AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

(4) For motion picture film, video tape and other audiovisual media prepared by or for ED and attributed thereto;

(5) On official publications which represent the achievements or mission of ED;

(6) In non-ED facilities in connection with events and displays sponsored by ED, and public appearances of the Secretary or other senior ED officials; and

(7) For other purposes as determined by the Director of the Office of Administrative Resources Management;

(d) Reproductions may be used only—

(1) On ED letterhead stationery;

(2) On official ED identification cards, security, and other approved credentials;

(3) On business cards for ED employees;

(4) On official ED signs;

(5) On official publications or graphics issued by and attributed to ED, or joint statements of ED with one or more other Federal agencies, State or local governments, or foreign governments;

(6) On official awards, certificates, and medals;

(7) On motion picture film, video tape, and other audiovisual media prepared by or for ED and attributed thereto; and

(8) For other purposes as determined by the Director of the Office of Administrative Resources Management.

(e) Embossing seals may be used only—

(1) On ED legal documents, including interagency or intergovernmental agreements, agreements with State or local governments, foreign patent applications, certification(s) of true copies, and similar documents;

(2) On official awards and certificates; and

(3) For other purposes as determined by the General Counsel or Assistant Secretary for Human Resources and Administration.

(f) Falsely making, forging, counterfeiting, mutilating, or altering the Official Seal, replicas, reproductions, or embossing seals, or knowingly using or possessing with fraudulent intent and altered official seal, replica, reproduction or embossing seal is punishable under 18 U.S.C. 506.

(g) Any person using the Official Seal, replicas, reproductions, or embossing seals in a manner inconsistent with the provisions of this part is subject to the provisions of 18 U.S.C. 1017, which states penalties for the wrongful use of an Official Seal, and to other provisions of law as applicable.

[45 FR 86491, Dec. 31, 1980, as amended at 53 FR 4620, Feb. 17, 1988; 56 FR 65388, Dec. 16, 1991]

PART 4—SERVICE OF PROCESS

§ 4.1 Service of process required to be served on or delivered to Secretary.

Summons, complaints, subpoenas, and other process which are required to be served on or delivered to the Secretary of Education shall be delivered to the General Counsel or a Deputy General Counsel, by mail at 400 Maryland Avenue SW., Washington, DC 20202 or by personal service at that address. The persons above designated are authorized to accept service of such process.

(Authority: 5 U.S.C. 301)

[47 FR 16780, Apr. 20, 1982]

PART 5—AVAILABILITY OF INFORMATION TO THE PUBLIC PURSUANT TO PUB. L. 90–23

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APPENDIX TO PART 5

AUTHORITY: 5 U.S.C. 552.

SOURCE: 45 FR 30803, May 9, 1980, unless otherwise noted.

Subpart A—Definitions

§5.1 Act.

As used in this part, *Act* means section 552 of title 5, United States Code, as amended by Pub. L. 90–23, codifying the Act of July 4, 1966, sometimes referred to as the ''Freedom of Information Act''.

§5.2 Department.

As used in this part, *Department* means the Department of Education.

§5.5 Records.

As used in this part:

(a) *Record* includes books, brochures, punch cards, magnetic tapes, paper tapes, sound recordings, maps, pamphlets, photographs, slides, motion pictures, or other documentary materials, regardless of physical form or characteristics, made or received by the Department pursuant to Federal law or in connection with the transaction of public business and preserved by the Department as evidence of the organization, functions, policies, decisions, procedures, operations, programs, or other activities.

(b) *Record* does not include: Objects or articles such as tangible exhibits, models, equipment, or processing materials; or formulae, designs, drawings, or other items of valuable property; books, magazines, pamphlets, or other reference material in formally organized and officially designated libraries of the Department, which are available under the rules of the particular library concerned.

§5.6 Statutory definitions.

The definitions in the Act and the Office of Management and Budget's ''Uniform FOIA Fee Schedule and Guidelines,'' 52 FR 10012 (March 27, 1987), apply to this part.

[52 FR 32525, Aug. 27, 1987]

Subpart B—What Records Are Available

§5.11 Purpose and scope.

This part constitutes the regulation of the Department respecting the availability to the public, pursuant to the Act, of records of the Department. It informs the public what records are generally available.

§5.12 General policy.

The Department's policy is one of the fullest responsible disclosure limited only by the obligations of confidentiality and the administrative necessities recognized by the Act. Unless otherwise exempted from disclosure pursuant to law, records of the Department shall be available for inspection and copying in accordance with this part.

