

## Federal Labor Relations Authority

## §2411.10

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The Authority determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, the Authority shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the Authority shall promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever the Authority provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the Authority shall also notify the requester(s). Whenever the Authority notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, the Authority shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the Authority shall notify the requester(s).

### §2411.10 Appeal from denial of request.

(a) *Authority/General Counsel/Panel/IG.* (1) Whenever any request for records is denied, a written appeal may be filed within thirty (30) days after the requester receives notification that the request has been denied or after the requester receives any records being

made available, in the event of partial denial.

(i) If the denial was made by a Regional Director or by the Freedom of Information Officer of the General Counsel, the appeal shall be filed with the General Counsel in Washington, DC.

(ii) If the denial was made by the Executive Director of the Panel, the appeal shall be filed with the Chairman of the Panel.

(iii) If the denial was made by the Solicitor or the IG, the appeal shall be filed with the Chairman of the Authority in Washington, DC.

(2) The Chairman of the Authority, the Chairman of the Panel or the General Counsel, as appropriate, shall, within twenty (20) working days (excepting Saturdays, Sundays, and legal public holidays) from the time of receipt of the appeal, except as provided in §2411.11, make a determination on the appeal and respond in writing to the requester, determining whether, or the extent to which, the request shall be granted.

(i) If the determination is to grant the request and the request is expected to involve an assessed fee in excess of \$250.00, the determination shall specify or estimate the fee involved and shall require prepayment of any charges due in accordance with the provisions of paragraph (a) of §2411.13 before the records are made available.

(ii) Whenever possible, the determination relating to a request for records that involves a fee of less than \$250.00 shall be accompanied by the requested records when there is no history of the requester having previously failed to pay fees in a timely manner. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Authority, the Panel, the General Counsel or IG.

(b) If on appeal the denial of the request for records is upheld in whole or in part by the Chairman of the Authority, the General Counsel, or the Chairman of the Panel, as appropriate, the person making the request shall be notified of the reasons for the determination, the name and title or position of the person responsible for the denial, and the provisions for judicial review

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of that determination under 5 U.S.C. 552(a)(4). Even though no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the Chairman of the Authority, the General Counsel or the Chairman of the Panel, as appropriate, may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of a denial under this appeal procedure by written notification to the person making the request. In such event the time limit for making the determination shall commence with the issuance of such notification.

### § 2411.11 Modification of time limits.

(a) In unusual circumstances as specified in this section, the time limits prescribed with respect to initial determinations or determinations on appeal may be extended by written notice from the agency component handling the request (either initial or on appeal) to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. As appropriate, the notice shall provide the requester with an opportunity to limit the scope of the request so that it may be processed within the time limit or an opportunity to arrange with the agency component an alternative time frame for processing the request or a modified request. To aid the requester, the FOIA Public Liaison shall assist in the resolution of any disputes between the requester and the processing agency component. No such notice shall specify a date that would result in a total extension of more than ten (10) working days.

(b) As used in this section, “unusual or exceptional 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 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.

(c) Expedited processing of a request for records, or an appeal of a denial of a request for expedited processing, shall be provided when the requester demonstrates a compelling need for the information and in other cases as determined by the officer processing the request. A requester seeking expedited processing can demonstrate a compelling need by submitting a statement certified by the requester to be true and correct to the best of such person’s knowledge and belief and that satisfies the statutory and regulatory definitions of compelling need. Requesters shall be notified within ten (10) calendar days after receipt of such a request whether expedited processing, or an appeal of a denial of a request for expedited processing, was granted. As used in this section, “compelling need” means:

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

### § 2411.12 Effect of failure to meet time limits.

Failure by the Authority, the General Counsel, the Panel, or the IG either to deny or grant any request under this part within the time limits prescribed by the Freedom of Information Act, as amended, 5 U.S.C. 552, and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making this request.

### § 2411.13 Fees.

(a) *Definitions.* For the purpose of this section:

(1) The term *direct costs* means those expenditures which the Authority, the