

(c) Pursuant to 5 CFR 735.305(b), the Commission authorizes the same exceptions concerning gifts, entertainment, and favors for special Government employees as are authorized for employees by §502.4.

**§502.7 Statements of employment and financial interests.**

(a) In addition to the employees required to submit statements of employment and financial interests under 5 CFR 735.403(a), attorneys in charge of divisions shall submit statements of employment and financial interests.

(b) Each statement of employment and financial interests required by this section shall be submitted to the Chairman of the Commission.

(c) An employee who believes that his or her position has been improperly included in this section as one requiring the submission of a statement of employment and financial interests may obtain a review thereof under the Commission's grievance procedure.

**§502.8 Supplementary statements.**

Notwithstanding the filing of the annual supplementary statement required by 5 CFR 735.406, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of title 18, United States Code, or the regulations in this part or adopted under §502.1.

**PART 503—PUBLIC INFORMATION**

Sec.

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AUTHORITY: 5 U.S.C. 552.

SOURCE: 52 FR 17561, May 11, 1987, unless otherwise noted.

**§503.1 Organization and authority—Foreign Claims Settlement Commission.**

(a) The Foreign Claims Settlement Commission of the United States ("the Commission") is an independent agency of the Federal Government created by Reorganization Plan No. 1 of 1954 (68 Stat. 1279) effective July 1, 1954. The Commission was transferred to the Department of Justice as an independent agency within that Department as of October 1, 1980, under the terms of Public Law 96-209, approved March 14, 1980 (94 Stat. 96, 22 U.S.C. 1622c). Its duties and authority are defined in the International Claims Settlement Act of 1949, as amended (64 Stat. 12, 22 U.S.C. 1621-1645o) and the War Claims Act of 1948 (62 Stat. 1240, 50 U.S.C. App. 2001-2017p).

(b) The Commission has jurisdiction to determine claims of United States nationals against foreign governments for compensation for losses and injuries sustained by such nationals, pursuant to programs which may be authorized under either of said Acts. Available funds have their sources in international settlements or liquidation of foreign assets in this country by the Department of Justice or Treasury, and from public funds when provided by the Congress.

(c) The Chairman and the two part-time members of the Commission are appointed by the President with the advice and consent of the Senate to serve for 3-year terms of office as provided by Public Law 96-209, *supra*.

(d) All functions of the Commission are vested in the Chairman with respect to the internal management of the affairs of the Commission, including but not limited to:

(1) The appointment of personnel employed under the Commission;

(2) The direction of employees of the Commission and the supervision of their official duties;

(3) The distribution of business among employees and organizational units under the Commission;

(4) The preparation of budget estimates; and

(5) The use and expenditures of funds of the Commission available for expenses of administration.

## § 503.2

(e) Requests for records shall be made in writing by mail or presented in person to the Administrative Officer, Foreign Claims Settlement Commission, Washington, DC, 20579.

(f) The offices of the Commission are located at 1111 20th Street NW. (Vanguard Building), 4th Floor, Washington, DC.

### **§ 503.2 Material to be published in the Federal Register pursuant to Public Law 89-487.**

The Commission shall separately state and concurrently publish the following materials 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 officers from whom, and the methods whereby, the public may secure 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.

(e) Every amendment, revision, or repeal of the foregoing.

### **§ 503.3 Effect of nonpublication.**

Except to the extent that a person has actual and timely notice of the terms thereof, 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 and not so published.

### **§ 503.4 Incorporation by reference.**

For purposes of this part, matter which is reasonably available to the class of persons affected thereby shall be deemed published in the FEDERAL REGISTER when incorporated by ref-

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erence therein with the approval of the Director of the Federal Register.

### **§ 503.5 Records generally available.**

The Commission will make promptly available to any member of the public the following documents:

(a) Proposed and Final Decisions (including dissenting opinions) and all orders made with respect thereto;

(b) Statements of policy and interpretations which have been adopted by the Commission which have not been published in the FEDERAL REGISTER; and

(c) A current index, which shall be updated at least quarterly, covering the foregoing material adopted, issued or promulgated after July 4, 1967. Publication of an index is deemed both unnecessary and impractical. However, copies of the index are available upon request for a fee of the direct cost of duplication.

### **§ 503.6 Current index.**

The Commission shall 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, as required by 5 U.S.C. 552(a)(2).

### **§ 503.7 Additional documents and records generally available for inspection and copying.**

The following kinds of documents are also available for inspection and copying in the offices of the Commission:

(a) Rules of practice and procedure.

(b) Annual report of the Commission to the Congress of the United States.

(c) Bound volumes of Commission decisions.

(d) International Claims Settlement Act of 1949, with amendments; the War Claims Act of 1948, with amendments; and related Acts.

(e) Claims agreements with foreign governments effecting the settlement of claims under the jurisdiction of the Commission.

(f) Press releases and other miscellaneous material concerning Commission operations.

(g) Indexes of claims filed under the various claims programs administered by the Commission.

**§ 503.8 Effect of noncompliance.**

No decision, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited as precedent by the Commission against any private party unless it has been indexed and either made available or published as provided by this part, or unless that private party shall have actual and timely notice of the terms thereof.