§5.13 Records available.

(a) *Publication in the Federal Register.* The following shall be published in the FEDERAL REGISTER:

(1) Descriptions of the Department's 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;

(2) Statements of the general course and method by which the Department's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedures, 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;

(4) 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 Department;

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

(b) *Agency opinions and orders.* The Department shall, in accordance with this part and applicable regulations, make available for public inspection and copying:

(1) All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases (initial decisions and reconsiderations thereof in matters that are not the result of administrative proceedings such as hearings or formal appeals are not ''opinions and orders in the adjudication of cases'');

(2) Those statements of policy and interpretations which have been adopted by the agency and are not published in the FEDERAL REGISTER;

(3) Administrative staff manuals and instructions to staff that affect any member of the public;

unless such materials are promptly published and copies offered for sale.

The Department shall maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter which is issued, adopted, or promulgated after July 4, 1967, and which is required by this paragraph (b) to be published or made available.

(c) *Availability of records on request.* In addition to the records made available pursuant to paragraphs (a) and (b) of this section, the Department shall, upon request for identifiable records made in accordance with this part, make such records available to any person, unless it is determined that such records must be withheld from disclosure and are exempt under subsection (b) of the Act and subpart F of this part.

§ 5.14 Published documents.

Published records of the Department, whether or not available for purchase, shall be made available for examination.

§ 5.15 Creation of records.

Records are not required to be created by compiling selected items from the files, and records are not required to be created to provide the requester with such data as ratios, proportions, percentages, per capitas, frequency distributions, trends, correlations, and comparisons. If such data have been compiled and are available in the form of a record, the record shall be made available as provided in this part.

§ 5.16 Deletion of identifying details.

Whenever any final opinion, order, or other materials required to be made available pursuant to subsection (a)(2) of the Act relates to a private party or parties and the release of the name or names or other identifying details will constitute a clearly unwarranted invasion of personal privacy, the record shall be published or made available with such identifying details left blank, or shall be published or made available with obviously fictitious substitutes and with a notification such as the following as a preamble:

> Names of parties and certain other identifying details have been removed [and fictitious names substituted] in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

§ 5.17 Records in record centers.

When a request is made for identifiable records of the Department which have been stored in the National Archives or other record centers of the General Services Administration, but would otherwise be available under this Act, such records shall be requested by the Department for the requester.

§5.18 Destroyed records.

Records of specified form or character are destroyed after the lapse of time specified in the Records Disposal Act of 1943 (44 U.S.C. 366–380), the Federal Property Management Regulations (41 CFR parts 101–111), and the Records Control Schedules.

§5.19 Records of other departments and agencies.

Requests for records which originated in or concern matters which originated in another Department or Government agency may be forwarded to the Department or agency primarily concerned and the requester so notified.

Subpart C—Freedom of Information Officer

§5.32 Freedom of information officer.

The Freedom of Information Officer shall be responsible for determining whether records of the Department must be withheld from disclosure and shall have authority to deny requests for records of the Department.

Subpart D—Procedures for Requesting Access to Records

§5.51 Procedure.

(a) A request for any information or record may be made at any appropriate office of the Department.

(b) If a request is made at any office of the Department and the information or record is not located where the request is made, the requester shall be referred to the proper office, or if the request is put in writing it may be forwarded to the proper office.

(c) A request should reasonably identify the requested record by brief description. Requesters who have detailed information which would assist in identifying the records requested are urged to provide such information in order to expedite the handling of the request. Envelopes in which written requests are submitted should be clearly identified as a Freedom of Information request.

(d) Determination of whether records will be released or withheld will be made within 10 working days from date of receipt in the office having custody of the records This time may be extended by written notice for no longer than an additional 10 working days, only in unusual circumstances. Unusual circumstances mean:

(1) The need to search for and collect the requested records from field facilities or 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.

If such extension is made, the requester will be notified in writing with an explanation of why the extension was necessary and the date on which a determination will be made.

§5.52 Copies of records.

Copies of available records shall be produced as promptly as possible upon receipt of the fee therefor. Copying service shall be limited to not more than two copies of any single page, except that additional copies may be made where administrative considerations permit. Records which are published or available for sale need not be copied.

§5.53 Denial of requests for records.

Written requests for inspection or copying of records shall be denied only by the Freedom of Information Officer. Denials of requests shall be in writing and shall contain the reasons for the denial and provide the requester with appropriate information on how to exercise the right of appeal under subpart G of this part. Such notification shall also set forth the names and titles or positions of each person responsible for the denial of such request if such person or persons is other than the Freedom of Information Officer.

