

(1) *Information classified pursuant to Executive Order 12356 and exempted pursuant to 5 U.S.C. 552a(k)(1).* (i) Requested information classified by NRC will be reviewed by the responsible official of the NRC to determine whether it continues to warrant classification under the criteria of section 1.3 of Executive Order 12356.

(ii) Information which no longer warrants classification under these criteria shall be declassified and made available to the individual. If the requested information has been classified by another agency, the responsible official of the NRC will request the classifying agency to review the information to ascertain if classification is still warranted. If the information continues to warrant classification, the individual shall be advised that the information sought is classified, that it has been reviewed and continues to warrant classification, and that it has been exempted from access pursuant to 5 U.S.C. 552a(k)(1).

(2) *Investigatory material compiled for law enforcement purposes exempted pursuant to 5 U.S.C. 552a(k)(2).* Requests shall be responded to in the manner provided in paragraph (a) of this section unless a review of the information indicates that the information has been used or is being used to deny the individual any right, privilege or benefit for which he is eligible or to which he would otherwise be entitled under Federal law. In that event, the individual shall be advised of the existence of the information and shall be provided the information except to the extent it would reveal the identity of a confidential source. Information that would reveal the identity of a confidential source shall be extracted or summarized in a manner which protects the source and the summary or extract shall be provided to the requesting individual.

(3) *Material within a system of records required by statute to be maintained and used solely as statistical records and exempted pursuant to 5 U.S.C. 552a(k)(4).* The exempted information requested will be reviewed by the responsible official of the NRC to determine whether it continues to warrant exemption. Information which no longer warrants exemption shall be made available to

the individual. If the information continues to warrant exemption, the individual shall be advised that the information sought is exempt from disclosure, that it has been reviewed and continues to warrant exemption, and that it has been exempted from access pursuant to 5 U.S.C. 552a(k)(4).

(4) *Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information and exempted pursuant to 5 U.S.C. 552a(k)(5).* Information exempted pursuant to 5 U.S.C. 552a(k)(5) shall be made available to an individual upon request except to the extent that the information would reveal the identity of a confidential source. Material that would reveal the identity of a confidential source shall be extracted or summarized in a manner which protects the source and the summary or extract shall be provided to the requesting individual.

(5) *Testing or examination material exempted pursuant to 5 U.S.C. 552a(k)(6).* Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service which has been exempted pursuant to 5 U.S.C. 552a(k)(6) shall not be made available to an individual if disclosure would compromise the objectivity or fairness of the testing or examination process but may be made available if no possibility of such compromise exists.

[40 FR 44484, Sept. 26, 1975, as amended at 44 FR 50804, Aug. 30, 1979; 50 FR 50284, Dec. 10, 1985; 60 FR 63900, Dec. 13, 1995]

#### § 9.62 Special procedures.

(a) *Records under the control of another government agency.* (1) *Medical records.* Requests received by NRC pertaining to medical records under the control of the U.S. Public Health Service or another Government agency will either be referred to the appropriate agency or returned to the requestor with the name of the controlling Government agency, if known, within ten working days after receipt by NRC. NRC will inform the requestor of any referral of his request to another Government agency at the time the referral is made.

(2) *Nonmedical records.* Requests received by NRC pertaining to nonmedical records under the control of another Government agency will be returned to the requestor with the name of the controlling Government agency, if known, within ten working days after receipt by NRC.

[40 FR 44484, Sept. 26, 1975, as amended at 41 FR 44997, Oct. 14, 1976]

DETERMINATIONS AND APPEALS

**§ 9.65 Access determinations; appeals.**

(a) *Initial determinations.* For agency records located in the Office of the Inspector General, the Assistant Inspector General for Audits or the Assistant Inspector General for Investigations shall determine whether access to the record is available under the Privacy Act. For all other agency records, the Director, Office of Administration, or the Director's designee, with the advice of the system manager having control of the record to which access is requested, shall determine whether access to the record is available under the Privacy Act. The Director, Office of Administration, or the Director's designee, shall notify the requesting individual in person or in writing of the determination. Unless the request presents unusual difficulties or involves extensive numbers of records, individuals shall be notified of determinations to grant or deny access within 30 working days after receipt of the request.

(1) Notices granting access shall inform the individual when and where the requested record may be seen, how copies may be obtained, and of any fees or anticipated charges which may be incurred pursuant to § 9.85 of this subpart.

(2) Notices denying access must state the reasons for the denial, and advise the individual that the denial may be appealed to the Inspector General, for agency records located in the Office of Inspector General, or the Executive Director for Operations, for all other agency records, in accordance with the procedures set forth in this section.

(b) *Appeals from denials of access.* If an individual has been denied access to a record the individual may request a final review and determination of that individual's request by the Inspector

General or the Executive Director for Operations as appropriate. A request for final review of an initial determination must be filed within 60 days of the receipt of the initial determination. For agency records denied by the Assistant Inspector General for Audits or the Assistant Inspector General for Investigations, the appeal must be in writing and addressed to the Inspector General, U.S. Nuclear Regulatory Commission, Washington, DC 20555. For agency records denied by the Director, Office of Administration, or the Director's designee, the appeal must be in writing addressed to the Executive Director for Operations. The appeal should clearly state on the envelope and in the letter "Privacy Act Appeal-Denial of Access." The NRC does not consider an appeal that is not marked as indicated in this paragraph as received until it is actually received by the Inspector General or Executive Director for Operations.

(c) *Final determinations.* (1) The Inspector General, or the Executive Director for Operations or the EDO's designee, shall make a final determination within 30 working days of the receipt of the request for final review, unless the time is extended for good cause shown such as the need to obtain additional information, the volume of records involved, or the complexity of the issue. The extension of time may not exceed 30 additional working days. The requester shall be advised in advance of any extension of time and of the reasons therefor.

(2) If the Inspector General, or the Executive Director for Operations or the EDO's designee, determines that access was properly denied because the information requested has been exempted from disclosure, the Inspector General, or the Executive Director for Operations or the EDO's designee shall undertake a review of the exemption to determine whether the information should continue to be exempt from disclosure. The Inspector General, or the Executive Director for Operations or the EDO's designee, shall notify the individual in writing of the final agency determination to grant or deny the request for access. Notices denying access must state the reasons therefor and must advise the individual of his/