PART 1400—RESERVED

PART 1401—PUBLIC AVAILABILITY OF INFORMATION

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AUTHORITY: 5 U.S.C. 552, as amended.
SOURCE: 57 FR 59803, Dec. 16, 1992, unless otherwise noted.
§ 1401.1 Purpose.
The purpose of this part is to prescribe rules, guidelines and procedures to implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended.
§ 1401.2 The Office of National Drug Control Policy—Organization and functions.
(a) The Office of National Drug Control Policy (ONDCP) was created by the Anti-Drug Abuse Act of 1988, 21 U.S.C. 1501 et seq. The mission of ONDCP is to coordinate the anti-drug efforts of the various agencies and departments of the Federal government, to consult with States and localities and assist their anti-drug efforts, and to annually promulgate the National Drug Control Strategy. ONDCP is headed by the Director of National Drug Control Policy. The Director is assisted by a Deputy Director for Supply Reduction, a Deputy Director for Demand Reduction, and an Associate Director for State and Local Affairs.
(b) ONDCP has an Office of Public Affairs that is responsible for providing information to the press and to the general public. If members of the public have general questions about ONDCP that can be answered by telephone, they may call the Office of Public Affairs at (202) 467-9890. This number should not be used to make FOIA requests. All oral requests for information under FOIA will be rejected.
§ 1401.3 Definitions.
As used in this part, the following definitions shall apply:
(a) Commercial-use request means a request from or on behalf of one who seeks information for a cause or purpose that furthers the commercial, trade or profit interests of the requester or the person or institution on whose behalf the request is made. In determining whether a requester properly belongs in this category, ONDCP will consider how the requester intends to use the documents.
(b) Direct costs means those expenditures that ONDCP actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.
(c) Duplication means the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation. ONDCP will provide a copy of the material in a form that is usable by the requester unless it is administratively burdensome to do so.
(d) Educational institution means pre-school, a public or private elementary...
§ 1401.4 Records of other agencies.

Requests for records that originated in another agency and are in the custody of ONDCP shall be referred to the originating agency for processing, and the person submitting the request shall be so notified. Any decision made by the originating agency with respect to such records will be honored by ONDCP.

§ 1401.5 How to request records—form and content.

(a) Requests for records under FOIA must be submitted in writing, addressed to: Office of the General Counsel, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500. The words “FOIA REQUEST” or “REQUEST FOR RECORDS” must be clearly marked on both the letter and the envelope. If the...
request is not so marked and addressed, the 10-day time limit imposed by §1401.7 of this part shall not begin to run until the request has been received by the Office of the General Counsel and identified as a FOIA request. Due to security requirements, FOIA requests may not be delivered in person.

(b) Any ONDCP employee who receives a request shall promptly forward it to the Office of the General Counsel. Any ONDCP employee who receives an oral request made under the FOIA shall inform the person making the request of the provisions of this part requiring a written request.

(c) Each request must reasonably describe the record(s) sought, including when known: The specific event or action to which the request refers, if any; the name of the agency, office, organization or person that originated the record; the date or time period to which the request refers; the subject matter of the records requested; the type of document requested; the location of the record(s) requested; and any other pertinent information that would assist in promptly locating the record(s).

(d) When a request is not considered reasonably descriptive, or requires the production of voluminous records, or places an extraordinary burden on ONDCP, seriously interfering with its normal functioning to the detriment of the business of the Government, ONDCP may require the person or agent making the FOIA request to confer with an ONDCP representative in order to attempt to verify, and, if possible, narrow the scope of the request.

(e) Upon initial receipt of a request, the Office of the General Counsel shall determine which official or officials within ONDCP shall have the primary responsibility for collecting and reviewing the requested information and drafting a proposed response.

§ 1401.6 Initial determination.

The General Counsel or his or her designee shall have the authority to approve or deny requests received pursuant to these regulations. The decision of the General Counsel shall be final, subject only to administrative review as provided in §1401.9.

§ 1401.7 Prompt response.

(a) The General Counsel or his or her designee shall either approve or deny a request for records within 10 working days (excluding Saturday, Sunday and Federal holidays) after receipt of the request unless additional time is required for one of the following reasons:

(1) It is necessary to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(2) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of ONDCP that have a substantial interest in the subject matter of the request.

(b) When additional time is required for one of the reasons stated in paragraph (a) of this section, the General Counsel or his or her designee shall acknowledge receipt of the request within the 10 working day period and include a brief explanation of the reason for delay, indicating the date by which a determination will be forthcoming. An extended deadline adopted for one of the reasons set forth above may not exceed 10 additional working days.

§ 1401.8 Responses—form and content.

(a) When a requested record has been identified and is available, the General Counsel or his or her designee shall notify the person making the request as to where and when the record will be available for inspection or the copies will be available. The notification shall also advise the person making the request of any fees assessed under §1401.10 of this part.

(b) A denial or partial denial of a request for a record shall be in writing signed by the General Counsel or his or her designee and shall include:

(1) The name and title of the person making the determination;

(2) Either a reference to the specific exemption under FOIA authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld, or a statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed by §1401.7, and
that the denial will be reconsidered as soon as the search or examination is complete; and
(3) A statement that the denial may be appealed to the Director within 30 days of its receipt by the requester.
(c) If a requested record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of, the person making the request shall be so notified and the legal authority for disposition shall be cited.