Subpart E—Fees and Charges

SOURCE: 52 FR 32525, Aug. 27, 1987, unless otherwise noted.

§ 5.60 Schedule of fees.

(a) Fees and charges are charged under this part as follows:

(1) *Search for records*—(i) *General.* Full search fees are charged for records requested by commercial use requesters. For records requested by representatives of the news media or educational or noncommercial scientific institutions whose purpose is scholarly or scientific research, no search fee is charged if the records requested are not for commercial use. For other requesters, if the records requested are not for commercial use, the first two hours of search time are provided without charge, except as limited in paragraph (a)(1)(iii) of this section. Search fees are recorded and assessed to the nearest quarter hour.

(ii) *Manual search.* 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.

(iii) *Computer search.* 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 computer operator plus 16% of that rate plus $287 per hour for computer operation. Two hours of search time on a computer search is deemed to have been spent if the cost of the search equals the equivalent of two hours of the computer operator's basic rate of pay per hour plus 16 percent of that rate.

(2) *Review of records.* Review fees are charged only for commercial use requests and only for the initial review. The review rate is calculated by determining the review 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 review plus 16% of that rate. If records requested under this part are stored elsewhere than the headquarters of the Department at Washington, DC, the mailing and handling costs of returning those records to the headquarters for review is added to the review costs.

(3) *Duplication of records.* No duplication fee is charged for the first 100 pages, except for commercial use requests. Duplication charges for paper copy reproduction of documents on photocopy machines is $0.10 per page.

(4) *Certification of records.* The charge for certifying records is $5 per record certified.

(5) *Other.* If no specific fee has been established for a service, or the request for a service does not fall under one of the categories in paragraphs (a)(1)–(4) of this section due to the amount or type of service, the Secretary is authorized to establish an appropriate fee, based on direct costs on a case-by-case basis as provided in the FOIA.

(b) If the Secretary awards a contract for a search or duplication of records for a FOI request, the fees charged are the actual costs under the contract.

(c) Fees are not charged if the total amount of the fee is less than $5. If the total amount of the fee is $5, or more, applicable search and review costs are charged even if no records are located or disclosed. The Secretary does not refund fees paid for services actually rendered.

(d) If the FOI Officer reasonably believes that a requester or group of requesters acting in concert is attempting to break down a request into multiple requests for the purpose of avoiding fee assessment, those requests and fees are aggregated and charged accordingly.

§ 5.61 Notification of estimated fees.

If the estimated fees under this section total more than $25, or more than the maximum amount specified in the request if that amount exceeds $25, the requester is:

(a) Notified promptly of the amount of the estimated fee or that portion of the fee as can readily be estimated; and

(b) Offered the opportunity to reformulate the request.

§ 5.62 Advance payment of fees.

(a) If the estimated fee for processing a request exceeds $250, the FOI Officer:

(1) Notifies the requester of the anticipated cost and obtains satisfactory

assurance of full payment if the requester has a history of prompt payment of FOIA fees; or

(2) Requires an advance payment if the requester has no history of payment.

(b) If a requester has previously failed to pay a fee in a timely fashion, the FOI Officer does not process any subsequent request until the requester pays the arrears in full, including interest, and makes an advance payment of the estimated fee for the new request.

(c) Requests under this section are not deemed to have been received for purposes of §5.51(d) until the Department receives the satisfactory assurance or advance payment.

§5.63 Payment of fees and interest.

(a) If a requester does not pay a fee under this subpart within 30 days after the date the billing was sent, interest is assessed at the rate prescribed under 31 U.S.C. 3717. The Secretary may use the procedures authorized under the Debt Collection Act of 1982 to collect fees due under this subpart, including disclosure to consumer reporting or collection agencies.

(b) Fee payments must 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. Fee payments must be made payable to the U.S. Department of Education and mailed to the FOI Officer, Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. A receipt for fees paid is given upon request.

§5.64 Waiver or reduction of fees.

(a) The Secretary may, in accordance with the FOIA, waive or reduce all or part of any fee provided for in this section if the Secretary determines that it is:

(1) In the public interest because furnishing the information can be considered as primarily benefiting the general public and is likely to contribute significantly to public understanding of the operations or activities of the government; and

(2) Is not primarily in the commercial interest of the requester.

