the importance of the Administration's policy of striving for the maximum responsible disclosure of information under the FOIA.

The Electronic Freedom of Information Act Amendments of 1996 ("Electronic FOIA amendments"), P.L. 104-231, 110 Stat. 3048, contain provisions amending the FOIA with respect to records maintained in electronic formats, the timing of agency responses to FOIA requests, the maintenance of reading rooms, and other procedural matters. (Attached is a copy of the amended statute with an accompanying amendment description.) The most significant of these Electronic FOIA amendments are:

° Provisions that confirm that the Act applies to information maintained in electronic formats and establish a "reasonable efforts" standard governing the search for and production of information in electronic form, effective as of March 31, 1997.

° A provision requiring "reading room" treatment for FOIA - processed records that an agency considers likely to be the subject of subsequent FOIA requests, also effective as of March 31, 1997.

° An "electronic reading room" provision that requires agencies to provide electronic availability for their newly created reading room records (i.e., created by the agency on or after November 1, 1996), as of November 1, 1997.

° Provisions that lengthen the Act's time limits for responding to requests, establish procedures for circumstances in which agencies cannot meet those time limits, and establish standards under which FOIA requesters can seek "expedited processing" of their requests. These provisions become effective on October 2, 1997.

° A provision limiting the circumstances under which an agency's backlog may be used to justify a delay in responding to a FOIA request, also effective as of October 2, 1997.

° A provision requiring agencies to prepare reference material or a guide for requesting records from the agency, effective as of March 31, 1997. The Office of Management and Budget has issued guidance to agencies on this subject (copy attached).

° Amendments to the Act's requirements for the filing of annual FOIA reports, effective as of fiscal year

1998, beginning on October 1, 1997.

As provided for in the Electronic FOIA amendments, the Department of Justice will develop annual report guidelines, in consultation with the Office of Management and Budget, for use by all agencies in their compilation of annual report statistics beginning on October 1, 1997. The Department of Justice is preparing to issue implementing regulations and a FOIA reference guide to which agencies can look in their own implementation of the amendments. The Department also will continue to address agency questions concerning the amendments through its publications, training activities, and its FOIA Counselor service.

As your department or agency implements the Electronic FOIA amendments, I urge you to be sure to continue our strong commitment to the openness-in-government principles that President Clinton and I established on October 4, 1993. These principles include applying customer-service attitudes toward FOIA requesters, following the spirit as well as the letter of the Act, and applying a presumption of disclosure in FOIA decision making. Most significant is that an agency should make a discretionary disclosure of exempt information whenever it is possible to do so without foreseeable harm to any interest that is protected by a FOIA exemption; an agency should withhold information under the FOIA only when it is necessary to do so.

These principles remain vital to the continued success of our FOIA policy. They also require that each department and agency place a sustained priority on its FOIA administration responsibilities, including through the elimination or reduction of any backlog of pending FOIA requests. The reduction of existing agency FOIA backlogs will take on heightened significance under the provisions of the Electronic FOIA amendments.

Copies of the statements of FOIA policy that President Clinton and I issued on October 4, 1993, are attached. In furtherance of the President's directives, I ask that you promote our continued commitment to open government by redistributing these policy statements, together with this memorandum and its attachments throughout your department or agency, with particular attention to your agency's recent appointees.



## Office of the Attorney General Washington, D.C. 20530

September 3, 1999

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

FROM: THE ATTORNEY GENERAL

SUBJECT: The Freedom of Information Act

On October 4, 1993, President Clinton issued a Freedom of Information Act (FOIA) policy memorandum (Attachment 1), in which he called upon all federal departments and agencies to renew their commitment to the FOIA, to its underlying principles of government openness, and to its sound administration. This is an appropriate time for all agencies to take a fresh look at their administration of the Act, to reduce backlogs of FOIA requests, and to conform agency practice to the new litigation guidance issued by the Attorney General, which is attached. (Attachment 2)

The President pointed out that the FOIA was enacted based upon the fundamental principle that an informed citizenry is essential to the democratic process and that the more the American people know about their Government the better they will be governed. Openness in government is essential to accountability and the FOIA has become an integral part of that process.

He directed that federal departments and agencies should handle requests for information in a customer-friendly manner. The use of the FOIA by ordinary citizens is not complicated, nor should it be. The existence of unnecessary bureaucratic hurdles has no place in its implementation.

After more than 5 years, I think we should all take a fresh look once again at the way in which each of our departments or agencies is implementing the FOIA to ensure that we are doing everything possible to promote openness in the Government and to respond to citizens' requests for information in a customer-friendly manner.

I have had the opportunity to address FOIA officers from nearly all the federal departments and agencies. I am impressed with their dedication and commitment to the proper enforcement of the FOIA. However, there is still work to be done and we must back them up in every way possible in their day-to-day administration of this statute. FOIA officers increasingly must rely on the cooperation of agency personnel who hold primary responsibilities in other areas of agency activity. Without the support and timely assistance of others at their agencies, FOIA officers cannot provide the FOIA-requester community with the best possible service in accordance with this Administration's openness-in-government and customer-service principles.

We should all reinforce how important it is for all employees to support the FOIA process and make clear the Administration's support for the work being done by the FOIA officers.

I would like to draw your attention to two very important areas of FOIA administration which require the support of all agency personnel:

• **Discretionary Disclosure.** A major policy objective established for the FOIA in 1993 is the "maximum responsible disclosure of government information." (See Attachment 2, FOIA litigation guidance dated October 4, 1993.) This objective is best served when agencies apply a "foreseeable harm" standard in their FOIA decision making and consider whether they can make a discretionary disclosure of a requested record or portion of a record even though it falls within one of the Act's exemptions. In short, information should be withheld from a FOIA requester only when it is not possible for an agency to disclose it as a matter of administrative discretion.

As a practical matter, the application of this policy requires close cooperation between an agency's FOIA officers and the agency's institutional custodians of the records that are sought by FOIA requests. Such agency employees who understandably are primarily concerned with their own agency programs and institutional interests, must be made aware of this Administration's openness-in-government policy and be mindful of its importance. Most importantly, they must be open to the possibility of making a discretionary disclosure of information in response to a FOIA request in cooperation with their agency's FOIA officers. This widespread awareness and receptivity among all agency employees is essential to the success of an agency's FOIA program.

• **Information Resources Management (IRM)-Related Activity.** A similar, but relatively new type of cooperation is necessary between an agency's FOIA officers and its IRM personnel. Two years ago, the Electronic Freedom of Information Act Amendments of 1996 (Electronic FOIA amendments), Pub. L. No. 104-231, placed additional obligations on agencies with respect to information maintained in electronic form. Under the Electronic FOIA amendments, for example, agencies now are required to make "reasonable efforts" to search for and produce records in various electronic forms or formats upon request, often requiring sophisticated computer expertise.

