

PART 2502—AVAILABILITY OF RECORDS

Subpart A—Production or Disclosure of Records Under the Freedom of Information Act, 5 U.S.C. 552

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Subpart A—Production or Disclosure of Records Under the Freedom of Information Act, 5 U.S.C. 552

§ 2502.1 Definitions.

- (a) *Office* or *OA* means the Office of Administration, Executive Office of the President;
- (b) *Agency* means agency as defined in 5 U.S.C. 552(e);

(c) *Workday* means those days when the Office is open for the conduct of government business, and does not include Saturdays, Sundays and legal public holidays;

(d) *FOIA* means Freedom of Information Act, 5 U.S.C. 552, as amended.

[45 FR 47112, July 14, 1980, as amended at 49 FR 28233, July 11, 1984]

§ 2502.2 Purpose and scope.

This subpart contains the regulations of the Office of Administration, Executive Office of the President, implementing 5 U.S.C. 552. The regulations of this subpart describe the procedures by which records may be obtained from all organizational units within the Office of Administration. Official records of the Office made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public only as prescribed by this subpart. To the extent that it is not prohibited by other laws the Office also will make available records which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

[45 FR 47112, July 14, 1980. Redesignated at 49 FR 28233, July 11, 1984]

§ 2502.3 Organization and functions.

(a) The Office of Administration (OA) was created by Reorganization Plan No. 1 of 1977 and Executive Order 12028. Its primary function is to provide common administrative and support services for the various agencies and offices of the Executive Office of the President. It consists of:

- (1) Office of the Director
- (2) Office of the Deputy Director
- (3) Office of the Executive Secretary
- (4) Office of the General Counsel
- (5) Six Directors and their staffs, who are responsible for the following divisions:
 - (i) Administrative Operations
 - (ii) Facilities Management
 - (iii) Financial Management
 - (iv) Information Resources Management
 - (v) Library and Information Services
 - (vi) Personnel Management
- (b) The Office has no field organization. Offices are presently located in the Old Executive Office Building, 17th

and Pennsylvania Avenue NW., 20500, and in the New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Regular office hours are from 9:00 a.m. to 5:30 p.m., Monday through Friday. Both buildings are under security control. Persons desiring access are encouraged to make advance arrangements by telephone with the office they plan to visit.

[49 FR 28233, July 11, 1984; 49 FR 29769, July 24, 1984, as amended at 56 FR 5741 and 5742, Feb. 13, 1991]

§ 2502.4 Public reference facilities and current index.

(a) The Office maintains a public reading area located in the Executive Office of the President Library, Room G-102, New Executive Office Building, 725 17th Street NW., Washington, DC, and makes available for public inspection and copying a copy of all material required by 5 U.S.C. 552(a)(2), including all documents published by OA in the FEDERAL REGISTER and currently in effect.

(b) The FOIA Officer or his or her designee shall maintain files containing all materials required to be retained by or furnished to the FOIA Officer under this subpart. The material shall be filed by chronological number of request within each calendar year, indexed according to the exceptions asserted, and, to the extent feasible, indexed according to the type of records requested.

(c) The FOIA Officer shall also maintain a file open to the public, which shall contain copies of all grants or denials of appeals by the Office.

[49 FR 28233, July 11, 1984, as amended at 56 FR 5742, Feb. 13, 1991]

§ 2502.5 Records of other Agencies.

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

[49 FR 47112, July 14, 1980. Redesignated at 49 FR 28233, July 11, 1984]

§ 2502.6 How to request records—form and content.

(a) A request made under the FOIA must be submitted in writing, addressed to: FOIA Officer, Office of Administration, 725 17th Street NW., Washington, DC 20503. The words "FOIA REQUEST" should be clearly marked on both the letter and the envelope. Due to security measures at the Old and New Executive Office Buildings, requests made in person should be delivered to Room G-1, at the above address.

(b) Any Office employee or official who receives a FOIA Request shall promptly forward it to the FOIA Officer, at the above address. Any Office employee or official who receives an oral request made under the FOIA shall inform the person making the request of the provisions of this subpart requiring a written request according to the procedures set out herein.

(c) Each request must reasonably describe the record(s) sought, including when known: Agency/individual originating the record, date, subject matter, type of document, location, and any other pertinent information which 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 the Office of Administration, seriously interfering with its normal functioning to the detriment of the business of the Government, the Office may require the person or agent making the FOIA request to confer with an Office representative in order to attempt to verify, and, if possible, narrow the scope of the request.

(e) Upon receipt of the FOIA request, the FOIA Officer will make an initial determination of which officials and offices may be involved in the search and reviewing procedures. The FOIA Officer will circulate the request to all offices so identified and any others the FOIA Officer later determines should be notified.