(b) In making the determination to waive or reduce a fee under paragraph (a) of this section, the Secretary considers the following factors:

(1) Whether the subject of the requested records concerns the operations or activities of the government.

(2) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(3) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so, whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Subpart F—Availability of Specific Records

§5.70 Policy.

This subpart specifies the types of records which the Department shall, in keeping with its policy of fullest possible disclosure, make available for inspection and copying. For clarity and purposes of guidance, there are also set forth below the kinds or portions of records which generally will not be released, except as may be determined under §5.74. The appendix to this part contains some examples of the kinds of materials which, in accordance with §5.72, will generally be released and other materials which, in accordance with §5.73, are not normally available. In the event that any record contains both information which is disclosable and that which is not disclosable under this regulation, the nondisclosable information will be deleted and the balance of the record disclosed.

§5.71 Protection of personal privacy and proprietary information.

As set forth with more particularity below, certain types of information in whatever record or document contained shall not be disclosed where disclosure would be inconsistent with individual rights of personal privacy or would violate obligations of confidentiality.

(a) No disclosure will be made of information of a personal and private nature, such as information in personnel

and medical files, in welfare and social security records and any other information of a private and personal nature.

(b) Information having a commercial or financial value and in which the person providing the information has a proprietary interest will not be disclosed if it is in fact confidential. In determining whether such information is in fact confidential, consideration may be given to such factors as (1) the general custom or usage in the occupation or business to which the information relates that it be held confidential, (2) the number and situation of the individuals who have access to such information, (3) the type and degree of risk of financial injury to be expected if disclosure occurs, and (4) the length of time such information should be regarded as retaining the characteristics noted above.

(c) Information obtained by the Department from any individual or organization, who furnishes it in reliance upon a provision for confidentiality authorized by applicable statute or regulation, will not be disclosed. This subpart does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the Department.

This section does not preclude use of nondiscloseable records or information from such records for authorized program purposes, including law enforcement purposes and litigation. Release of information of the nature described in this section to the individual or the organization to whom the information pertains or to an authorized representative of either will not be deemed a disclosure within the meaning of this part.

§ 5.72 Records available.

The following records of the Department shall, subject to the exceptions set forth in §§ 5.71 and 5.73, be available upon request for inspection and copying.

(a) *Correspondence.* Correspondence, relating to or resulting from the conduct of the official business of the Department, between the Department and individuals or organizations which are not agencies within the meaning of 5 U.S.C. 551(1) and 552(e).

(b) *Records pertaining to grants.* (1) Portions of funded initial research grant applications and portions of continuation, renewal or supplemental grant applications, whether funded or not, including interim progress reports and other supporting documents submitted by applicants, which are not otherwise exempted from disclosure by this subpart.

(2) Grant award documents.

(3) All State plans, amendments, and supplements thereto, including applications for the waiver of any provision thereof whether acted upon by the Department or not.

(c) *Contracts.* (1) Contract instruments.

(2) Portions of offers reflecting final prices submitted in negotiated procurements.

(d) *Reports on grantee, contractor, or provider performance.* Final reports of audits, surveys, reviews, or evaluations by, for, or on behalf of the Department, of performance by any grantee, contractor, or provider under any departmentally financed or supported program or activity, which reports have been transmitted to the grantee, contractor, or provider.

(e) *Research, development, and demonstration project records.* The reports of a grantee or a contractor of the performance under any research, development, or demonstration project, records, other than reports, produced in such projects, such as films, computer software, other copyrightable materials and reports of inventions, will be available, except that considerations relating to obtaining copyright and patent protection may require delay in disclosure for such period as necessary to accomplish such protection. Disclosure of records which are copyrightable or which reflect patentable inventions shall not confer upon the requester any license under any copyright or patent without regard to the holder or owner thereof.

§ 5.73 Records not available.

The following types of records or information contained in any record, in addition to those prohibited by law from disclosure, are not available for inspection or copying, any provision of § 5.72 notwithstanding:

(a) *Intra-agency and inter-agency communications.* Communications within the Department other than those described in §5.72(d) or between the Department or any other agency within the meaning of 5 U.S.C. 551(1) and 552(e), to the extent they reflect the views or judgment of the writer or of other individuals. If disclosure of any factual portion of the communication would indicate the views or judgment being withheld from disclosure, then such factual portions will also be withheld.