Most significantly, the Electronic FOIA amendments also require agencies to maintain "electronic reading rooms" and to make a growing variety of information available to the public on the World Wide Web. During the past 2 years, these amendments have spurred the development of agency web sites for FOIA purposes and an agency's FOIA Web site has become an essential means by which its FOIA obligations are satisfied. This requires that an agency's FOIA officers and its IRM personnel work together in a new partnership, with strong institutional ties, to achieve efficient information disclosure through electronic means. It should be a primary mission of each agency's IRM staff that it facilitate the prompt and accurate disclosure of information through the agency's FOIA sites on the World Wide Web. This assistance is now vital to the full and proper administration of the Act.

I hope you will do all you can within your department or agency to foster this new working relationship between FOIA officers and agency IRM personnel, as well as to promote continued commitment to government openness by all agency personnel. Accordingly, I ask that you disseminate this memorandum and its attachments widely throughout your department or agency, with particular attention to distribution to all agency IRM personnel.

**Appendix H**

**CD-244, FOIA Request and Action Record Examples**

**FOIA REQUEST AND ACTION RECORD**  
(Pursuant to 5 U.S.C. 552 and 15 CFR 4)

P  
A  
R  
T

I

3. Name, address, (phone) of requester

4. Description of records requested

5. Request Received | Date | Time | By

6. \_\_\_\_\_ request returned or requester contacted: to clarify, or for other reason. Explain on reverse side of White Copy.

7. Request fulfilled by facility | Date | Time | By

8. ACTION ASSIGNED TO: \_\_\_\_\_ Date: \_\_\_\_\_

9. Due Date. By law, this request must be answered no later than:

10. Comments or instructions:

11. Received in Action Office | Date | Time | By

12. Fee Provisions

- a. Without further notice, requester agrees to pay: \_\_\_\_\_ full amount, or \_\_\_\_\_ up to \$ \_\_\_\_\_
- b. \_\_\_\_\_ Fees reduced or waived, and by whom; attach explanation: 4.9 (b) applies.
- c. Notification of fees sent to requester on: \_\_\_\_\_, 19\_\_\_\_
- d. Payment of \$ \_\_\_\_\_ received on \_\_\_\_\_.

13. Tolling of Time Provisions (see 4.9.(d))

- a. \_\_\_\_\_ estimated fee exceeds authorization.
- b. \_\_\_\_\_ estimated fee exceeds \$250 and lacks \_\_\_\_\_ authorization.
- c. \_\_\_\_\_ requester delinquent in past payments.

P  
A  
R  
T  
II

14. Initial Determination (Summarize per subparagraph 7.04d.3., DAO 205-14; attach another sheet if necessary; 4.6 applies.)

14. a. Clearance Official(s)

Name: \_\_\_\_\_  
Office Title: \_\_\_\_\_  
Date: \_\_\_\_\_

15. Collectible Costs per Fee Schedule (4.9 (b))

	Estimated	Actual
Search Fee \$	_____	\$ _____
Copying Fee	_____	_____
Review	_____	_____
Total Collectible \$	_____	\$ _____

16. Non-collectible Costs

17. Action Office | Signature | Position title | Date

FORM CD-244 (REV. 8-87) PRESCR. BY DAO 205-14	U.S. DEPARTMENT OF COMMERCE  <b>FOIA REQUEST AND ACTION RECORD</b> (Pursuant to 5 U.S.C. 552 and 15 CFR 4)	DOC/FOI Facility <b>HAZMAT</b>  2. Request No. 1997-346																					
P A R T  I	3. Name, address, (phone) of requester <b>Hector San Miguel</b> <b>Lake Charles American Press</b> <b>4900 U.S. 90 East</b> <b>Lake Charles, LA 70601</b> <b>(318) 494-4084</b> <b>(318) 494-4070 FAX</b>		4. Description of records requested <b>Ethylene dichloride (EDC) spill at the</b> <b>Conoco refinery in West Lake, LA in</b> <b>June 1994</b>																				
	5. Request Received	Date 7/29/97	Time 7:00 AM	By John Kaperick																			
	6. _____ request returned or requester contacted: to clarify, or for other reason. Explain on reverse side of White Copy.																						
	7. Request fulfilled by facility	Date 7/29/97	Time 8:15 AM	By John Kaperick																			
	8. ACTION ASSIGNED TO: N/ORCA3		Date: 7/29/97																				
9. Due Date. By law, this request must be answered no later than: 8/13/97	10. Comments or instructions:																						
P A R T  II	11. Received in Action Office	Date 7/29/97	Time 7:00	By John Kaperick																			
	12. Fee Provisions a. Without further notice, requester agrees to pay: _____ full amount, or _____ up to \$_____ b. _____ Fees reduced or waived, and by whom; attach explanation; 4.9 (b) applies. c. Notification of fees sent to requester on: _____, 19_____ d. Payment of \$_____ received on _____.		13. Tolling of Time Provisions (see 4.9.(d)) a. _____ estimated fee exceeds authorization. b. _____ estimated fee exceeds \$250 and lacks _____ authorization. c. _____ requester delinquent in past payments.																				
	14. Initial Determination (Summarize per subparagraph 7.04d.3., DAO 205-14; attach another sheet if necessary; 4.6 applies.) All records relating to this response have transmitted, via facsimile, to the requestor.																						
	14. a. Clearance Official(s) Name: _____ Office Title: _____ Date: _____																						
	15. Collectible Costs per Fee Schedule (4.9 (b))  <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:30%;"></th> <th style="width:20%; text-align: center;">Estimated</th> <th style="width:20%;"></th> <th style="width:20%; text-align: center;">Actual</th> </tr> </thead> <tbody> <tr> <td>Search Fee</td> <td style="text-align: center;">\$ _____</td> <td></td> <td style="text-align: center;">\$ _____</td> </tr> <tr> <td>Copying Fee</td> <td style="text-align: center;">_____</td> <td></td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Review</td> <td style="text-align: center;">_____</td> <td></td> <td style="text-align: center;">_____</td> </tr> <tr> <td>Total Collectible</td> <td style="text-align: center;">\$ _____</td> <td></td> <td style="text-align: center;">\$ _____</td> </tr> </tbody> </table>				Estimated		Actual	Search Fee	\$ _____		\$ _____	Copying Fee	_____		_____	Review	_____		_____	Total Collectible	\$ _____		\$ _____
	Estimated		Actual																				
Search Fee	\$ _____		\$ _____																				
Copying Fee	_____		_____																				
Review	_____		_____																				
Total Collectible	\$ _____		\$ _____																				
17. Action Office	Signature 	Position title HAZMAT FOIA Liaison	Date 7/29/97																				

**FOIA REQUEST AND ACTION RECORD**  
 (Pursuant to 5 U.S.C. 552 and 15 CFR 4)

2. Request No.  
 1994-015

P  
A  
R  
T  
I

3. Name, address, (phone) of requester  
 Briana M. Douglas  
 Palmer Biezup & Henderson  
 Public Ledger Building  
 Independence Square  
 Sixth & Chestnut Streets  
 Philadelphia, PA 19106-3409

4. Description of records requested  
 Exxon Valdez oil spill

5. Request Received | Date 1-13-94 | Time 9:00 AM | By Maria Krug

6. \_\_\_\_\_ request returned or requester contacted: to clarify, or for other reason. Explain on reverse side of White Copy.

