

Federal Election Commission

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the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender unless it is the subject of a request under the Freedom of Information Act or of judicial discovery proceedings.

(vi) Since enforcement actions under 2 U.S.C. 437g are confidential by statute, the procedures outlined in § 4.5(a)(4) (i) thru (v) are not applicable.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the Commission.

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

(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 or information 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.

(b) Whenever a request is made which involves access to records described in 11 CFR 4.5(a)(7): and

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that—

(i) The subject of the investigation or proceeding is not aware of its pendency, and

(ii) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings;

The agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the Freedom of Information Act.

(c) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.

(d) If a requested record is one of another government agency or deals with subject matter to which a government agency other than the Commission has exclusive or primary responsibility, the request for such a record shall be promptly referred by the Commission to that agency for disposition or guidance as to disposition.

(e) Nothing in this part authorizes withholding of information or limiting the availability of records to the public, except as specifically provided in this part; nor is this part authority to withhold information from Congress.

[44 FR 33368, June 8, 1979, as amended at 50 FR 50778, Dec. 12, 1985; 52 FR 23638, June 24, 1987; 52 FR 39212, Oct. 21, 1987]

§ 4.6 Discretionary release of exempt records.

The Commission may, in its discretion, release requested records despite the applicability of the exemptions in § 4.5(a), if it determines that it is in the public interest and that the rights of third parties would not be prejudiced.

§ 4.7 Requests for records.

(a) A request to inspect or copy Commission public records of the type referred to in 11 CFR 4.4(b) may be made

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in person or by mail. The Public Records Office is open Monday through Friday between the hours of 9 a.m. and 5 p.m. and is located on the first floor, 999 E Street, NW., Washington, DC 20463.

(b) Requests for copies of records pursuant to the Freedom of Information Act shall be addressed to FOIA officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The request shall reasonably describe the records sought with sufficient specificity with respect to names, dates, and subject matter, to permit the records to be located. A requester will be promptly advised if the records cannot be located on the basis of the description given and that further identifying information must be provided before the request can be satisfied.

(c) Records or copies thereof will normally be made available either immediately upon receipt of a request or within ten working days thereafter, or twenty working days in the case of an appeal, unless in unusual circumstances the time is extended or subject to 11 CFR 4.9(f)(3), which governs advance payments. In the event the time is extended, the requestor shall be notified of the reasons for the extension and the date on which a determination is expected to be made, but in no case shall the extended time exceed ten working days. An extension may be made if it is—

(1) Necessary to locate records or transfer them from physically separate facilities; or

(2) Necessary to search for, collect, and appropriately examine a large quantity of separate and distinct records which are the subject of a single request; or

(3) Necessary for consultation with another agency which has a substantial interest in the determination of the request, or with two or more components of the Commission which have a substantial subject matter interest therein.

(d) Any person denied access to records by the Commission shall be notified immediately giving reasons therefore, and notified of the right of such person to appeal such adverse determination to the Commission.

(e) The date of receipt of a request under this part shall be the date on which the FOIA Officer actually receives the request.

[44 FR 33368, June 8, 1979, as amended at 45 FR 31292, May 13, 1980; 50 FR 50778, Dec. 12, 1985; 52 FR 39213, Oct. 21, 1987]

§ 4.8 Appeal of denial.

(a) Any person who has been notified pursuant to § 4.6(d) of this part that his/her request for inspection of a record or for a copy has been denied, or who has received no response within ten working days (or within such extended period as is permitted under § 4.7(c) of this part) after the request has been received by the Commission, may appeal the adverse determination or the failure to respond by requesting the Commission to direct that the record be made available.

(b) The appeal request shall be in writing, shall clearly and prominently state on the envelope or other cover and at the top of the first page “FOIA Appeal”, and shall identify the record in the form in which it was originally requested.

(c) The appeal request should be delivered or addressed to the FOIA Officer, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(d) The requestor may state facts and cite legal or other authorities as he/she deems appropriate in support of the appeal request.

(e) For good cause shown, the Commission may disclose a record which is subject to one of the exemptions listed in § 4.5 of this part.

(f) The Commission will make a determination with respect to any appeal within twenty days (excluding Saturdays, Sundays and legal holidays) after receipt of the appeal (or within such extended period as is permitted under § 4.7(c) of this part). If on appeal, the denial of the request for a record or a copy is in whole or in part upheld, the Commission shall advise the requestor of the denial and shall notify him/her of the provisions for judicial review of that determination as set forth in 5 U.S.C. 552(a)(4).

(g) Because of the risk of misunderstanding inherent in oral communications, the Commission will not entertain any appeal from an alleged denial