**§ 503.9 Availability of records.**

(a) Each person desiring access to a record covered by this part must comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request must indicate that it is being made under the Freedom of Information Act.

(3) The envelope in which the request is sent must be prominently marked with the letters "FOIA".

(4) The request must be addressed to the appropriate official or employee of the Commission as set forth in paragraph (c) of this section.

(5) The foregoing requirements must be complied with whether the request is mailed or hand-delivered to the Commission.

(b) If the requirements of paragraph (a) of this section are not met, the ten day time limit described in § 503.10(a) will not begin to run until the request has been identified by an official or employee of the Commission as a request under the Freedom of Information Act and has been received by the appropriate official or employee of the Commission.

(c) Each person desiring access to a record covered in this part that is located in the Commission, or to obtain a copy of such a record, must make a written request to the Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579.

(d) Each request should reasonably describe the particular record requested. The request should specify the subject matter, the date when it was made and the person or office that made it. If the description is insufficient, the official or employee handling the request may notify the person

making the request and, to the extent possible, indicate the additional data required.

(e) Each record made available under this section is available for inspection and copying during regular working hours. Original documents may be copied but may not be released from custody.

(f) Authority to administer this part in connection with Commission records is delegated to the Administrative Officer or the Commission employee acting in that official's capacity.

**§ 503.10 Actions on requests.**

(a) The Administrative Officer or any employee acting in that official's capacity shall determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request. Upon receipt of a request for a Commission record which is available, the Administrative Officer or other employee shall notify the requester as to the time the record is available, and shall promptly make the record available after advising such requester of the applicable fees under § 503.13. The person making such request shall be notified immediately after any adverse determination, the reasons for making such adverse determination and the right of such person to appeal.

(b) Any denial of a request for a record shall be written and signed by the Administrative Officer or other employee, including a statement of the reason for denial. Such statement shall contain, as applicable:

(1) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of a record, and to the extent consistent with the purpose of the exemption, an explanation of how the exemption applies to the record withheld.

(2) If a record requested does not exist or has been legally disposed of, the requester shall be so notified.

(c) In unusual circumstances, the time limit prescribed in paragraph (a) may be extended by written notice to the person making such request setting forth the reasons 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. As used in this paragraph, “unusual circumstances” means, but only to the extent reasonably necessary to the proper processing of the particular request—

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

(2) 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

(3) 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.

(d) With respect to determinations on appeals, such determinations shall be made within twenty days (excepting Saturdays, Sundays, and legal holidays) after the receipt of such appeal. If, on appeal, the denial of the request for records is in whole or in part upheld, the person making such request shall be notified of the provisions for judicial review of that determination under section 552(a)(4) of title 5, United States Code.

#### § 503.11 Appeals.

(a) Any person to whom a record has not been made available within the time limits established by paragraph (d) of § 503.10, and any person who has been given an adverse determination pursuant to paragraph (b) of § 503.10, that a requested record will not be disclosed, may apply to the Chairman of the Commission, or in the Chairman’s absence an officer or employee designated by the Chairman, for reconsideration of the request. A determination that a record will not be disclosed is not administratively final for the purpose of judicial review unless it was made by the Chairman or Chairman’s designee, unless the applicable time limit has passed without a determination of the appeal having been made.

(b) Each application for reconsideration must be made in writing within

thirty days from the date of receipt of the original denial and must include all information and arguments relied upon by the person making the request. Such application must indicate that it is an appeal from a denial of a request made under the Freedom of Information Act. The envelope in which the application is sent must be prominently marked with the letters “FOIA”. If these requirements are not met, the twenty day limit described in § 503.10 will not begin to run until the application has been identified as an application under the Freedom of Information Act and has been received by the appropriate office.

(c) Whenever it is to be determined necessary, the person making the request may be required to furnish additional information, or proof of factual allegations and other proceedings appropriate in the circumstances may be ordered. The decision of the Chairman or Chairman’s designee as to the availability of the record is administratively final.

(d) The decision not to disclose a record under this part is considered to be a withholding for the purposes of section 552(a)(3) of title 5, United States Code.

#### § 503.12 Exemptions.

In the event any document or record requested hereunder shall contain material which is exempt from disclosure under this section, any reasonably segregable portion of such record shall, notwithstanding such fact, and to the extent feasible, be provided to any person requesting same, after deletion of the portions which are exempt under this section. Documents or records determined to be exempt from disclosure hereunder may nonetheless be provided upon request in the event it is determined that the provision of such document would not violate the public interest or the right of any person to whom such information may pertain, and the disclosure is not prohibited by law or Executive Order. The following categories of records are exempt from disclosure under the provisions of 5 U.S.C. 552(b):

(a) Records which are specifically required by Executive Order to be kept

secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. This exception may apply to records in the custody of the Commission which have been transmitted to the Commission by another agency which has designated the record as nonpublic under Executive Order.

(b) Records related solely to the internal personnel rules and practices of the Commission.

(c) Records specifically exempted from disclosure by statute.