7. Request fulfilled by facility | Date 1-31-94 | Time 2:30 PM | By John Kaperick

8. ACTION ASSIGNED TO: GC/DAC Date: 1-13-94

9. Due Date. By law, this request must be answered no later than:  
 2-8-94

10. Comments or instructions:  
 Please send copy of reply (letter only) and completed CD244 to OA332, Maria Krug, room 714, WSC#5. FAX 301-443-8850

P  
A  
R  
T  
II

11. Received in Action Office | Date 1-28-94 | Time 1:30 PM | By John Kaperick

12. Fee Provisions  
 a. Without further notice, requester agrees to pay: \_\_\_\_\_ full amount, or \_\_\_\_\_ up to \$\_\_\_\_\_  
 b. \_\_\_\_\_ Fees reduced or waived, and by whom; attach explanation; 4.9 (b) applies.  
 c. Notification of fees sent to requester on: \_\_\_\_\_, 19\_\_\_\_\_  
 d. Payment of \$\_\_\_\_\_ received on \_\_\_\_\_.

13. Tolling of Time Provisions (see 4.9.(d))  
 a. \_\_\_\_\_ estimated fee exceeds authorization.  
 b. \_\_\_\_\_ estimated fee exceeds \$250 and lacks \_\_\_\_\_ authorization.  
 c. \_\_\_\_\_ requester delinquent in past payments.

14. Initial Determination (Summarize per subparagraph 7.04d.3., DAO 205-14; attach another sheet if necessary; 4.6 applies.)  
 Contacted requestor and received permission to narrow request to reports and correspondence, about Exxon Valdez oil spill, which Dr. Jacqui Michel was involved in. Items sent to requestor 1/31/94 via U.S. Mail. See attached letter for reference.

14. a. Clearance Official(s)  
 Name: \_\_\_\_\_  
 Office Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

15. Collectible Costs per Fee Schedule (4.9 (b))		16. Non-collectible Costs	
	Estimated	Actual	
Search Fee	\$ _____	\$ _____	
Copying Fee	_____	_____	
Review	_____	_____	
Total Collectible	\$ _____	\$ _____	

17. Action Office | Signature \_\_\_\_\_ | Position title HAZMAT Reference Assistant | Date 2-1-94

**Appendix I**

**The Privacy Act (5 USC § 552a)**

TITLE 5--GOVERNMENT ORGANIZATION AND EMPLOYEES

PART I--THE AGENCIES GENERALLY

CHAPTER 5--ADMINISTRATIVE PROCEDURE

SUBCHAPTER II--ADMINISTRATIVE PROCEDURE

Sec. 552a. Records maintained on individuals

(a) Definitions.--For purposes of this section--

- (1) the term ``agency'' means agency as defined in section 552(e) \1\ of this title;

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\1\ See References in Text note below.  
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- (2) the term ``individual'' means a citizen of the United States or an alien lawfully admitted for permanent residence;
- (3) the term ``maintain'' includes maintain, collect, use, or disseminate;
- (4) the term ``record'' means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;
- (5) the term ``system of records'' means a group of any records under the control of any agency 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;
- (6) the term ``statistical record'' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;
- (7) the term ``routine use'' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

5 U.S.C. § 552a

(8) the term "matching program"--

(A) means any computerized comparison of--

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of--

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include--

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain

Laws in effect as of January 2, 2001

I-2

April 2002 Update

5 U.S.C. § 552a

verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches--

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency; if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel;

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(vii) matches performed incident to a levy described in section 6103(k)(8) of the Internal Revenue Code of 1986; or

(viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. 402(x)(3), 1382(e)(1));

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

Laws in effect as of January 2, 2001

I-3

April 2002 Update

5 U.S.C. § 552a

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of Disclosure.--No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be--

- (1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;
- (2) required under section 552 of this title;
- (3) for a routine use as defined in subsection (a) (7) of this section and described under subsection (e) (4) (D) of this section;
- (4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;
- (5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;
- (6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;
- (7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;
- (8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

5 U.S.C. § 552a

- (9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;
  - (10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;
  - (11) pursuant to the order of a court of competent jurisdiction; or
  - (12) to a consumer reporting agency in accordance with section 3711(e) of title 31.
- (c) Accounting of Certain Disclosures.--Each agency, with respect to each system of records under its control, shall--
- (1) except for disclosures made under subsections (b) (1) or (b) (2) of this section, keep an accurate accounting of--
    - (A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and
    - (B) the name and address of the person or agency to whom the disclosure is made;
  - (2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;
  - (3) except for disclosures made under subsection (b) (7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and
  - (4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.
- (d) Access to Records.--Each agency that maintains a system of records shall--
- (1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

Laws in effect as of January 2, 2001

I-5

April 2002 Update

5 U.S.C. § 552a

- (2) permit the individual to request amendment of a record pertaining to him and--
  - (A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and
  - (B) promptly, either--
    - (i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or
    - (ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;
- (3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g) (1) (A) of this section;
- (4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and
- (5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

5 U.S.C. § 552a

(e) Agency Requirements.--Each agency that maintains a system of records shall--

- (1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;
- (2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;
- (3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual--
  - (A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;
  - (B) the principal purpose or purposes for which the information is intended to be used;
  - (C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and
  - (D) the effects on him, if any, of not providing all or any part of the requested information;
- (4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include--
  - (A) the name and location of the system;
  - (B) the categories of individuals on whom records are maintained in the system;
  - (C) the categories of records maintained in the system;
  - (D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;
  - (E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;
  - (F) the title and business address of the agency official who is responsible for the system of records;

Laws in effect as of January 2, 2001

I-7

April 2002 Update

5 U.S.C. § 552a

- (G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;
  - (H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and
  - (I) the categories of sources of records in the system;
- (5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;
  - (6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b) (2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;
  - (7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;
  - (8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;
  - (9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;
  - (10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

5 U.S.C. § 552a

- (11) at least 30 days prior to publication of information under paragraph (4) (D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and
  - (12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.
- (f) Agency Rules.--In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall--
- (1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;
  - (2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;
  - (3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;
  - (4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and
  - (5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e) (4) of this section in a form available to the public at low cost.

