

(3) That the witness is unable to attend because of other good cause shown.

(g) *Interrogatories and cross-interrogatories.* Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon interrogatories and cross-interrogatories, none of the parties may be present or represented, and no person, other than the witness, the person's representative or attorney, a stenographic reporter and the presiding officer, may be present at the examination of the witness, which fact will be certified by the officer, who will read the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness's own words.

(h) *Fees.* A witness whose deposition is taken pursuant to the regulations in this part, and the officer taking the deposition, will be entitled to the same fees and mileage allowed and paid for like service in the United States District Court for the district in which the deposition is taken. Such fees will be paid by the Commission or by the party at whose request the deposition is being taken.

§ 501.6 Documentary evidence.

Documentary evidence may consist of books, records, correspondence or other documents pertinent to any hearing, examination, or investigation within the jurisdiction of the Commission. The application for the issuance of subpoenas for production of documents must specify the books, records, correspondence or other documents sought. The production of documentary evidence will not be required at any place other than the witness's place of business. The production of such documents will not be required at any place if, prior to the return date specified in the subpoena, the person either has furnished the issuer of the subpoena with a properly certified copy of the documents or has entered into a stipulation as to the information contained in the documents.

§ 501.7 Time.

(a) *Computation.* In computing any period of time prescribed or allowed by the regulations, by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays will be excluded in the computation.

(b) *Enlargement.* When by the regulations in this chapter, or by a notice given thereunder or by order of the Commission, an act is required or allowed to be done at or within a specific time, the Commission for good cause shown may, at any time in its discretion:

(1) With or without motion, notice, or previous order or

(2) Upon motion, permit the act to be done after the expiration of the specified period.

PART 502—PUBLIC INFORMATION-FREEDOM OF INFORMATION ACT

Sec.

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AUTHORITY: 5 U.S.C. 552.

SOURCE: 66 FR 49844, Oct. 1, 2001, unless otherwise noted.

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§ 502.1 Organization and authority— Foreign Claims Settlement Commission.

(a) The Foreign Claims Settlement Commission of the United States (“the Commission”) is an independent agency of the Federal Government created by Reorganization Plan No. 1 of 1954 (68 Stat. 1279) effective July 1, 1954. The Commission was transferred to the Department of Justice as an independent agency within that department as of October 1, 1980, under the terms of Public Law 96–209, approved March 14, 1980 (94 Stat. 96, 22 U.S.C. 1622a). Its duties and authority are defined in the International Claims Settlement Act of 1949, as amended (64 Stat. 12, 22 U.S.C. 1621–1645o) and the War Claims Act of 1948 (62 Stat. 1240, 50 U.S.C. App. 2001–2017p).

(b) The Commission has jurisdiction to determine the validity and amount of claims of United States nationals against foreign governments for compensation for losses and injuries sustained by those nationals, pursuant to programs authorized under either of the cited Acts. Funds for payment of claims are derived from international settlement agreements or through liquidation of foreign assets in the United States by the Department of Justice or Treasury, or from public funds when provided by the Congress.

(c) The Chair and the two part-time members of the Commission are appointed by the President with the advice and consent of the Senate to serve for 3-year terms of office as provided in 22 U.S.C. 1622c(c).

(d) All functions of the Commission are vested in the Chair with respect to the internal management of the affairs of the Commission, including but not limited to:

- (1) The appointment of Commission employees;
- (2) The direction of Commission employees and the supervision of their official duties;
- (3) The distribution of business among employees and organizational units within the Commission;
- (4) The preparation of budget estimates; and
- (5) The use and expenditures of Commission funds appropriated for expenses of administration.

(e) Requests for records must be made in writing by mail or presented in person to the Administrative Officer, Foreign Claims Settlement Commission, Washington, DC 20579.

(f) The offices of the Commission are located at 600 E Street NW (Bicentennial Building), Room 6002, Washington, DC.

§ 502.2 Material to be published in the Federal Register pursuant to the Freedom of Information Act.