(d) Information given in confidence. This includes information obtained by or given to the Commission which constitutes confidential commercial or financial information, privileged information, or other information which was given to the Commission in confidence or would not customarily be released by the person from whom it was obtained.

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Commission. Such communications include inter-agency memoranda, drafts, staff memoranda transmitted to the Commission, written communications between the Commission and its staff regarding the preparation of Commission decisions, other documents received or generated in the process of issuing a decision or regulation, and reports and other work papers of staff attorneys, accountants, and investigators.

(f) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) 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 a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

#### § 503.13 Fees for services.

The following provisions shall apply in the assessment and collection of fees for services rendered in processing requests for disclosure of Commission records under this part.

(a) *Fee for duplication of records.* \$0.15 per page.

(b) *Search and review fees.* (1) Searches for records by clerical personnel—\$2.00 per quarter hour, including time spent searching for and copying any record.

(2) Search for and review of records by professional and supervisory personnel—\$5.50 per quarter hour spent searching for any record or reviewing a record to determine whether it may be disclosed, including time spent in copying any record.

(c) *Certification and validation fee.* \$1.00 for each certification, validation or authentication of a copy of any record.

(d) *Imposition of fees.* (1) Commercial use requests—Where a request appears to seek disclosure of records for a commercial use, the requester shall be charged for the time spent by Commission personnel in searching for the requested record and in reviewing the record to determine whether it should be disclosed, and for the cost of each page of duplication. “Commercial use” is defined as a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The request also must reasonably identify the records sought.

(2) Requests from representatives of news media—Where a request seeks disclosure of records to a representative of the news media, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; provided, however, that the request must reasonably describe the records sought, and it must appear that the records are for use by the requester in such person's capacity as a news media representative. "Representative of the news media" refers to 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. A "freelance" journalist not actually employed by a news organization shall be eligible for inclusion under this category if such person can demonstrate a solid basis for expecting publication by a news organization.

(3) Requests from educational and non-commercial scientific institutions—Where a request seeks disclosure of records to an educational or non-commercial scientific institution, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; provided, however, that the request must reasonably describe the records sought and it must appear that the records are to be used by the requester in furtherance of its educational or non-commercial scientific research programs. "Educational institution" refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate, graduate, professional or vocational education, which operates a program or programs of scholarly research. "Non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis, within the meaning of paragraph (d)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(4) All other requests—Where a request seeks disclosure of records to a

person or entity other than one coming within paragraphs (d) (1), (2) and (3) of this section, the requester shall be charged the full cost of search and duplication. However, the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

(e) *Aggregating of requests.* If there exists a solid basis for concluding that a requester or group of requesters has submitted a series of partial requests for disclosure of records in an attempt to evade assessment of fees, the requests may be aggregated so as to constitute a single request, with fees charged accordingly.

(f) *Unsuccessful searches.* Except as provided in paragraph (d) of this section, the cost of searching for a requested record shall be charged even if the search fails to locate such record or it is determined that the record is exempt from disclosure.

(g) *Interest.* In the event a requester fails to remit payment of fees charged for processing a request under this part within 30 days from the date such fees were billed, interest on such fees may be assessed beginning on the 31st day after the billing date, to be calculated at the rate prescribed in section 3717 of title 31, United States Code.

(h) *Advance payments.* (1) If, but only if, it is estimated or determined that processing of a request for disclosure of records will result in a charge of fees of more than \$250.00, the requester may be required to pay the fees in advance in order to obtain completion of such processing.

(2) If a requester has previously failed to make timely payment (i.e., within 30 days of billing date) of fees charged under this part, the requester may be required to pay such fees and interest accrued thereon, and to make an advance payment of the full amount of estimated fees chargeable in connection with any pending or new request, in order to obtain processing of such pending or new request.

(3) With regard to any request coming within paragraphs (h) (1) and (2) of this section, the administrative time limits set forth in §§ 503.10 and 503.11 of this part will begin to run only after the requisite fee payments have been received.

(i) *Non-payment.* In the event of non-payment of billed charges for disclosure of records, the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365), including disclosure to consumer credit reporting agencies and referral to collection agencies, may be utilized to obtain payment.

(j) *Waiver or reduction of charges.* Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where—

(1) It is determined that disclosure 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; or

(2) It is determined that the cost of collection would be equal to or exceed the amount of such fees. No charges shall be assessed if such fees amount to \$8.00 or less.

## PART 504—PRIVACY ACT AND GOVERNMENT IN THE SUNSHINE REGULATIONS

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- 504.1 Definitions—Privacy Act.
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SOURCE: 52 FR 17565, May 11, 1987, unless otherwise noted.

## Subpart A—Privacy Act Regulations

AUTHORITY: 5 U.S.C. 552a(f).

### § 504.1 Definitions—Privacy Act.

For the purpose of this part:

*Agency* 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. The Foreign Claims Settlement Commission (*Commission*) is an *agency* within the meaning of the term.

*Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

*Maintain* includes maintain, collect, use or disseminate.

*Record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, an individual's education, financial transactions, medical history, and criminal or employment history, and that contains an individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

*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.

*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, United States Code.

*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.