5 U.S.C. § 552a

- (g) (1) Civil Remedies.--Whenever any agency
- (A) makes a determination under subsection (d) (3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;
  - (B) refuses to comply with an individual request under subsection (d) (1) of this section;
  - (C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual;  
or
  - (D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.
- (2) (A) In any suit brought under the provisions of subsection (g) (1) (A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.
- (B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.
- (3) (A) In any suit brought under the provisions of subsection (g) (1) (B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.
- (B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

5 U.S.C. § 552a

- (4) In any suit brought under the provisions of subsection (g) (1) (C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of--
- (A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and
  - (B) the costs of the action together with reasonable attorney fees as determined by the court.
- (5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.
- (h) Rights of Legal Guardians.--For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.
- (i) (1) Criminal Penalties.--Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e) (4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

5 U.S.C. § 552a

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) General Exemptions.--The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is--

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific Exemptions.--The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is--

(1) subject to the provisions of section 552(b)(1) of this title;

5 U.S.C. § 552a

- (2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j) (2) of this section: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;
- (3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;
- (4) required by statute to be maintained and used solely as statistical records;
- (5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;
- (6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or
- (7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

Laws in effect as of January 2, 2001

I-13

April 2002 Update

5 U.S.C. § 552a

- (1) (1) Archival Records.--Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.
- (2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e) (4) (A) through (G) of this section) shall be published in the Federal Register.
- (3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e) (4) (A) through (G) and (e) (9) of this section.
- (m) (1) Government Contractors.--When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.
- (2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.
- (n) Mailing Lists.--An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

- (o) Matching Agreements.--(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying--
- (A) the purpose and legal authority for conducting the program;
  - (B) the justification for the program and the anticipated results, including a specific estimate of any savings;
  - (C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;
  - (D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to--
    - (i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and
    - (ii) applicants for and holders of positions as Federal personnel, that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;
  - (E) procedures for verifying information produced in such matching program as required by subsection (p);
  - (F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;
  - (G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;
  - (H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;
  - (I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

5 U.S.C. § 552a

- (J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and
  - (K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.
- (2) (A) A copy of each agreement entered into pursuant to paragraph (1) shall--
- (i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and
  - (ii) be available upon request to the public.
- (B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A) (i).
- (C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.
- (D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if--
- (i) such program will be conducted without any change; and
  - (ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.
- (p) Verification and Opportunity to Contest Findings.--(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until--
- (A) (i) the agency has independently verified the information;  
or

5 U.S.C. § 552a

- (ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that--
  - (I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and
  - (II) there is a high degree of confidence that the information provided to the recipient agency is accurate;
- (B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and
- (C) (i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or
  - (ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.
- (2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of--
  - (A) the amount of any asset or income involved;
  - (B) whether such individual actually has or had access to such asset or income for such individual's own use; and
  - (C) the period or periods when the individual actually had such asset or income.
- (3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.
- (q) Sanctions.--(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

Laws in effect as of January 2, 2001

I-17

April 2002 Update

5 U.S.C. § 552a

- (2) No source agency may renew a matching agreement unless--
- (A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and
  - (B) the source agency has no reason to believe that the certification is inaccurate.
- (r) Report on New Systems and Matching Programs.--Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.
- (s) Biennial Report.--The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report--
- (1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;
  - (2) describing the exercise of individual rights of access and amendment under this section during such years;
  - (3) identifying changes in or additions to systems of records;
  - (4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.
- (t) (1) Effect of Other Laws.--No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.
- (2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.
- (u) Data Integrity Boards.--
- (1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

5 U.S.C. § 552a.

- (2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.
- (3) Each Data Integrity Board--
- (A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;
  - (B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;
  - (C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;
  - (D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including--
    - (i) matching programs in which the agency has participated as a source agency or recipient agency;
    - (ii) matching agreements proposed under subsection (o) that were disapproved by the Board;
    - (iii) any changes in membership or structure of the Board in the preceding year;
    - (iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;
    - (v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and
    - (vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

Laws in effect as of January 2, 2001

I-19

April 2002 Update

- (E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;
  - (F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;
  - (G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and
  - (H) may review and report on any agency matching activities that are not matching programs.
- (4) (A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.\2\

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\2\ So in original. Probably should be ``cost-effective.''  
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- (B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.
  - (C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.
- (5) (A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.
- (B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that--

- (i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;
  - (ii) there is adequate evidence that the matching agreement will be cost-effective; and
  - (iii) the matching program is in the public interest.
- (C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).
- (D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.
- (6) In the reports required by paragraph (3)(D), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.
- (v) Office of Management and Budget Responsibilities.--The Director of the Office of Management and Budget shall--
- (1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and
  - (2) provide continuing assistance to and oversight of the implementation of this section by agencies.

(Added Pub. L. 93-579, Sec. 3, Dec. 31, 1974, 88 Stat. 1897; amended Pub. L. 94-183, Sec. 2(2), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 97-365, Sec. 2, Oct. 25, 1982, 96 Stat. 1749; Pub. L. 97-375, title II, Sec. 201(a), (b), Dec. 21, 1982, 96 Stat. 1821; Pub. L. 97-452, Sec. 2(a)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98-477, Sec. 2(c), Oct. 15, 1984, 98 Stat. 2211; Pub. L. 98-497, title I, Sec. 107(g), Oct. 19, 1984, 98 Stat. 2292; Pub. L. 100-503, Secs. 2-6(a), 7, 8, Oct. 18, 1988, 102 Stat. 2507-2514; Pub. L. 101-508, title VII, Sec. 7201(b)(1), Nov. 5, 1990, 104 Stat. 1388-334; Pub. L. 103-66, title XIII, Sec. 13581(c), Aug. 10, 1993, 107 Stat. 611; Pub. L. 104-193, title I, Sec. 110(w), Aug. 22, 1996, 110 Stat. 2175; Pub. L. 104-226, Sec. 1(b)(3), Oct. 2, 1996, 110 Stat. 3033; Pub. L. 104-316, title I, Sec. 115(g)(2)(B), Oct. 19, 1996, 110 Stat. 3835; Pub. L. 105-34, title X, Sec. 1026(b)(2), Aug. 5, 1997, 111 Stat. 925; Pub. L. 105-362, title XIII, Sec. 1301(d), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 106-170, title IV, Sec. 402(a)(2), Dec. 17, 1999, 113 Stat. 1908.)

References in Text

Section 552(e) of this title, referred to in subsec. (a)(1), was

Laws in effect as of January 2, 2001

I-21

April 2002 Update

5 U.S.C. § 552a

redesignated section 552(f) of this title by section 1802(b) of Pub. L. 99-570.

Section 6103 of the Internal Revenue Code of 1986, referred to in subsec. (a)(8)(B)(iv), (vii), is classified to section 6103 of Title 26, Internal Revenue Code.

Sections 404, 464, and 1137 of the Social Security Act, referred to in subsec. (a)(8)(B)(iv), are classified to sections 604, 664, and 1320b-7, respectively, of Title 42, The Public Health and Welfare.

For effective date of this section, referred to in subssecs. (k)(2), (5), (7), (1)(2), (3), and (m), see Effective Date note below.

Section 6 of the Privacy Act of 1974, referred to in subsec. (s)(1), is section 6 of Pub. L. 93-579, which was set out below and was repealed by section 6(c) of Pub. L. 100-503.

For classification of the Privacy Act of 1974, referred to in subsec. (s)(4), see Short Title note below.

Codification

Section 552a of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2244 of Title 7, Agriculture.

Amendments

1999--Subsec. (a)(8)(B)(viii). Pub. L. 106-170 added cl. (viii).