[49 FR 28233, July 11, 1984, as amended at 56 FR 5742, Feb. 13, 1991]

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§ 2502.7 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 § 2502.10.

[45 FR 47112, July 14, 1980. Redesignated and amended at 49 FR 28234, July 11, 1984; 56 FR 5742, Feb. 13, 1991]

§ 2502.8 Prompt response.

(a) The General Counsel or his or her designee shall either approve or deny a request for records within 10 working days 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 which 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 the agency having substantial subject matter interest therein.

(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 workday period and include a brief explanation of the reason for the 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 workdays.

[45 FR 47112, July 14, 1980. Redesignated and amended at 49 FR 28234, July 11, 1984]

§ 2502.9 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 is available for inspection or the copies will be available. The notification shall also advise the person making the request of any fees assessed under § 2502.13 hereof.

(b) A denial or partial denial of a request for a record shall be in writing

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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) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record, and a brief explanation of how the exemption applies to the record withheld; or

(3) A statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed by § 2502.9, and that the denial will be reconsidered as soon as the search or examination is complete;

(4) A statement that no agency records are responsive to the request.

(5) A statement that the denial may be appealed to the Deputy Director within 30 days of receipt of the denial or partial denial.

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.

[45 FR 47112, July 14, 1980. Redesignated and amended at 49 FR 28234, July 11, 1984; 56 FR 5742, Feb. 13, 1991]

§ 2502.10 Appeals to the Deputy Director from initial denials.

(a) When the General Counsel or his or her designee had denied a request for records in whole or in part, the person making the request may, within 30 days of its receipt, appeal the denial to the Deputy Director. The appeal must be in writing, addressed to the Deputy Director, Office of Administration, 725 17th Street NW., Washington, DC 20503 and clearly labeled as a "Freedom of Information Act Appeal".

(b) The Deputy Director will act upon the appeal within 20 workdays of its receipt. The Deputy Director may extend the 20 day period of time by any number of workdays which could have been claimed and consumed by the General Counsel or his or her designee under § 2502.9 but which were not claimed and consumed in making the initial determination. The Office of Administration's action on an appeal shall be in

writing, signed by the Deputy Director of the Office.

(c) If the decision is in favor of the person making the request, the Deputy Director shall order records promptly made available to the person making the request.

(d) A denial in whole or in part of a request on appeal shall set forth the exemption relied on and a brief explanation of how the exemption applied to the records withheld and the reasons for asserting it, if different from that described by the General Counsel or his or her designee under § 2502.10. The denial shall state that the person making the request may, if dissatisfied with the decision on appeal, file a civil action in the district in which the person resides or has his principal place of business, in the district where the records are located, or in the District of Columbia.

(e) No personal appearance, oral argument or hearing will ordinarily be permitted in connection with an appeal to the Office of Administration.

(f) On appeal, the Office may reduce any fees previously assessed.

[45 FR 47112, July 14, 1980. Redesignated and amended at 49 FR 28234, July 11, 1984; 56 FR 5742, Feb. 13, 1991]

CHARGES FOR SEARCH AND REPRODUCTION

§ 2502.11 Definitions.

For the purpose of this part:

(a) All the terms defined in the Freedom of Information Act apply.

(b) A *statute specifically providing for setting the level of fees for particular types of records* (5 U.S.C. 552(a)(4)(vi)) means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of agencies in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return overdue revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

Statutes, such as the User Fee Statute, which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents do not supersede the Freedom of Information Act under section (a)(4)(A)(vi) of that statute.

(c) The term *direct costs* means those expenditures that OA incurs in searching for and duplicating (and in the case of commercial requestors, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the 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.

(d) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. OA employees should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requestor. For example, employees should not engage in a line-by-line search when merely duplicating an entire document would prove the least expensive and quicker method of complying with a request. *Search* should be distinguished, moreover, from *review* of material in order to determine whether the material is exempt from disclosure (see paragraph (f) of this section). Searches may be done manually or by computer using existing programming.

(e) The term *duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable (e.g. magnetic tape or disk), among others.

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The copy provided must be in a form that is reasonably usable by the requestors.

(f) The term *review* refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (g) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, (e.g., doing all that is necessary to excise them and otherwise prepare them for release). Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(g) The term '*commercial use*' request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requestor or the person on whose behalf the request is made. In determining whether the requestor properly belongs in this category, OA must determine the use to which a requestor will put the documents requested. Moreover, where an OA employee has reasonable cause to doubt the use to which a requestor will put the records sought, or where that use is not clear from the request itself, the employee should seek additional clarification before assigning the request to a specific category.