(b) *Investigatory files.* Investigatory files compiled for law enforcement purposes to the extent that production of such records would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source, 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, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures or (6) endanger the life or physical safety of law enforcement personnel. For the purpose of this section *enforcement action* means any authorized action intended to abate, prevent, counteract, deter, or terminate violations of law and includes action involving possible civil, criminal, or administrative sanctions whether such sanctions involve adversary proceedings or other procedures, such as termination of benefits, protective measures, etc.

§5.74 Further disclosure.

(a) The Secretary may in particular instances, except where prohibited by law, disclose documents or portions of documents described in §5.73 if he determines that disclosure is in the public interest and is consistent with obligations of confidentiality and administrative necessity.

(b) In making such a determination, consideration may be given to the Department's responsibilities under law for dissemination to the public of information relating to education.

(c) When such determination has been made, the particular document or portion of document to which it relates shall thereafter be available upon request for inspection and copying: *Provided however,* That use of nondiscloseable records or information from such records for authorized program purposes, including law enforcement purposes and litigation is not a disclosure within the meaning of this section.

Subpart G—Administrative Review

§5.80 Review of denial of a record.

This subpart provides for the review of a denial, pursuant to §5.53, of a written request for inspection or copying of a record.

§5.81 Time for initiation of request for review.

A person whose request has been denied may initiate a review by filing a request for review within (a) 30 days of receipt of the determination to deny or (b) within 30 days of receipt of records which are in partial response to his request if a portion of a request is granted and a portion denied, whatever is later.

§5.82 By whom review is made.

(a) Requests for review of denials should be addressed to the Secretary.

(b) [Reserved]

§5.83 Contents of request for review.

The request for review shall include a copy of the written request and the denial.

§5.84 Consideration on review.

Review shall be considered on the basis of the written record including any written argument submitted by the requester.

§5.85 Decisions on review.

(a) Decisions on review shall be in writing within 20 working days from receipt of the request for review. Extension of the time limit may be granted to the extent that the maximum 10-day limit on extensions has not been exhausted on the initial determination.

Such extension may only be granted for the reasons enumerated in §5.51(d).

(b) The decision, which constitutes final action of the Department, if adverse to the requester shall be in writing, stating the reasons for the decision, and advising the requester of the right to judicial review of such decision.

(c) Failure to comply with time limits set forth in §5.51 or in this paragraph constitutes an exhaustion of the requester's administrative remedies.

APPENDIX TO PART 5

[The following are some examples of specific records (or specific information relating to personnel, programs, or activities of this Department) listed according to whether or not they are available upon request for inspection and copying]

Generally available	Generally not available
GRANTS	
Funded initial grant applications, subject to provisions of §5.71. Reports of grantee. Final report of any review or evaluation of grantee performance conducted or caused to be conducted by the Department. Applications for continuation, renewal, or supplemental grants, subject to provisions of §5.71. State plan material.	Research protocol, design, processing, and other technical information to the extent proprietary or of a confidential nature submitted with initial applications not yet funded, or where disclosure would adversely affect patent or other valuable rights. Confidential financial information of grantee. Site visit reports. Initial research or research training grant application on which award is not made.
CONTRACTS	
Name of contractor, subject matter, date, and amount of contract. Contract performance review report ..... Deficiency report ..... Final report	Trade secrets. Confidential pricing data contained in contract proposal if in the Department's judgment it is properly so designated by the offeror. Proprietary technical data contained in a contract proposal if in the Department's judgment it is properly so designated by offeror. Confidential financial information of contractor Draft of proposed final report submitted for comment prior to acceptance. Research protocol, design, processing, and other technical information to the extent proprietary or of a confidential nature, including proprietary contents of unsolicited proposals. Proposals on which no award is made.
ADVISORY COMMITTEES	
Name of committee ..... Final report ..... Minutes or transcripts of meetings open to the public and not involved with matters exempt from mandatory disclosure under Freedom of Information Act.	Minutes or transcripts of committee meetings or portions thereof which are involved with matters exempt from mandatory disclosure under Freedom of Information Act.
PERSONNEL INFORMATION	
Name of employee, title of position, and location of regular duty station. Grade, position description, and salary of public employees.	Home addresses of employees.
AFFIRMATIVE ACTION PLAN FILED PURSUANT TO EXECUTIVE ORDER 11246	
Approved action plan, including analysis, proposed remedial or affirmative steps to be taken with goals and timetables, policies on recruitment, hiring, and promotion, and description of grievance procedures.	
MISCELLANEOUS	
	Names of individual beneficiaries of departmental programs or a list of the benefits they receive if release would be an unwarranted invasion of privacy. Office for Civil Rights investigatory files in open cases.