1998--Subsec. (u)(6), (7). Pub. L. 105-362 redesignated par. (7) as (6), substituted ``paragraph (3)(D)'' for ``paragraphs (3)(D) and (6)'' , and struck out former par. (6) which read as follows: ``The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver.''

1997--Subsec. (a)(8)(B)(vii). Pub. L. 105-34 added cl. (vii).

1996--Subsec. (a)(8)(B)(iv)(III). Pub. L. 104-193 substituted ``section 404(e), 464,' ' for ``section 464'' .

Subsec. (a)(8)(B)(v) to (vii). Pub. L. 104-226 inserted ``or'' at end of cl. (v), struck out ``or'' at end of cl. (vi), and struck out cl. (vii) which read as follows: ``matches performed pursuant to section 6103(1)(12) of the Internal Revenue Code of 1986 and section 1144 of the Social Security Act;'' .

Subsecs. (b)(12), (m)(2). Pub. L. 104-316 substituted ``3711(e)'' for ``3711(f)'' .

1993--Subsec. (a)(8)(B)(vii). Pub. L. 103-66 added cl. (vii).

1990--Subsec. (p). Pub. L. 101-508 amended subsec. (p) generally, restating former pars. (1) and (3) as par. (1), adding provisions relating to Data Integrity Boards, and restating former pars. (2) and (4) as (2) and (3), respectively.

- 1988--Subsec. (a) (8) to (13). Pub. L. 100-503, Sec. 5, added pars. (8) to (13).  
 Subsec. (e) (12). Pub. L. 100-503, Sec. 3(a), added par. (12).  
 Subsec. (f). Pub. L. 100-503, Sec. 7, substituted ``biennially'' for ``annually'' in last sentence.  
 Subsecs. (o) to (q). Pub. L. 100-503, Sec. 2(2), added subsecs. (o) to (q). Former subsecs. (o) to (q) redesignated (r) to (t), respectively.  
 Subsec. (r). Pub. L. 100-503, Sec. 3(b), inserted ``and matching programs'' in heading and amended text generally. Prior to amendment, text read as follows: ``Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.''  
 Pub. L. 100-503, Sec. 2(1), redesignated former subsec. (o) as (r).  
 Subsec. (s). Pub. L. 100-503, Sec. 8, substituted ``Biennial'' for ``Annual'' in heading, ``biennially submit'' for ``annually submit'' in introductory provisions, ``preceding 2 years'' for ``preceding year'' in par. (1), and ``such years'' for ``such year'' in par. (2).  
 Pub. L. 100-503, Sec. 2(1), redesignated former subsec. (p) as (s).  
 Subsec. (t). Pub. L. 100-503, Sec. 2(1), redesignated former subsec. (q) as (t).  
 Subsec. (u). Pub. L. 100-503, Sec. 4, added subsec. (u).  
 Subsec. (v). Pub. L. 100-503, Sec. 6(a), added subsec. (v).  
 1984--Subsec. (b) (6). Pub. L. 98-497, Sec. 107(g) (1), substituted ``National Archives and Records Administration'' for ``National Archives of the United States'', and ``Archivist of the United States or the designee of the Archivist'' for ``Administrator of General Services or his designee''.  
 Subsec. (l) (1). Pub. L. 98-497, Sec. 107(g) (2), substituted ``Archivist of the United States'' for ``Administrator of General Services'' in two places.  
 Subsec. (q). Pub. L. 98-477 designated existing provisions as par. (1) and added par. (2).  
 1983--Subsec. (b) (12). Pub. L. 97-452 substituted ``section 3711(f) of title 31'' for ``section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))''.  
 Subsec. (m) (2). Pub. L. 97-452 substituted ``section 3711(f) of title 31'' for ``section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))''.

5 U.S.C. § 552a

- 1982--Subsec. (b)(12). Pub. L. 97-365, Sec. 2(a), added par. (12).  
Subsec. (e)(4). Pub. L. 97-375, Sec. 201(a), substituted  
``upon establishment or revision'' for ``at least annually''  
after ``Federal Register''.
- Subsec. (m). Pub. L. 97-365, Sec. 2(b), designated existing  
provisions as par. (1) and added par. (2).
- Subsec. (p). Pub. L. 97-375, Sec. 201(b), substituted  
provisions requiring annual submission of a report by the  
President to the Speaker of the House and President pro  
tempore of the Senate relating to the Director of the Office  
of Management and Budget, individual rights of access,  
changes or additions to systems of records, and other  
necessary or useful information, for provisions which had  
directed the President to submit to the Speaker of the House  
and the President of the Senate, by June 30 of each calendar  
year, a consolidated report, separately listing for each  
Federal agency the number of records contained in any system  
of records which were exempted from the application of this  
section under the provisions of subsections (j) and (k) of  
this section during the preceding calendar year, and the  
reasons for the exemptions, and such other information as  
indicate efforts to administer fully this section.
- 1975--Subsec. (g)(5). Pub. L. 94-183 substituted ``to September 27,  
1975'' for ``to the effective date of this section''.

Change of Name

Committee on Government Operations of House of Representatives  
treated as referring to Committee on Government Reform and Oversight of  
House of Representatives by section 1(a) of Pub. L. 104-14, set out as  
a note under section 21 of Title 2, The Congress. Committee on  
Government Reform and Oversight of House of Representatives changed to  
Committee on Government Reform of House of Representatives by House  
Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

Effective Date of 1999 Amendment

Amendment by Pub. L. 106-170 applicable to individuals whose period  
of confinement in an institution commences on or after the first day of  
the fourth month beginning after December 1999, see section 402(a)(4)  
of Pub. L. 106-170, set out as a note under section 402 of Title 42,  
The Public Health and Welfare.

Effective Date of 1997 Amendment

Amendment by Pub. L. 105-34 applicable to levies issued after Aug.  
5, 1997, see section 1026(c) of Pub. L. 105-34, set out as a note under  
section 6103 of Title 26, Internal Revenue Code.

Laws in effect as of January 2, 2001

I-24

April 2002 Update

5 U.S.C. § 552a

Effective Date of 1996 Amendment

Amendment by Pub. L. 104-193 effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

Effective Date of 1993 Amendment

Amendment by Pub. L. 103-66 effective Jan. 1, 1994, see section 13581(d) of Pub. L. 103-66, set out as a note under section 1395y of Title 42, The Public Health and Welfare.