The Commission will separately state and concurrently publish the following materials in the FEDERAL REGISTER for the guidance of the public:

(a) Descriptions of its 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.

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, 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.

(d) 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 agency.

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

§ 502.3 Effect of nonpublication.

Except to the extent that a person has actual and timely notice of the terms thereof, no person will in any manner be required to resort to, or be adversely affected by, any matter required to be published in the FEDERAL REGISTER and not so published.

§ 502.4 Incorporation by reference.

For purposes of this part, matter which is reasonably available to the class of persons affected thereby will be deemed published in the FEDERAL

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REGISTER when incorporated by reference therein with the approval of the Director of the Federal Register.

§ 502.5 Records generally available.

The Commission will make promptly available to any member of the public the following documents:

(a) Proposed and Final Decisions (including dissenting opinions) and all orders made with respect thereto, except when exempted from public disclosure by statute;

(b) Statements of policy and interpretations which have been adopted by the Commission which have not been published in the FEDERAL REGISTER; and

(c) A current index, which will be updated at least quarterly, covering the foregoing material adopted, issued or promulgated after July 4, 1967. Publication of an index is deemed both unnecessary and impractical. However, copies of the index are available upon request for a fee of the direct cost of duplication.

§ 502.6 Current index.

The Commission will maintain and make available for public inspection and copying, current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, as required by 5 U.S.C. 552(a)(2).

§ 502.7 Additional documents and records generally available for inspection and copying.

The following types of documents are also available for inspection and copying in the offices of the Commission:

(a) Rules of practice and procedure.

(b) Annual report of the Commission to the Congress of the United States.

(c) Bound volumes of Commission decisions.

(d) International Claims Settlement Act of 1949, with amendments; the War Claims Act of 1948, with amendments; and related Acts.

(e) Claims agreements with foreign governments effecting the settlement of claims under the jurisdiction of the Commission.

(f) Press releases and other miscellaneous material concerning Commission operations.

(g) Indexes of claims filed in the various claims programs administered by the Commission.

§ 502.8 Documents on-line.

Commission documents available in electronic format may be accessed via the Commission's World Wide Web site, the address of which is <http://www.usdoj.gov/fcsc>.

§ 502.9 Effect of non-compliance.

No decision, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited as precedent by the Commission against any private party unless it has been indexed and either made available or published as provided by this part, or unless that private party has actual and timely notice of the terms thereof.

§ 502.10 Availability of records.

(a) Each person desiring access to a record covered by this part must comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request must indicate that it is being made under the Freedom of Information Act.

(3) The envelope in which the request is sent must be prominently marked with the letters "FOIA."

(4) The request must be addressed to the appropriate official or employee of the Commission as set forth in paragraph (c) of this section.

(5) The foregoing requirements must be complied with whether the request is mailed or hand-delivered to the Commission.

(b) If the requirements of paragraph (a) of this section are not met, the twenty-day time limit described in § 502.10(a) will not begin to run until the request has been identified by an official or employee of the Commission as a request under the Freedom of Information Act and has been received by the appropriate official or employee of the Commission.

(c) Each person desiring access to a record covered in this part that is located in the Commission, or to obtain a copy of such a record, must make a written request to the Administrative Officer, Foreign Claims Settlement

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Commission, 600 E Street NW, Room 6002, Washington, DC 20579.

(d) Each request should reasonably describe the particular record requested. The request should specify the subject matter, the date when it was made and the person or office that made it. If the description is insufficient, the official or employee handling the request may notify the person making the request and, to the extent possible, indicate the additional data required.

(e) Each record made available under this section is available for inspection and copying during regular working hours. Original documents may be copied but may not be released from custody.

(f) Authority to administer this part in connection with Commission records is delegated to the Administrative Officer or the Commission employee acting in that official's capacity.

§ 502.11 Actions on requests.

