

(f) Those requesters searching for records about themselves will be treated under the Privacy Act of 1974 and will only be charged for reproduction costs.

(g) A requester may not file multiple requests solely in order to avoid payment of fees. When the agency reasonably believes that a requester is attempting to separate a request into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly.

[52 FR 31398, Aug. 20, 1987; 53 FR 16256, May 6, 1988]

§ 9.14 Current index.

(a) The Commission maintains and will make available for public inspection and copying a current index of the agency's opinions, policy statements, administrative staff manuals, and instructions to staff that affect a member of the public.

(b) The Commission has decided that it is not necessary to publish this index.

(c) On request, the Commission will provide copies of this index to members of the public. The charges for the copies will be no greater than those set out in § 9.11.

[44 FR 75309, Dec. 19, 1979. Redesignated at 52 FR 31397, Aug. 20, 1987; 53 FR 16256, May 6, 1988]

§ 9.15 Annual report.

On or before March 1 of each calendar year, the Panama Canal Commission sends to both Houses of Congress a report of its activities in connection with the Freedom of Information Act during the preceding calendar year. The Freedom of Information Act requires each agency to make this report and to include in it such information as: how many requests were denied and why; how many denials were appealed and the result of those appeals; the name and title of each official who denied a request; and other information showing how the agency administered the Freedom of Information Act during the period covered by the report.

[44 FR 75309, Dec. 19, 1979. Redesignated at 52 FR 31397, Aug. 20, 1987; 53 FR 16256, May 6, 1988]

§ 9.16 Predisclosure notification procedures for confidential commercial information.

(a) *In general.* Confidential commercial information provided to the Panama Canal Commission by a submitter shall not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section. The following definitions apply:

(1) *Confidential commercial information* means records provided to the Commission by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides confidential commercial information to the Commission. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitters.* The Panama Canal Commission shall provide a submitter with prompt notice of receipt of a Freedom of Information Act request encompassing its confidential commercial information whenever required in accordance with paragraph (c) of this section, and except as provided in paragraph (g) of this section. The written notice shall either describe the exact nature of the information requested or provide copies of the records or portions of records containing the requested information.

(c) *When notice is required.* (1) For confidential commercial information submitted prior to January 1, 1988, the Panama Canal Commission shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information;

(ii) The Panama Canal Commission has reason to believe that disclosure of the information could reasonably result in commercial or financial harm to the submitter; or

(iii) The information is subject to the prior express commitment of confidentiality given by the Commission to the submitter.

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(2) For confidential commercial information submitted on or after January 1, 1988, the Commission shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The submitter has in good faith designated the information as commercially or financially sensitive; or

(ii) The Commission has reason to believe that disclosure of the information could reasonably result in commercial or financial harm to the submitter.

(3) Notice of a request for confidential commercial information falling within paragraph (c)(2)(i) of this section shall be required for a period of not more than ten years after the date of submission unless the submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(4) Whenever possible, the submitter's claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial or financial information and that the information has not been disclosed to the public.

(5) When notice is given to a submitter under this section, the Commission shall at the same time provide written notice to the requester that it is affording the submitter a reasonable period of time within which to object to disclosure and that, therefore, there will be a delay in responding to the request because of the overseas location of the agency and the time requirements to obtain responses from the submitters.

(d) *Opportunity to object to disclosure.*

(1) The notice required by paragraph (b) of this section shall afford a submitter ten (10) working days within which to provide the Commission with a detailed statement of any objection to disclosure. Such statement must specify all grounds for withholding information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, must demonstrate why the information is contended to be a trade secret or commercial or financial information which is considered privileged or confidential and capable of causing competitive damage if disclosed. Information provided by a sub-

mitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(e) *Notice of intent to disclose.* The Commission will carefully consider the submitter's objections to release prior to determining whether or not to disclose the information. Whenever the Commission decides to disclose information over the objection of the submitter, the Commission will forward a written notice to the submitter which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the confidential commercial information to be disclosed; and,

(3) A specific disclosure date, which shall be ten (10) working days after the notice of the final decision to release the requested information has been mailed to the submitter.

(4) When notice is given to a submitter under this section, the Commission will notify the requester that such notice has been given to the submitter and the proposed date for disclosure.

(f) *Notice of lawsuit.* (1) Whenever a requester brings legal action seeking to compel disclosure of information covered by paragraph (c) of this section, the Commission shall promptly notify the submitter.

(2) Whenever a submitter brings legal action seeking to prevent disclosure of information covered by paragraph (c) of this section, the Commission shall notify the requester.

(g) *Exception to notice requirement.* The notice requirements of paragraph (c) of this section shall not apply if:

(1) The Panama Canal Commission determines that the information should not be disclosed;

(2) The information has been published or otherwise officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The information was acquired in the course of a lawful investigation of a possible violation of criminal law.

[56 FR 11373, Mar. 18, 1991]