Effective Date of 1988 Amendment

Section 10 of Pub. L. 100-503, as amended by Pub. L. 101-56, Sec. 2, July 19, 1989, 103 Stat. 149, provided that:

- “(a) In General.--Except as provided in subsections (b) and (c), the amendments made by this Act [amending this section and repealing provisions set out as a note below] shall take effect 9 months after the date of enactment of this Act [Oct. 18, 1988].
- “(b) Exceptions.--The amendment made by sections 3(b), 6, 7, and 8 of this Act [amending this section and repealing provisions set out as a note below] shall take effect upon enactment.
- “(c) Effective Date Delayed for Existing Programs.--In the case of any matching program (as defined in section 552a(a)(8) of title 5, United States Code, as added by section 5 of this Act) in operation before June 1, 1989, the amendments made by this Act (other than the amendments described in subsection (b)) shall take effect January 1, 1990, if--
  - “(1) such matching program is identified by an agency as being in operation before June 1, 1989; and
  - “(2) such identification is--
    - “(A) submitted by the agency to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget before August 1, 1989, in a report which contains a schedule showing the dates on which the agency expects to have such matching program in compliance with the amendments made by this Act, and
    - “(B) published by the Office of Management and Budget in the Federal Register, before September 15, 1989.”

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

Laws in effect as of January 2, 2001

I-25

April 2002 Update

Effective Date

Section 8 of Pub. L. 93-579 provided that: ``The provisions of this Act [enacting this section and provisions set out as notes under this section] shall be effective on and after the date of enactment [Dec. 31, 1974], except that the amendments made by sections 3 and 4 [enacting this section and amending analysis preceding section 500 of this title] shall become effective 270 days following the day on which this Act is enacted.''

Short Title of 1990 Amendment

Section 7201(a) of Pub. L. 101-508 provided that: ``This section [amending this section and enacting provisions set out as notes below] may be cited as the `Computer Matching and Privacy Protection Amendments of 1990'.''

Short Title of 1989 Amendment

Pub. L. 101-56, Sec. 1, July 19, 1989, 103 Stat. 149, provided that:  
``This Act [amending section 10 of Pub. L. 100-503, set out as a note above] may be cited as the `Computer Matching and Privacy Protection Act Amendments of 1989'.''

Short Title of 1988 Amendment

Section 1 of Pub. L. 100-503 provided that: ``This Act [amending this section, enacting provisions set out as notes above and below, and repealing provisions set out as a note below] may be cited as the `Computer Matching and Privacy Protection Act of 1988'.''

Short Title

Section 1 of Pub. L. 93-579 provided: ``That this Act [enacting this section and provisions set out as notes under this section] may be cited as the `Privacy Act of 1974'.''

Termination of Reporting Requirements

For termination, effective May 15, 2000, of reporting provisions in subsec. (s) of this section, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 31 of House Document No. 103-7.

Delegation of Functions

Functions of Director of Office of Management and Budget under this section delegated to Administrator for Office of Information and Regulatory Affairs by section 3 of Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2825, set out as a note under section 3503 of Title 44, Public Printing and Documents.

Publication of Guidance Under Subsection (p) (1) (A) (ii)

Section 7201(b) (2) of Pub. L. 101-508 provided that: ``Not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990], the Director of the Office of Management and Budget shall publish guidance under subsection (p) (1) (A) (ii) of section 552a of title 5, United States Code, as amended by this Act.''

Limitation on Application of Verification Requirement

Section 7201(c) of Pub. L. 101-508 provided that: ``Section 552a(p) (1) (A) (ii) (II) of title 5, United States Code, as amended by section 2 [probably means section 7201(b) (1) of Pub. L. 101-508], shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b-7), until the earlier of--

- ``(1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or
- ``(2) 30 days after the date of publication of guidance under section 2(b) [probably means section 7201(b) (2) of Pub. L. 101-508, set out as a note above].''

Effective Date Delayed for Certain Education Benefits Computer Matching Programs

Pub. L. 101-366, title II, Sec. 206(d), Aug. 15, 1990, 104 Stat. 442, provided that:

- ``(1) In the case of computer matching programs between the Department of Veterans Affairs and the Department of Defense in the administration of education benefits programs under chapters 30 and 32 of title 38 and chapter 106 of title 10, United States Code, the amendments made to section 552a of title 5, United States Code, by the Computer Matching and Privacy Protection Act of 1988 [Pub. L. 100-503] (other than the amendments made by section 10(b) of that Act) [see Effective Date of 1988 Amendment note above] shall take effect on October 1, 1990.
- ``(2) For purposes of this subsection, the term `matching program' has the same meaning provided in section 552a(a) (8) of title 5, United States Code.''

Implementation Guidance for 1988 Amendments

Section 6(b) of Pub. L. 100-503 provided that: ``The Director shall, pursuant to section 552a(v) of title 5, United States Code, develop guidelines and regulations for the use of agencies in implementing the amendments made by this Act [amending this section and repealing provisions set out as a note below] not later than 8 months after the date of enactment of this Act [Oct. 18, 1988].''

Construction of 1988 Amendments

Section 9 of Pub. L. 100-503 provided that: ``Nothing in the amendments made by this Act [amending this section and repealing provisions set out as a note below] shall be construed to authorize--

- ``(1) the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by other Federal agencies;
- ``(2) the direct linking of computerized systems of records maintained by Federal agencies;
- ``(3) the computer matching of records not otherwise authorized by law; or
- ``(4) the disclosure of records for computer matching except to a Federal, State, or local agency.''

Congressional Findings and Statement of Purpose

Section 2 of Pub. L. 93-579 provided that:

- ``(a) The Congress finds that--
  - ``(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;
  - ``(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;
  - ``(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;
  - ``(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and
  - ``(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.
- ``(b) The purpose of this Act [enacting this section and provisions set out as notes under this section] is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to--
  - ``(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;
  - ``(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

- `` (3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;
- `` (4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;
- `` (5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and
- `` (6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act.''

#### Privacy Protection Study Commission

Section 5 of Pub. L. 93-579, as amended by Pub. L. 95-38, June 1, 1977, 91 Stat. 179, which established the Privacy Protection Study Commission and provided that the Commission study data banks, automated data processing programs and information systems of governmental, regional and private organizations to determine standards and procedures in force for protection of personal information, that the Commission report to the President and Congress the extent to which requirements and principles of section 552a of title 5 should be applied to the information practices of those organizations, and that it make other legislative recommendations to protect the privacy of individuals while meeting the legitimate informational needs of government and society, ceased to exist on September 30, 1977, pursuant to section 5(g) of Pub. L. 93-579.

#### Guidelines and Regulations for Maintenance of Privacy and Protection of Records of Individuals

Section 6 of Pub. L. 93-579, which provided that the Office of Management and Budget shall develop guidelines and regulations for use of agencies in implementing provisions of this section and provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies, was repealed by Pub. L. 100-503, Sec. 6(c), Oct. 18, 1988, 102 Stat. 2513.

#### Disclosure of Social Security Number

Section 7 of Pub. L. 93-579 provided that:

- `` (a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.
- `` (2) the [The] provisions of paragraph (1) of this subsection shall not apply with respect to--

Laws in effect as of January 2, 2001

I-29

April 2002 Update

5 U.S.C. § 552a

- ``(A) any disclosure which is required by Federal statute, or
  - ``(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.
- ``(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.''

Authorization of Appropriations to Privacy Protection Study Commission

Section 9 of Pub. L. 93-579, as amended by Pub. L. 94-394, Sept. 3, 1976, 90 Stat. 1198, authorized appropriations for the period beginning July 1, 1975, and ending on September 30, 1977.

