

warrants classification shall be declassified and made available to the individual, if not otherwise exempt. If the information continues to warrant classification, the individual shall be advised that the information sought is classified; that it has been reviewed and continues to warrant classification; and that it has been exempted from access under 5 U.S.C. 552a(k)(1). Information which has been exempted under 5 U.S.C. 552a(j) and which is also classified, shall be reviewed as required by this paragraph but the response to the individual shall be in the form prescribed by paragraph (a) of this section.

(2) Requests for information which has been exempted from disclosure pursuant to 5 U.S.C. 552a(k)(2) shall be responded to in the manner provided in paragraph (a) of this section unless a review of the information indicates that the information has been used or is being used to deny the individual any right, privilege or benefit for which he is eligible or to which he would otherwise be entitled under Federal law. In that event, the individual shall be advised of the existence of the record and shall be provided the information except to the extent it would identify a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletions made or the summary shall be furnished to the requester.

(3) Information compiled as part of an employee background investigation which has been exempted pursuant to 5 U.S.C. 552a(k)(5) shall be made available to an individual upon request except to the extent that it identifies a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletions made or the summary shall be furnished to the requester.

(4) Testing or examination material which has been exempted pursuant to 5 U.S.C. 552a(k)(6) shall not be made available to an individual if disclosure would compromise the objectivity or

fairness of the testing or examination process but shall be made available if no such compromise possibility exists.

(5) The Service records which are exempted and the reasons for the exemptions are enumerated in 28 CFR 16.99.

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983; 58 FR 31149, June, 1, 1993]

§ 103.23 Special access procedures.

(a) *Records of other agencies.* When information sought from a system of records of the Service includes information from other agencies or components of the Department of Justice that has been classified under Executive Order 12356, the request and the requested documents shall be referred to the appropriate agency or other component for classification review and processing. Only with the consent of the responsible agency or component, may the requester be informed of the referral as specified in section 3.4(f) of E.O. 12356.

(b) *Medical records.* When an individual requests medical records concerning himself, which are not otherwise exempt from disclosure, the responsible official as specified in § 103.10(a) of this part shall, if deemed necessary, advise the individual that records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation, the responsible official as specified in § 103.10(a) of this part will permit the physician to review the records or to receive copies of the records by mail, upon proper verification of identity. The determination of which records should be made available directly to the individual and which records should not be disclosed because of possible harm to the individual shall be made by the physician.

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983; 58 FR 31149, 31150, June, 1, 1993]

§ 103.24 Requests for accounting of record disclosure.

At the time of his request for access or correction or at any other time, an individual may request an accounting of disclosures made of his record outside the Department of Justice. Requests for accounting shall be directed

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to the appropriate responsible official as specified in §103.10(a) of this part listed in the "Notice of Systems of Records". Any available accounting, whether kept in accordance with the requirements of the Privacy Act or under procedures established prior to September 27, 1975, shall be made available to the individual except that an accounting need not be made available if it relates to: (a) A disclosure with respect to which no accounting need be kept (see §103.30(c) of this part); (b) A disclosure made to a law enforcement agency pursuant to 5 U.S.C. 552a(b)(7); (c) An accounting which has been exempted from disclosure pursuant to 5 U.S.C. 552a (j) or (k).

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.25 Notice of access decisions; time limits.

(a) *Responsibility for notice.* The responsible official as specified in §103.10(a) of this part has responsibility for determining whether access to records is available under the Privacy Act and for notifying the individual of that determination in accordance with these regulations. If access is denied because of an exemption, the responsible person shall notify the individual that he may appeal that determination to the Deputy Attorney General within thirty working days of the receipt of the determination.

(b) *Time limits for access determinations.* The time limits provided by 28 CFR 16.1(d) shall be applicable to requests for access to information pursuant to the Privacy Act of 1974.

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.26 Fees for copies of records.

The fees charged by the Service under the Privacy Act shall be those specified in 28 CFR 16.47. Remittances shall be made in accordance with §103.7(a) of this part.

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.27 Appeals from denials of access.

An individual who has been denied access by the Service to the records

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concerning him may appeal that decision in the manner prescribed in 28 CFR 16.48.

[40 FR 44481, Sept. 26, 1975, as amended at 58 FR 31150, June 1, 1993]

§ 103.28 Requests for correction of records.

(a) *How made.* A request for amendment or correction is made by the individual concerned, either in person or by mail, by addressing the written request to the FOIA/PA Officer at the location where the record is maintained. The requester's identity must be established as provided in §103.21 of this part. The request must indicate the particular record involved, the nature of the correction sought, and the justification. A request made by mail should be addressed to the FOIA/PA Officer at the location where the system of records is maintained and the request and envelope must be clearly marked "Privacy Correction Request." Where the requester cannot determine the precise location of the system of records or believes that the same record appears in more than one system, the request may be addressed to the Headquarters FOIA/PA Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536. That officer will assist the requester in identifying the location of the records.

(b) *Initial determination.* Within 10 working days of the receipt of the request, the appropriate Service official shall advise the requester that the request has been received. If a correction is to be made, the requester shall be advised of the right to obtain a copy of the corrected record upon payment of the standard fee, established in 28 CFR 16.47. If a correction or amendment is refused, in whole or in part, the requester shall be given the reasons and advised of the right to appeal to the Assistant Attorney General under 28 CFR 16.50.

(c) *Appeals.* A refusal, in whole or in part, to amend or correct a record may be appealed as provided in 28 CFR 16.50.

(d) *Appeal determinations.* 28 CFR 16.50 provides for appeal determinations.