(h) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, that operates a program or programs of scholarly research.

(i) The term *non-commercial scientific institution* refers to an institution that is not operated on a *commercial* basis (as that term is referenced in paragraph (g) of this section) and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(j) The term *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

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news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase and subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of *free lance* journalists, they may be regarded as working for a news organization, if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but OA may also look to the past publication record of a requestor in making this determination.

[56 FR 5742, Feb. 13, 1991]

§ 2502.12 Fees to be charged—general.

OA should charge fees that recoup the full allowable direct costs it incurs. Moreover, it shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see definition in §2502.11(b)), such as the NTIS, OA should inform requestors of the steps necessary to obtain records from those sources.

(a) *Manual searches for records.* OA will charge at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the search.

(b) *Computer searches for records.* OA will charge at the actual direct cost of providing this service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(c) *Review of records.* Only requestors who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time OA analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review are assessable.

(d) *Duplication of records.* Records will be duplicated at a rate of \$.15 per page. For copies prepared by computer such as tapes or printouts, OA shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, OA will charge the actual direct costs of producing the document(s). If OA estimates that duplication charges are likely to exceed \$25.00, it shall notify the requestor of the estimated amount of fees, unless the requestor has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requestor the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(e) *Other charges.* OA will recover the full costs of providing services such as those enumerated below when it elects to provide them:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail.

(f) Remittances shall be in the form of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the FOIA Officer, Office of Administration, 725 17th Street, NW., Washington, DC 20503.

(g) A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

(h) *Restrictions on assessing fees.* With the exception of requestors seeking documents for a commercial use, OA will provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, OA will not charge fees to any requestor, including commercial use requestors, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) The elements to be considered in determining whether the "cost of collecting a fee" are the administrative costs of receiving and recording a requestor's remittance, and processing the fee for deposit in the Treasury Department's special account.

(2) For purposes of these restrictions on assessment of fees, the word "pages" refers to copies of "8½ × 11" or "11 × 14." Thus, requestors are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout does meet the terms of the restriction.

(3) Similarly, the term "search time" in this context has as its basis, manual search. To apply this term to searches made by computer, OA will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of a search (including the operator time and the cost of operating the computer to process the request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, OA will begin assessing charges for a computer search.

[56 FR 5742, Feb. 13, 1991]

§ 2502.13 Fees to be charged—categories of requestors.

There are four categories of FOIA requestors: commercial use requestors; educational and non-commercial scientific institutions; representatives of the news media; and all other requestors. The specific levels of fees for each of these categories are:

(a) *Commercial use requestors.* When OA receives a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Requestors must reasonably

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describe the records sought. Commercial use requestors are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. OA may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see § 2502.14).

(b) *Educational and non-commercial scientific institution requestors.* OA shall provide documents to requestors in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requestors must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly if the request is from an education institution) or scientific (if the request is from a non-commercial scientific institution) research. Requestors must reasonably describe the records sought.

(c) *Requestors who are representatives of the news media.* OA shall provide documents to requestors in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requestor must meet the criteria in § 2502.11(j), and his or her request must not be made for commercial use. In reference to this class of requestors a request for records supporting the news dissemination function of the requestor shall not be considered to be a request that is for a commercial use. Requestors must reasonably describe the records sought.

(d) *All other requestors.* OA shall charge requestors who do not fit into any of the categories above fees that recover the full, reasonable, direct cost of searching for and reproducing the records that are responsive to the request, except that the first 100 pages and the first two hours of search time shall be furnished without charge. Moreover, requests for records about the requestors filed in OA's system of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requestors must reasonably describe the records sought.

[56 FR 5742, Feb. 13, 1991]

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§ 2502.14 Miscellaneous fee provisions.

(a) *Charging interest—notice and rate.* OA may begin assessing interest on an unpaid bill starting on the 31st day of the month following the date on which billing was sent. The fact that the fee has been received by OA within the thirty day grace period, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of billing.

(b) *Charges for an unsuccessful search.* OA may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure. If OA estimates that search charges are likely to exceed \$25.00, it shall notify the requestor of the estimated amount of fees, unless the requestor has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requestor the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Aggregation results.* A requestor may not file multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When OA reasonably believes that a requestor, or on rare occasions, a group of requestors acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, OA may aggregate any such request and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(d) *Advance payments.* OA may not require a requestor to make an advance payment, i.e., payment before work is commenced or continued on a request unless:

(1) OA estimates or determines that allowable charges that a requestor may be required to pay are likely to exceed \$250.00. Then, OA will notify the requestor of the likely cost and obtain satisfactory assurance of full payment where the requestor has a history of prompt payment of FOIA fees, or require an advance payment of an

amount up to the full estimated charges in the case of requestors with no history of payment; or

(2) A requestor has previously failed to pay a fee charged in a timely fashion (i.e., within thirty days of the date of the billing). OA may require the requestor to pay the full amount owed plus any applicable interest as provided above or demonstrate that he or she has in fact paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request, or a pending request from that requestor.