Classified National Security Information

For provisions relating to a response to a request for information under this section when the fact of its existence or nonexistence is itself classified or when it was originally classified by another agency, see Ex. Ord. No. 12958, Sec. 3.7, Apr. 17, 1995, 60 F.R. 19835, set out as a note under section 435 of Title 50, War and National Defense.

Section Referred to in Other Sections

This section is referred to in sections 552b, 1212, 3111, 7133, 8148 of this title; title 7 sections 2204b, 2279b, 7035; title 10 sections 1102, 1506, 1588; title 12 section 1715z; title 14 section 645; title 15 section 278g-3; title 16 sections 410cc-35, 1536; title 19 section 1631; title 20 sections 1080a, 1090, 9010; title 22 section 4355; title 25 section 3205; title 26 sections 6103, 7852; title 29 section 1908; title 31 sections 3701, 3711, 3716, 3718, 3729, 3733, 7701; title 38 sections 3684A, 5701; title 39 section 410; title 42 sections 247b-4, 300aa-25, 402, 405, 904, 1306, 3544, 9660, 14614, 14616; title 44 sections 2906, 3501, 3504, 3506; title 46 sections 7702, 9303; title 49 section 30305; title 50 section 403-5b; title 50 App. section 2159.

**Appendix J**

**Resources and Assistance Available**

## FOIA Contacts List

Name, Title, Address, and E-Mail	Phone Number	Fax Number
Brenda Dolan DOC FOIA/PA Officer Washington, D.C. <a href="mailto:bdolan1@doc.gov">bdolan1@doc.gov</a>	(202) 482-4115	(202) 482-3270
Jean Carter-Johnson, NOAA FOIA Officer Silver Spring, MD <a href="mailto:jean.carter.johnson@noaa.gov">jean.carter.johnson@noaa.gov</a>	(301) 713-3540 X209	(301) 713-1169
Marie Marks, NOAA FOIA Team Leader Silver Spring, MD <a href="mailto:Marie.h.marks@noaa.gov">Marie.h.marks@noaa.gov</a>	(301) 713-3540 X144	(301) 713-2303
Veronica Harvey, NOS FOIA Officer Silver Spring MD <a href="mailto:veronica.harvey@noaa.gov">veronica.harvey@noaa.gov</a>	(301)713-3070 x184	(301)713-4307
Katie Geenen-Niemi, NOS FOIA Coordinator Silver Spring, MD <a href="mailto:katie.geenen.niemi@noaa.gov">katie.geenen.niemi@noaa.gov</a>	(301) 713-3070 X139	(301) 713-4307
John Kaperick, NOS OR&R FOIA Liaison Seattle, WA <a href="mailto:john.kaperick@noaa.gov">john.kaperick@noaa.gov</a>	(206) 526-6400	(206) 526-6329
Gail Siani, Paralegal, Office of General Counsel Seattle, WA <a href="mailto:gail.e.siani@noaa.gov">gail.e.siani@noaa.gov</a>	(206) 526-4566	(206) 527-1542
Katherine Pease, Senior Attorney, Office of General Counsel Long Beach, CA <a href="mailto:kathe.pease@noaa.gov">kathe.pease@noaa.gov</a>	(562) 980-4077	(562) 980-4084
Stephanie Fluke, Attorney, Office of General Counsel St. Petersburg, FL <a href="mailto:stephanie.fluke@noaa.gov">stephanie.fluke@noaa.gov</a>	(727) 570-5362	(727) 570-5376
Cheryl Scannell, Attorney, Office of General Counsel St. Petersburg, FL 33702-2439 <a href="mailto:cheryl.scannell@noaa.gov">cheryl.scannell@noaa.gov</a>	(727) 570-5365	(727) 570-5376

**FOIA Contacts List (continued)**

<b>Name, Title, Address, and E-Mail</b>	<b>Phone Number</b>	<b>Fax Number</b>
Marguerite Matera, Attorney, Office of General Counsel Gloucester, MA 01930-2298 <a href="mailto:marguerite.matera@noaa.gov">marguerite.matera@noaa.gov</a>	(978) 281-9231	(978) 281-9389
Gwendolyn Wilkie, Attorney, Office of General Counsel Gloucester, MA <a href="mailto:gwendolyn.wilkie@noaa.gov">gwendolyn.wilkie@noaa.gov</a>	(978) 281-9211	(978) 281-9389
Mary O'Connell Office of General Counsel Silver Spring MD 20910-3282 <a href="mailto:Mary.e.o'connell@noaa.gov">Mary.e.o'connell@noaa.gov</a>	(301)713-1328	(301) 713-1229
Linda Burlington Office of General Counsel Silver Spring MD <a href="mailto:Linda.B.Burlington@noaa.gov">Linda.B.Burlington@noaa.gov</a>	(301)713-1332	(301) 713-1229
U.S. Department of Commerce Assistant General Counsel for Administration Washington, D.C. Judith Means <a href="mailto:jmeans@doc.gov">jmeans@doc.gov</a> John Giff <a href="mailto:jgiff@doc.gov">jgiff@doc.gov</a> --FOIA appeals are handled by this office	(202) 482-5391	
U.S. Department of Justice FOIA Counselor Service --Can answer questions regarding FOIA, exemptions, how to proceed on certain types of requests, etc. --These attorneys are very experienced in FOIA litigation and are a good resource to consult if you are unsure or have an uncommon request	(202) 514-3642	

## FOIA Internet Resources

Web Site Resource	Web Site Address
<b>NOAA FOIA Office</b>	<a href="http://www.rdc.noaa.gov/~foia/">http://www.rdc.noaa.gov/~foia/</a>
The NOAA FOIA Office web site has information on FOIA exemptions, fees, appeals, policies, reports, and legislation. It also has a tutorial section on processing FOIA requests and available training.	
<b>U.S. Department of Justice</b>	<a href="http://www.usdoj.gov/oip/">http://www.usdoj.gov/oip/</a>
The U.S. Department of Justice Office of Information and Privacy web site has an abundance of information on FOIA, including a "FOIA Reference Guide" and information on training. The Department of Justice training on FOIA is the best available.	
<b>FOIA Reference Guide</b>	<a href="http://www.usdoj.gov/04foia/04_3.html">http://www.usdoj.gov/04foia/04_3.html</a>
This is a great source of information on topics pertaining to FOIA. It includes information from both the requester and receiver perspectives.	
<b>FOIA Update Newsletter</b>	<a href="http://www.usdoj.gov/oip/foi-upd.htm">http://www.usdoj.gov/oip/foi-upd.htm</a>
This newsletter provides information on updates to FOIA. It also includes information on current or recently-settled cases and decisions. Items from 1979 – 2000 can be found at this address. There was a change to "FOIA Post" after that.	
<b>FOIA Post</b>	<a href="http://www.usdoj.gov/oip/foiapost/mainpage.htm">http://www.usdoj.gov/oip/foiapost/mainpage.htm</a>
This is the replacement for "FOIA Update Newsletter". It began in March 2001 and provides updates to FOIA as well as information on current or recently-settled cases and decisions.	
<b>U.S. DOJ General FOIA Page</b>	<a href="http://www.usdoj.gov/04foia/index.htm">http://www.usdoj.gov/04foia/index.htm</a>
This is good general page about FOIA in DOJ. It also provides a FOIA contact list for federal agencies and other good information on FOIA.	
<b>White House Council on Environmental Quality</b>	<a href="http://www.whitehouse.gov/ceq/">http://www.whitehouse.gov/ceq/</a>
This site has annual FOIA reports for the Council on Environmental Quality.	