(a) The Administrative Officer or any employee acting in that official's capacity will determine within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any a request whether to comply with the request. Upon receipt of a request for a Commission record which is available, the Administrative Officer or other employee will notify the requester as to the time the record is available, and will promptly make the record available after advising the requester of the applicable fees under § 502.13. The person making the request will be notified immediately after any adverse determination, the reasons for making the adverse determination and the right of the person to appeal.

(b) Any denial of a request for a record will be written and signed by the Administrative Officer or other employee, including a statement of the reason for denial. That statement will contain, as applicable:

(1) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of a record, and to the extent consistent with the purpose of the exemption, an explanation of how the exemption applies to the record withheld.

(2) If a record requested does not exist, or has been legally disposed of, the requester will be so notified.

(c) In unusual circumstances, the time limit prescribed in paragraph (a) of this section may be extended by written notice to the person making the request setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No extension notice will specify a date that would result in an extension for more than twenty working days. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(1) The need to search for and collect the requested records from 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 will 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.

§ 502.12 Appeals.

(a) Any person to whom a record has not been made available within the time limits established by paragraph (b) of § 502.11, and any person who has been given an adverse determination pursuant to paragraph (b) of § 503.10 of this chapter, that a requested record will not be disclosed, may apply to the Office of Information and Privacy, U.S. Department of Justice, Washington, DC 20530, for reconsideration of the request. The person making such a request will also be notified of the provisions for judicial review provided in 5 U.S.C. 552(a)(4).

(b) Each application for reconsideration must be made in writing within sixty days from the date of receipt of the original denial and must include all information and arguments relied upon by the person making the request. The application must indicate that it is an

appeal from a denial of a request made under the Freedom of Information Act. The envelope in which the application is sent must be prominently marked with the letters "FOIA." If these requirements are not met, the twenty day limit described in § 502.10 will not begin to run until the application has been identified as an application under the Freedom of Information Act and has been received by the Office of Information and Privacy of the Department of Justice.

(c) Whenever it is to be determined necessary, the person making the request may be required to furnish additional information, or proof of factual allegations and other proceedings appropriate in the circumstances may be ordered.

(d) The decision not to disclose a record under this part is considered to be a withholding for the purposes of 5 U.S.C. 552(a)(3).

§ 502.13 Exemptions.

In the event any document or record requested hereunder should contain material which is exempt from disclosure under this section, any reasonably segregable portion of the record will, notwithstanding that fact, and to the extent feasible, be provided to any person requesting it, after deletion of the portions which are exempt under this section. Documents or records determined to be exempt from disclosure hereunder may nonetheless be provided upon request in the event it is determined that the provision of the document would not violate the public interest or the right of any person to whom the information may pertain, and the disclosure is not prohibited by law or Executive Order. The following categories of records are exempt from disclosure under the provisions of 5 U.S.C. 552(b):

(a) Records which are specifically required by Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. This exception may apply to records in the custody of the Commission which have been transmitted to the Commission by another agency which has designated the record as nonpublic under Executive Order.

(b) Records related solely to the internal personnel rules and practices of the Commission.

(c) Records specifically exempted from disclosure by statute.

(d) Information given in confidence. This includes information obtained by or given to the Commission which constitutes confidential commercial or financial information, privileged information, or other information which was given to the Commission in confidence or would not customarily be released by the person from whom it was obtained.

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Commission. Such communications include inter-agency memoranda, drafts, staff memoranda transmitted to the Commission, written communications between the Commission and its staff regarding the preparation of Commission decisions, other documents received or generated in the process of issuing a decision or regulation, and reports and other work papers of staff attorneys, accountants, and investigators.

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

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) 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

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conducting a lawful security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

§ 502.14 Fees for services.

The following provisions shall apply in the assessment and collection of fees for services rendered in processing requests for disclosure of Commission records under this part.

(a) *Fee for duplication of records:* \$0.15 per page.

(b) *Search and review fees:*

(1) Searches for records by clerical personnel—\$3.00 per quarter hour, including time spent searching for and copying any record.