§ 1401.9 Appeal procedures.
(a) When the General Counsel or his or her designee denies a request for records in whole or in part, the person making the request may, within 30 days of receipt of the notice of denial, appeal the denial to the Director of ONDCP. The appeal must be in writing, addressed to the Director, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500. The envelope should be clearly labeled as a "Freedom of Information Act Appeal."
(b) The Director will act upon the appeal within 20 working days of its receipt. The Director may extend the 20-day period of time by any number of working days which could have been used by the General Counsel or his or her designee under §1401.7 but which were not used in making the initial determination. The Director's action on an appeal shall be in writing and signed.
(c) If the decision is in favor of the requester, the Director shall order records promptly made available to the requester.
(d) A denial in whole or in part of a request on appeal shall set forth a brief explanation of the reasons for the decision, and shall inform the requester of his or her right to seek judicial review of the denial and ruling on appeal as provided in 5 U.S.C. 552(a)(4).
(e) No personal appearance, oral argument or hearing will ordinarily be permitted in connection with an appeal to the Director.

§ 1401.10 Fee schedule.
(a) There are four categories of requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. FOIA prescribes different levels of fees for each of these categories.
(1) Commercial use requesters. When a request for records is made for commercial use, charges will be assessed to cover all the costs of searching for, reviewing for release, and duplicating the records sought.
(2) Educational and non-commercial scientific institutions. When a request for records is made by an educational or a non-commercial scientific institution in furtherance of scholarly or scientific research, charges will be assessed to cover the cost of duplication alone, excluding charges for duplication of the first 100 pages.
(3) Requests by representatives of the news media. When a request for records is made by a representative of the news media for the purpose of news dissemination, charges will be assessed to cover the cost of duplication alone, excluding charges for duplication of the first 100 pages.
(4) All other requests. When a request for records is made by a requester who does not fit into any of the preceding categories, charges will be assessed to cover the costs of searching for and duplicating the records sought, excluding charges for the first two hours of search time and the duplication of the first 100 pages. Moreover, requests from individuals for records about themselves will be treated under the Privacy Act of 1974, 5 U.S.C. 552a, which permits the assessment of fees for duplication costs only, regardless of the requester's characterization of the search.
(b) Fees for searches, review of records and duplication of records are charged as follows:
(1) Search for records. The charge for a manual search is calculated by determining the search time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the employee conducting the search plus 16 percent of that rate. The charge for a computer search is calculated by determining the search time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the employee conducting the search, plus...
16 percent of that rate, plus the direct
cost of the operation of the computer
for that portion of time attributable to
the search.

(2) Review of records. Only requesters
who are seeking documents for com-
cmercial use will be charged for time
spent reviewing records to determine
whether they are exempt from manda-
tory disclosure. Charges will be as-
sessed only for the initial review; i.e.,
the review undertaken the first time
ONDCP analyses the applicability of a
specific exemption to a particular
record or portion of a record. Charges
will not be assessed for review at the
administrative appeal level of the ex-
emption(s) already applied. The cost
for review will be calculated based on
the salary of the category of the em-
ployee who actually performed the re-
view plus 16 percent of that rate.

(3) Duplication of records. Copies made
by routine photostatic copying shall be
charged at the rate of $0.15 per page. If
copies need to be made by other meth-
ods, the direct costs of such copies will
be charged to the requester, as deter-
mined by the General Counsel.

(4) Unsuccessful searches. Requesters
may be charged for unsuccessful or un-
productive searches or for searches
when records located are determined to
be exempt from disclosure.

(5) Other charges. ONDCP will recover
the direct costs of providing special
services such as certifying that records
are true copies, and sending records by
special methods such as express mail.

(c) No fee will be charged by ONDCP
when the routine costs of collecting
and processing the fee equal to or ex-
ceed the amount of the fee. For pur-
poses of this section, the routine costs
of collecting and processing a fee
chargeable under FOIA are estimated
to be $15.00 for each FOIA request.

§ 1401.11 Payment of fees.

(a) The requester must agree to pay
all fees that are chargeable under this
section prior to issuance of the re-
quested copies.

(b) Payment of fees shall be in the
form either of a personal check or bank
draft drawn on a bank in the United
States, or a postal money order. Re-
mittances shall be made payable to the
order of the Treasurer of the United
States and mailed to the General Coun-
sel, Office of National Drug Control
Policy, Executive Office of the Presi-
dent, Washington, DC 20500.

(c) If it is anticipated that the fees
chargeable under this section will
amount to more than $25.00, and the re-
quester has not indicated in advance
his willingness to pay such fees, the re-
quester shall be promptly notified of
the amount of the anticipated fee or
such portion thereof as can readily be
estimated. In instances where the esti-
imated fees will exceed $250.00, an ad-
vance deposit may be required. The no-
tice or request for an advance deposit
shall extend to the requester an offer
to consult with ONDCP personnel in
order to reformulate the request in a
manner which will reduce the fees. A
reformulated request shall be consid-
ered a new request, thus beginning a
new 10 workday period for responding
to the request.