**Appendix K**

**Sample Letters and Memos**



**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
National Ocean Service  
Office of Response and Restoration  
7600 Sand Point Way N.E. - Bin C15700  
Seattle, Washington 98115

**September 13, 2000**

John P. Englert  
Kirkpatrick & Lockhart  
535 Smithfield Street  
Pittsburgh, PA 15222-2312

Re: FOIA Request #2000-00434

Dear Mr. Englert:

We are in receipt of your Freedom of Information Act Request, dated August 23, 2000, for records relating to the Li Tungsten site in Glen Cove, New York. We have classified you as a commercial use requestor under 15 CFR § 4.11 (b)(1) and you will be responsible to pay any costs associated with our response to your request. We anticipate having a cost estimate available for you by September 25<sup>th</sup>. Please feel free to contact me at (206) 526-6400 if you have any questions regarding your request.

Sincerely,

John Kaperick, FOIA Liaison

Cc: NOAA FOIA Office  
File  
OR&R HQ  
NOS HQ





U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
National Ocean Service  
Office of Response and Restoration  
7600 Sand Point Way N.E. - Bin C15700  
Seattle, Washington 98115

**October 4, 2000**

John P. Englert  
Kirkpatrick & Lockhart  
535 Smithfield Street  
Pittsburgh, PA 15222-2312

Re: FOIA Request #2000-00434

Dear Mr. Englert:

We are in receipt of your Freedom of Information Act Request, dated August 23, 2000, for records relating to the Li Tungsten site in Glen Cove, New York. We have classified you as a commercial use requestor under 15 CFR § 4.11 (b)(1) and you will be responsible to pay any costs associated with our response to your request. We estimate the costs associated with your request to be \$942.25 and hereby request prepayment of these costs prior to further processing of your request. The check should be made payable to "Treasury of the United States" and sent directly to the NOAA FOIA Office at 1305 East West Highway, Silver Spring, MD 20910, attention: Marie Marks. If we do not receive prepayment by 30 days from the date of this letter, we will close this request. Please feel free to contact me at (206) 526-6400 if you have any questions.

Sincerely,

John Kaperick, FOIA Liaison

Cc: NOAA FOIA Office  
File  
OR&R HQ  
NOS HQ





**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
National Ocean Service  
Office of Response and Restoration  
7600 Sand Point Way N.E. - Bin C15700  
Seattle, Washington 98115

**April 8, 2002**

Peggy Regan  
Phelps Dunbar LLP  
Canal Place  
365 Canal Street, Suite 2000  
New Orleans, LA 70130-9130

Re: FOIA Request 2002-00122, dated 12/20/2001

Dear Ms. Regan:

I am in receipt of your Freedom of Information Act request and your subsequent letter narrowing the request to those documents NOAA would exclusively have regarding sites owned or leased in the past by the Port of Bellingham, Washington. I have searched our records and have talked with our Coastal Resource Coordinator in the Washington area and have determined that we have no records responsive to your request. Thank you for your interest in the operations of our agency. Please feel free to contact me at any time if you have any questions. You may appeal this determination within 30 calendar days from the date of this initial denial letter. Address your written appeal to the Assistant General Counsel for Administration, Room 5875, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, D.C. 20230, and prominently mark your letter and the outside envelope, "Freedom of Information Appeal." Your appeal should state the reasons, under the Act, why you believe this determination to be in error. It should also include a copy of your original request and this response letter.

Sincerely,

John Kaperick, FOIA Liaison  
NOAA Office of Response and Restoration  
(206) 526-6400

K-3

April 2002 Update





**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
National Ocean Service  
Office of Response and Restoration  
7600 Sand Point Way N.E. - Bin C15700  
Seattle, Washington 98115

**April 9, 2002**

Lori E. Andrus  
Lieff, Cabraser, Helmann & Bernstein  
3319 West End Avenue, Suite 600  
Nashville, TN 37203-1074

Re: FOIA Request 2002-00202, dated 2/20/2002

Dear Ms. Andrus:

I am in receipt of your Freedom of Information Act request and have reviewed it thoroughly. I have searched our records and have talked with our Coastal Resource Coordination staff, our Damage Assessment Center staff, our Scientific Support Coordination staff, and the Office of General Counsel staff and have determined that we have no records responsive to your request. Thank you for your interest in the operations of our agency. Please feel free to contact me at any time if you have any questions. You may appeal this determination within 30 calendar days from the date of this initial denial letter. Address your written appeal to the Assistant General Counsel for Administration, Room 5875, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, D.C. 20230, and prominently mark your letter and the outside envelope, "Freedom of Information Appeal." Your appeal should state the reasons, under the Act, why you believe this determination to be in error. It should also include a copy of your original request and this response letter.

Sincerely,

Margaret Davidson, Administrator





**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric**  
**Administration**  
National Ocean Service  
Office of Response and Restoration  
7600 Sand Point Way N.E. - Bin C15700  
Seattle, Washington 98115

**October 19, 2000**

Alfred E. Smith  
Nossaman, Guthner, Knox & Elliott  
445 South Figueroa Street, Thirty-First Floor  
Los Angeles, CA 90071-1602

Re: FOIA Request #2000-00431

Dear Mr. Smith:

This responds to your Freedom of Information Act request, dated August 16, 2000, to the National Oceanic and Atmospheric Administration. We are providing you with some whole documents and some redacted documents. We have determined that the rest of the records requested by you are exempt from disclosure under 5 USC § 552(b)(5), as amended. This exemption allows an agency to withhold from public disclosure inter-agency and intra-agency memoranda or other documents and communications which would not be available by law to a party other than an agency in litigation with the agency. The exemption incorporates several of the government's accepted privileges from discovery in litigation, including the privileges for attorney work product, attorney-client communications and deliberative materials. An index of all withheld and/or redacted documents is provided with this response.

Based on the above information, this constitutes a partial denial of your request. You may appeal the denial of information within 30 calendar days from the date of this initial denial letter. Address your written appeal to the General Counsel, Room 5882, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, D.C. 20230, and prominently mark your letter and the outside envelope, "FOIA Appeal." Your appeal should state the reasons why you believe the requested records should be released under the Act and why you believe this denial decision to be in error.

Sincerely,

Acting Director, National Ocean Service

cc: NOAA FOIA Office  
File  
OR&R HQ  
NOS HQ

K-5

April 2002 Update