When OA acts under paragraph (d) (1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (i.e., ten working days from receipt of initial request and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after OA has received fee payments described above.

(e) *Effect of the Debt Collection Act of 1982 (Pub. L. 97-365)*. OA should comply with the provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

[56 FR 5744, Feb. 13, 1991]

§ 2502.15 Waiver or reduction of charges.

Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where 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 requestor.

[56 FR 5744, Feb. 13, 1991]

§ 2502.16 Information to be disclosed.

(a) In general, all records of the Office of Administration are available to the public, as required by the Freedom of Information Act. However, the Office claims the right, where it is applicable, to withhold material under the provisions specified in the Freedom of Information Act as amended (5 U.S.C. 552(b)).

(b) *Records from Non-U.S. Government Source*. (1) Upon receipt of a request for a record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, including a contract proposal or contract material, the Office will contact the source of the requested record or information requesting advice as to whether release of the record would adversely affect the source's competitive position or invade anyone's privacy. Subsequent to receipt of such advice, the Office will independently examine the requested document and will notify the requester of the final decision.

(2) OA personnel will generally consider two exemptions in the FOIA in deciding whether to withhold from disclosure material from a non-U.S. Government source. Exemption 4 permits withholding of "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Exemption 6 permits withholding certain information, the disclosure of which "would constitute a clearly unwarranted invasion of personal privacy." The source whose material has been requested will be asked to supply convincing justification for any material it wishes withheld under the Act, in accordance with the following general guidelines.

(i) For consideration under *exemption 4*, the supplier of the record or information should identify material that would be likely to cause substantial harm to its present or future competitive position if it were released. If a contractor, the provider should assume that the material will be released to a competitor, even if that is not always the case. A contractor must provide detailed information on why release would be harmful, e.g., the general custom or usage in the business; the number and situation of the persons who have access to the information; the type and degree of risk of financial injury that release would cause; and the length of time the information will need to be kept confidential.

(A) In this respect, the Office of Administration will—as a general rule—look favorably upon recommendations for withholding information about

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ideas, methods, and processes that are unique; about equipment, materials, or systems that are potentially patentable; or about a unique use of equipment which is specifically outlined.

(B) OA will not withhold information that is known through custom or usage in the relevant trade, business, or profession, or information that is generally known to any reasonably educated person. Self-evident statements or reviews of the general state of the art will not ordinarily be withheld.

(C) OA will withhold all cost data submitted except the total estimated cost for each year of the contract. Where appropriate, OA will release unit pricing data except where that information would disclose confidential information such as profit margins. It will release these total estimated costs and ordinarily release explanatory material and headings associated with the cost data, withholding only the figures themselves. If a contractor believes some of the explanatory material should be withheld, that material must be identified and a justification be presented as to why it should not be released.

(ii) *Exemption 6* is not a blanket exemption for all personal information. The Office will balance the need to keep a person's private affairs from unnecessary public scrutiny with protection of the public's right to information on Government records.

(A) As a general practice, the Office will release information about any person named in a contract itself or about any person who signed a contract as well as information given in a proposal about any officer of a corporation submitting that proposal. Except for names and other identifying details, the Office usually releases all information in resumes concerning employees, including education and experience. Efforts will be made to identify information that should be deleted and offerors are urged to point out such material for guidance. Any information in the proposal which might constitute an unwarranted invasion of personal privacy if released should be identified and a justification for non-release provided in order to receive proper consideration.

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(B) The Office can protect the names of and identifying details about other staff members who are described in a contract proposal if it is clear that identification of these employees would assist competitors in raiding and hiring them away. In this regard, names and other identifying details could be protected under Exemption 4 (harmful to competitive position) and also under Exemption 6 (it would be an unwarranted invasion of personal privacy to release them). In such a case, the Office would withhold names, home addresses, salaries, telephone numbers, social security numbers, marital status and, if these served to identify them, perhaps some details about past employment or professional activities of these persons.

[45 FR 47112, July 14, 1980. Redesignated and amended at 49 FR 28234, July 11, 1984. Redesignated and amended at 56 FR 5744, Feb. 13, 1991]

§ 2502.17 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in 552(b). These categories include such matters as national defense and foreign policy information, investigatory files, internal procedures and communications, materials exempted from disclosure by other statutes, information given in confidence and matters involving personal privacy.

