

## Presidio Trust

(e) Show that no record could be provided and used in lieu of employee testimony;

(f) Provide the substance of the testimony expected of the employee; and

(g) Explain why you believe your *Touhy* Request meets the criteria specified in §1012.9.

### § 1012.6 How much will I be charged?

We will charge you the costs, including travel expenses, for employees to testify under the relevant substantive and procedural laws and regulations. You must pay costs for record production in accordance with the provisions governing requests under the Freedom of Information Act in part 1007 of this chapter. Estimated Costs must be paid in advance by check or money order payable to the Presidio Trust. Upon determination of the precise costs, the Presidio Trust will either reimburse you for any overpayment, or charge you for any underpayment, which charges must be paid within 10 business days by check or money order payable to the Presidio Trust.

### § 1012.7 Can I get an authenticated copy of a Presidio Trust record?

Yes. We may provide an authenticated copy of a Presidio Trust record, for purposes of admissibility under Federal, State or Tribal law. We will do this only if the record has been officially released or would otherwise be released under parts 1007 or 1008 of this chapter, or this part.

#### RESPONSIBILITIES OF THE PRESIDIO TRUST

### § 1012.8 How will the Presidio Trust process my *Touhy* Request?

(a) The Executive Director will decide whether to grant or deny your *Touhy* Request. The Presidio Trust's General Counsel, or his or her agent, may negotiate with you or your attorney to refine or limit both the timing and content of your *Touhy* Request. When necessary, the General Counsel also will coordinate with the Department of Justice to file appropriate motions, including motions to remove the matter to Federal court, to quash, or to obtain a protective order.

## § 1012.10

(b) We will limit the Presidio Trust's decision to allow employee testimony to the scope of your *Touhy* Request.

(c) If you fail to follow the requirements of this part, we will not allow the testimony or produce the records.

(d) If your *Touhy* Request is complete, we will consider the request under § 1012.9.

### § 1012.9 What criteria will the Presidio Trust consider in responding to my *Touhy* Request?

In deciding whether to grant your *Touhy* Request, the Executive Director will consider:

(a) Your ability to obtain the testimony or records from another source;

(b) The appropriateness of the employee testimony and record production under the relevant regulations of procedure and substantive law, including the FOIA or the Privacy Act; and

(c) The Presidio Trust's ability to:

(1) Conduct its official business unimpeded;

(2) Maintain impartiality in conducting its business;

(3) Minimize the possibility that the Presidio Trust will become involved in issues that are not related to its mission or programs;

(4) Avoid spending public employees' time for private purposes;

(5) Avoid any negative cumulative effect of granting similar requests;

(6) Ensure that privileged or protected matters remain confidential; and

(7) Avoid undue burden on the Presidio Trust.

#### RESPONSIBILITIES OF EMPLOYEES

### § 1012.10 What must I, as an employee, do upon receiving a request?

(a) If you receive a request or subpoena that does not include a *Touhy* Request, you must immediately notify your supervisor and the Presidio Trust's General Counsel for assistance in issuing the proper response.

(b) If you receive a *Touhy* Request, you must promptly notify your supervisor and forward the request to the General Counsel. After consulting with the General Counsel, the Executive Director will decide whether to grant the *Touhy* Request under § 1012.9.

**§ 1012.11**

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(c) All decisions granting or denying a *Touhy* Request must be in writing. The Executive Director must ask the General Counsel for advice when preparing the decision.

(d) Under 28 U.S.C. 1733, Federal Rule of Civil Procedure 44(a)(1), or comparable State or Tribal law, a request for an authenticated copy of a Presidio Trust record may be granted by the person having the legal custody of the record. If you believe that you have custody of a record:

(1) Consult the General Counsel to determine if you can grant a request for authentication of records; and

(2) Consult the General Counsel concerning the proper form of the authentication (as authentication requirements may vary by jurisdiction).

**§ 1012.11 Must I get approval before testifying as an expert witness other than on behalf of the United States in a Federal proceeding in which the United States is a party or has a direct and substantial interest?**

(a) You must comply with 5 CFR 2635.805(c), which details the authoriza-

tion procedure for an employee to testify as an expert witness, not on behalf of the United States, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest. This procedure means:

(1) You must obtain the written approval of the Presidio Trust's General Counsel;

(2) You must be in an approved leave status if you testify during duty hours; and

(3) You must state for the record that you are appearing as a private individual and that your testimony does not represent the official views of the Presidio Trust.

(b) If you testify as an expert witness on a matter outside the scope of your official duties, and which is not covered by paragraph (a) of this section, you must comply with 5 CFR 2635.802.