(2) Search for and review of records by professional and supervisory personnel—\$6.00 per quarter hour spent searching for any record or reviewing a record to determine whether it may be disclosed, including time spent in copying any record.

(c) *Certification and validation fee:* \$1.00 for each certification, validation or authentication of a copy of any record.

(d) *Imposition of fees:*

(1) Commercial use requests—Where a request appears to seek disclosure of records for a commercial use, the requester shall be charged for the time spent by Commission personnel in searching for the requested record and in reviewing the record to determine whether it should be disclosed, and for the cost of each page of duplication. *Commercial use* is defined as a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The request also must reasonably identify the records sought.

(2) Requests from representatives of news media—Where a request seeks disclosure of records to a representative of the news media, the requester shall be charged only for the actual duplication cost of the records and only to the

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extent that the number of duplications exceeds 100 pages; provided, however, that the request must reasonably describe the records sought, and it must appear that the records are for use by the requester in such person's capacity as a news media representative. "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 *news* means information that is about current events or that would be of current interest to the public. A "freelance" journalist not actually employed by a news organization shall be eligible for inclusion under this category if the person can demonstrate a solid basis for expecting publication by a news organization.

(3) Requests from educational and non-commercial scientific institutions—Where a request seeks disclosure of records to an educational or non-commercial scientific institution, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; provided, however, that the request must reasonably describe the records sought and it must appear that the records are to be used by the requester in furtherance of its educational or non-commercial scientific research programs. "Educational institution" refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate, graduate, professional or vocational education, which operates a program or programs of scholarly research. "Non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis, within the meaning of paragraph (d)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(4) All other requests—Where a request seeks disclosure of records to a person or entity other than one coming within paragraphs (d) (1), (2) and (3) of this section, the requester shall be charged the full cost of search and duplication. However, the first two hours of search time and the first 100 pages of

duplication shall be furnished without charge.

(e) *Aggregating of requests.* If there exists a solid basis for concluding that a requester or group of requesters has submitted a series of partial requests for disclosure of records in an attempt to evade assessment of fees, the requests may be aggregated so as to constitute a single request, with fees charged accordingly.

(f) *Unsuccessful searches.* Except as provided in paragraph (d) of this section, the cost of searching for a requested record shall be charged even if the search fails to locate the record or it is determined that the record is exempt from disclosure.

(g) *Interest.* In the event a requester fails to remit payment of fees charged for processing a request under this part within 30 days from the date those fees were billed, interest on the fees may be assessed beginning on the 31st day after the billing date, to be calculated at the rate prescribed in 31 U.S.C. 3717.

(h) *Advance payments.* (1) If, but only if, it is estimated or determined that processing of a request for disclosure of records will result in a charge of fees of more than \$250.00, the requester may be required to pay the fees in advance in order to obtain completion of the processing.

(2) If a requester has previously failed to make timely payment (i.e., within 30 days of billing date) of fees charged under this part, the requester may be required to pay those fees and interest accrued thereon, and to make an advance payment of the full amount of estimated fees chargeable in connection with any pending or new request, in order to obtain processing of the pending or new request.

(3) With regard to any request coming within paragraphs (h) (1) and (2) of this section, the administrative time limits set forth in §§502.11 and 502.12 of this part will begin to run only after the requisite fee payments have been received.

(i) *Non-payment.* In the event of non-payment of billed charges for disclosure of records, the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365), including disclosure to consumer credit reporting agencies and referral

to collection agencies, may be utilized to obtain payment.

(j) *Waiver or reduction of charges.* Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where—

(1) 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 requester; or

(2) It is determined that the cost of collection would be equal to or exceed the amount of those fees. No charges shall be assessed if the fees amount to \$8.00 or less.

PART 503—PRIVACY ACT AND GOVERNMENT IN THE SUNSHINE REGULATIONS

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AUTHORITY: 5 U.S.C. 552a(f).

SOURCE: 66 FR 49844, Oct. 1, 2001, unless otherwise noted.