(d) When a requester has previously
failed to pay a fee in a timely fashion
(i.e., within 30 days of the date of the
billing), ONDCP may require the re-
quester to demonstrate that he or she
has, in fact, paid any outstanding fees
from past requests, and to make an ad-
vance payment of the full amount of
the estimated fee for the present re-
quest before ONDCP responds to that
request.

(e) Interest charges on an unpaid bill
may be assessed starting on the 31st
day following the day on which the
billing was sent. Interest shall be as-
sessed at the rate prescribed in 31
U.S.C. 3717, and shall accrue from the
date of the billing. The fact that a fee
has been received by ONDCP, even if
not processed, will suffice to stay the
accrual of interest.

(f) To encourage the repayment of de-
linquent fees, ONDCP shall use the pro-
cedures described in the Debt Collec-
tion Act of 1982, 31 U.S.C. 3716-3719, in-
cluding the use of collection agencies
and disclosure to consumer reporting
agencies.

§ 1401.12 Waiver of fees.

(a) Records shall be furnished with-
out charge, or at a reduced charge,
upon a determination by the General
Counsel of ONDCP that:
§ 1401.13 Waiver or reduction of fees. 

(1) Waiver or reduction of the fees is in the public interest because release of the requested information is likely to contribute significantly to public understanding of the operations or activities of ONDCP and is not primarily in the commercial interest of the requester; or 

(2) Assessment of fees is not feasible.

(b) Upon written request, a written explanation will be provided as to why a request for waiver or reduction of FOIA fees was not granted.

(c) There is no right to an administrative appeal from a decision not to waive or reduce fees.

§ 1401.13 Aggregation of requests.

(a) When the General Counsel reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, such requests may be aggregated and fees may be charged accordingly.

(b) In determining whether a series of requests shall be aggregated, the General Counsel will consider two factors: whether the requests concern a single subject or two or more closely related subjects; and whether the requests were all made within a 30-day period. If a series of requests is made by multiple requesters, the General Counsel will also consider whether there is substantial evidence to support the conclusion that the requesters are acting in concert.

§ 1401.14 Records that are exempt from disclosure.

(a) Records described in 5 U.S.C. 552(b) are exempt from disclosure under FOIA. These include the following categories of records:

(1) Records that are specifically authorized under criteria established by an 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;

(2) Records related solely to the internal personnel rules and practices of an agency;

(3) Records specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute:

(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Records of trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than 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; and

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

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) 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 compiled by a 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,

(v) 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

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.
§ 1402.15 Deletion of exempted information.

When requested records contain matters that are exempted under 5 U.S.C. 552(b), but such exempted matters are reasonably segregable from the remainder of the records, the records shall be disclosed by ONDCP with the necessary deletions. ONDCP shall attach to each such record a written justification for making the deletion or deletions. A single such justification shall suffice for deletions made in a group of similar or related records.

PART 1402—MANDATORY DECLASSIFICATION REVIEW

Sec.
1402.1 Purpose.
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1402.7 Suggestions and complaints.


SOURCE: 57 FR 55089, Nov. 24, 1992, unless otherwise noted.

§ 1402.1 Purpose.

Other government agencies, U.S. citizens or permanent resident aliens may request that classified information in files of the Office of National Drug Control Policy (ONDCP) be reviewed for possible declassification and release. This part prescribes the procedures for such review and subsequent release or denial.

§ 1402.2 Responsibility.

All requests for the mandatory declassification review of classified information in ONDCP files should be addressed to the Security Officer, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500, who will acknowledge receipt of the request. When a request does not reasonably describe the information sought, the requester shall be notified that unless additional information is provided, or the scope of the request is narrowed, no further action will be taken.

§ 1402.3 Information in the custody of ONDCP.

Information contained in ONDCP files and under the exclusive declassification jurisdiction of ONDCP will be reviewed by the Director of the Office of Planning, Budget, and Administration of ONDCP and/or the office of primary interest to determine whether, under the declassification provisions of section 3.1 of Executive Order 12356 (3 CFR, 1982 Comp., p. 166), the requested information may be declassified. If the information may not be released, in whole or in part, the requester shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination to the Director of ONDCP, and a notice that such an appeal must be filed within 60 days in order to be considered.

§ 1402.4 Information classified by another agency.

When a request is received for information that was classified by another agency, the Director of the Office of Planning, Budget, and Administration of ONDCP will forward the request and a copy of the document(s) along with any other related materials, to the appropriate agency for review and determination as to release. Recommendations as to release or denial may be made if appropriate. The requester will be notified of the referral, unless the receiving agency objects on the grounds that its association with the information requires protection.

§ 1402.5 Appeal procedure.

Appeals reviewed as a result of a denial will be routed to the Director of ONDCP, who will take action as necessary to determine whether any part of the information may be declassified. If so, the Director shall notify the requester of this determination and shall make any information available that is declassified and is otherwise releasable. If continued classification is required, the requester shall be notified by the Director of ONDCP of the reasons therefore.