(b) Executive Order 12028 (December 4, 1977) provides that the Office of Administration shall upon request, assist the White House office in performing its role of providing those administrative services which are primarily in direct support of the President. Due to this role of providing direct support of the President, members of the public should presume that communications between the Director of the Office of Administration and the President (and their staffs) are confidential or ordinarily will not be released; they will usually fall, at a minimum, within Exemption 5 of the Act.

(c) The records of the Office of Administration which are part of systems of records subject to the Privacy Act of 1974 are exempt from disclosure to the

public except as provided by 5 CFR part 2504.

[45 FR 47112, July 14, 1980. Redesignated at 49 FR 28235, July 11, 1984, and further redesignated at 56 FR 5744, Feb. 13, 1991]

§ 2502.18 Deletion of exempted information.

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

[45 FR 47112, July 14, 1980. Redesignated at 49 FR 28235, July 11, 1984, and further redesignated 56 FR 5744, Feb. 13, 1991]

§ 2502.19 Annual report.

The General Counsel or his or her designee shall annually on or before March 1, submit a Freedom of Information report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate. The report shall include those matters required by 5 U.S.C. 552(d).

[45 FR 47112, July 14, 1980. Redesignated and amended at 49 FR 28235, July 11, 1984. Redesignated at 56 FR 5744, Feb. 13, 1991]

Subpart B—Production in Response to Subpoenas or Demands of Courts or Other Authorities

§ 2502.30 Purpose and scope.

This subpart contains the regulations of the Office concerning procedures to be followed when a subpoena, order or other demand (hereinafter in this subpart referred to as a “demand”) of a court or other authority is issued for the production or disclosure of:

- (a) Any material contained in the files of the Office of Administration;
- (b) Any information relating to materials contained in the files of the Office; or
- (c) Any information or material acquired by any person while such person as an employee of the Office of Administration as a part of the performance

of his official duties or because of his official status.

§ 2502.31 Production prohibited unless approved by the Deputy Director.

No employee or former employee of the Office of Administration shall, in response to a demand of a court or other authority, produce any material contained in the files of the Office of Administration or disclose any information or produce any material acquired as part of the performance of his official status without the prior approval of the Deputy Director.

[45 FR 47112, July 14, 1980, as amended at 56 FR 5744, Feb. 13, 1991]

§ 2502.32 Procedure in the event of a demand for disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Office of Administration for the production of material or the disclosure of information described in § 2502.31, he shall immediately notify the Deputy Director. If possible, the Deputy Director shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before instructions from the Deputy Director are received, an attorney designated for that purpose by the Office of Administration shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration by the Deputy Director. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Deputy Director.

[45 FR 47112, July 14, 1980, as amended at 56 FR 5744, Feb. 13, 1991]

§ 2502.33 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 2502.32(b) pending receipt of instructions from the Deputy

Director, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Deputy Director not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand. (United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951)).

[45 FR 47112, July 14, 1980, as amended at 56 FR 5744, Feb. 13, 1991]

PART 2504—PRIVACY ACT REGULATIONS

Sec.

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- 2504.16 Appeals process.
- 2504.17 Fees.
- 2504.18 Penalties.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 45 FR 41121, June 18, 1980, unless otherwise noted.

§ 2504.1 Purpose and scope.

These regulations implement the Privacy Act of 1974, 5 U.S.C. 552a. The regulations apply to all records maintained by the Office of Administration that are contained in a system of records, and that contain information about an individual. The regulations also establish procedures that (a) authorize an individual's access to records maintained about him; (b) limit the access of other persons to

those records, and (c) permit an individual to request the amendment or correction of records about him.

§ 2504.2 Definitions.

For the purposes of this part—(a) *Office* means the Office of Administration, Executive Office of the President;

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

(c) *Maintain* means collect, use or distribute;

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

(e) *System of records* means a group of any records controlled by the Office and from which information is retrieved by the name of the individual;

(f) *System manager* means the employee of the Office who is responsible for the maintenance, collection, use or distribution of information contained in a system of records;

(g) *Routine use* means, with respect to the disclosure of a record, the use of that record for a purpose consistent with the purpose for which it was collected;

(h) *Subject individual* means the individual by whose name or other personal identifier a record is maintained or retrieved;

(i) *Statistical record* means 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 U.S.C.;

(j) *Agency* means agency as defined in 5 U.S.C. 552(e);

(k) *Work days* as used in calculating the date when response is due does not include Saturdays, Sundays and legal public holidays.