

## § 16.6

## 24 CFR Subtitle A (4-1-97 Edition)

separated or expunged from the particular record, and cases where consultations with other agencies having a substantial interest in the determination of the request are necessary.

(b) Grant of access—(1) *Notification.* An individual shall be granted access to a record pertaining to him or her, except where the provisions of § 16.6 apply. The Privacy Act Officer shall notify the individual of such determination and provide the following information:

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

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

(iii) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection and/or the estimated date by which a copy of the record could be mailed and the estimate of fees pursuant to § 16.12;

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

(v) Any additional requirements needed to grant 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:

(i) Inspection in person may be had in the office specified by the Privacy Act Officer granting access during hours indicated by the Privacy Act Officer;

(ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the Privacy Act Officer determines that a suitable facility is available, that the individual's access can be properly supervised at the 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 § 16.12. 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) The Department shall supply such other information and assistance at the time of access as to make the record intelligible to the individual.

(d) 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 media 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 Act Officer or his designee. It is a crime to conceal, mutilate, obliterate, or destroy any record filed in a public office, or to attempt to do any of the foregoing, Title 18, United States Code, 2701(a).

(e) 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 discussion of the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual by a signed and dated document which includes the name of the other individual and specifically describes the record to which access is sought. The other individual shall sign the authorization in the presence of the Privacy Act 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.

### § 16.6 Initial denial of access.

(a) *Grounds.* Access by an individual to a record which pertains to that individual will be denied only upon a determination by the Privacy Act Officer that:

(1) The record is subject to an exemption under § 16.14, § 16.15 or to an exemption determined by another agency noticing the system of records;

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

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

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

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

(2) The date of the denial;

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

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

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

[40 FR 39729, Aug. 28, 1975, as amended at 42 FR 20297, Apr. 19, 1977]

#### **§ 16.7 Administrative review of initial denial of access.**

(a) Review shall be available only from a written denial of a request for access issued under § 16.6(a) (2) or (3) and only if a written request for review is filed within thirty calendar days after the issuance of the written denial.

(b) A request for review shall be addressed to the Privacy Appeals Officer identified in the initial denial, which official is authorized to make final determinations. The envelope containing the request for review and the letter itself should both clearly indicate that the subject is a PRIVACY ACT REQUEST FOR REVIEW.

(c) When a request for review is misdirected by the requester, or not addressed as specified in paragraph (b) of this section, the Department official receiving same shall promptly refer it to the Privacy Appeals Officer and the time of receipt for processing purposes will be the time when it is received by the appropriate official.

(d) When a request for review fails to provide necessary information as set forth in paragraph (e) of this section, the requester shall be given reasonable opportunity to amend the request and shall be advised that the time of receipt for processing purposes will be the time when the additional necessary information is received by the appropriate official.

(e) The filing of a request for review may be accomplished by mailing to the Privacy Appeals Officer a copy of the request for access, if in writing; a copy of the written denial issued under § 16.6; and a statement of the reasons why the initial denial is believed to be in error. The appeal shall be signed by the individual.

(f) No hearing will be allowed in connection with administrative review of an initial denial of access.

(g) The Privacy Appeals Officer shall act upon the appeal and issue a final determination in writing not later than thirty days (excluding Saturdays, Sundays and holidays) from the date on which the appeal is received; provided, that the Privacy Appeals officer 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, which estimated date should not be later than the sixtieth day (excluding Saturdays, Sundays and holidays) after receipt of the appeal unless there exist unusual circumstances, as described in § 16.5(a).

(h) The decision after review will be in writing, will constitute final action of the Department on a request for access, and, if the denial of the request is in whole or part upheld, the Department shall notify the person making the request of his right to judicial review under 5 U.S.C. 552a(g)(1), as amended by 5 U.S.C. 552a(g)(5).

#### **§ 16.8 Request for correction or amendment to record.**

(a) Any individual, regardless of age, may submit to the Department a request for correction or amendment of a record pertaining to that individual. The request should be made either in