

officer empowered to administer oaths must accompany the request.

(3) Parents of minors and legal guardians: An individual acting as the parent of a minor or the legal guardian of the individual or an heir or legal representative of a deceased person to whom a record pertains shall establish his or her personal identity in the manner prescribed in either paragraph (f)(1) or (2) of this section. In addition, such individual shall establish his or her identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the court's order. A parent or legal guardian may act only for a living individual, not for a decedent. A parent or legal guardian may be accompanied during personal access to a record by another individual, provided the requirements of paragraph (f) of § 1101.7 are satisfied. In the case of an heir or legal representative of a deceased person the proof of identity shall be a certified copy of the Will, if any; the order of a court of competent jurisdiction admitting the Will to probate; the order of a court of competent jurisdiction appointing an executor, executrix, or administrator; a letter of administration; or any other documentary evidence which establishes the identity of the individual as an heir or legal representative of a deceased person.

(g) When the provisions of this part are alleged to have the effect of impeding an individual in exercising his or her right to access, the Section will consider, from an individual making a request, alternative suggestions regarding proof of identity and access to records.

(h) An inquiry which is not addressed as specified in paragraph (b) of this section or which is not marked as specified in paragraph (c) of this section will be so addressed and marked by the Section's personnel and forwarded immediately to the PA Officer. An inquiry

which is not properly addressed by the individual will not be deemed to have been "received" for purposes of measuring time periods for response until forwarding of the inquiry to the PA Officer has been effected. In each instance when an inquiry so forwarded is received, the PA Officer shall notify the individual that his or her inquiry was improperly addressed and the date when the inquiry was received at the proper address.

(i) Each inquiry received shall be acted upon promptly by the PA Officer. Although there is no fixed time when an agency must respond to a request for access to records under the Act, every effort will be made to respond within ten (10) days (excluding Saturdays, Sundays and holidays) of the date of receipt. If a response cannot be made within ten (10) days, the PA Officer shall send an acknowledgment during that period providing information on the status of the inquiry and asking for such further information as may be necessary to process the inquiry. Every effort will be made to provide the requested records within thirty (30) days.

(j) An individual shall not be required to state a reason or otherwise justify his or her inquiry.

§ 1101.7 Disclosure of records to individuals who are subjects of those records.

(a) Each request received shall be acted upon promptly by the PA Officer. Every effort will be made to respond within ten (10) days (excluding Saturdays, Sundays, and holidays) of the date of receipt. If a response cannot be made within ten (10) days due to unusual circumstances, the PA Officer shall send an acknowledgment during that period providing information on the status of the request and asking for such further information as may be necessary to process the request. Every effort will be made to provide the requested records within thirty (30) days. "Unusual circumstances" shall include circumstances where a search for and collection of requested records from inactive storage, field facilities or other establishments are required, cases where a voluminous amount of data is involved, instances where information on other individuals must be separated

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or expunged from the particular record, and cases where consultations with other agencies having a substantial interest in the determination of the request are necessary.

(b) Grant of access:

(1) Notification.

(i) An individual shall be granted access to a record pertaining to him or her except where the record is subject to an exemption under the Act and these rules.

(ii) The PA Officer shall notify the individual of such determination and provide the following information:

(A) The methods of access, as set forth in paragraph (b)(2) of this section;

(B) The place at which the records may be inspected;

(C) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection. In no event shall the earliest date be later than thirty (30) days from the date of notification;

(D) The estimated date by which a copy of the record could be mailed and the estimate of fees pursuant to § 1101.11. In no event shall be estimated date be later than thirty (30) days from the date of notification;

(E) The fact that the individual, if he or she wishes, may be accompanied by another individual during the personal access, subject to the procedures set forth in paragraph (f) of this section; and

(F) Any additional requirements needed to grant access to a specific record.

(2) Method of access: The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(i) Inspection in person may be made in the office specified by the PA Officer, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (excluding holidays);

(ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the PA Officer determines that a suitable facility is available, that the individual's access can be properly supervised at that facility, and that transmittal of the records to that facility will not unduly interfere with operations of the

section or involve unreasonable costs, in terms of both money and manpower; and

(iii) Copies may be mailed at the request of the individual, subject to payment of the fees prescribed in § 1101.11. The Section, at its own initiative, may elect to provide a copy by mail, in which case no fee will be charged to the individual.

(c) Access to medical records: Upon advice by a physician that release of medical information directly to the requester could have an adverse effect on the requester, the Section may attempt to arrange an acceptable alternative. This will normally involve release of such information to a physician named by the requester, with the requester's written consent. (Note that release to any third party, including a physician or family member, must comply with the provisions of § 1101.8 of this part.)

(d) The Section shall supply such other information and assistance at the time of access to make the record intelligible to the individual.

(e) The Section reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election would be appropriate, for example, when the record is in an automated data media such as tape or disc, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example 5, U.S.C. 552(k)(1)). In no event shall original records of the Section be made available to the individual except under the immediate supervision of the PA Officer or his designee. Title 18 U.S.C. 2701(a) makes it a crime to conceal, mutilate, obliterate, or destroy a record filed in a public office, or to attempt to do any of the foregoing.

(f) Any individual who requests access to a record pertaining to that individual may be accompanied by another individual of his or her choice. "Accompanied" includes discussion of the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual in writing and shall include the name of the other individual, a specific description of the record to which access is

sought, and the date and the signature of the individual to whom the record pertains. The other individual shall sign the authorization in the presence of the PA Officer or his designee. An individual shall not be required to state a reason or otherwise justify his or her decision to be accompanied by another individual during the personal access to a record.

(g) Initial denial of access:

(1) Grounds. Access by an individual to a record which pertains to that individual will be denied only upon a determination by the PA Officer that:

(i) The record is subject to an exemption under the Act and these rules;

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of §1101.7(c) pertaining to medical records have been temporarily invoked; or

(iv) The individual unreasonably has failed to comply with the procedural requirements of these rules.

(2) Notification. The PA Officer shall give notice of denial of access of records to the individual in writing and shall include the following information:

(i) The PA Officer's name and title or position;

(ii) The date of denial;

(iii) The reasons for the denial, including citation to the appropriate section of the Act and these rules;

(iv) The individual's opportunities for further administrative consideration, including the identity and address of the responsible official;

(v) If stated to be administratively final within the Section, the individual's right to judicial review under 5 U.S.C. 552a(g) (1) and (5).

(3) Administrative review: When an initial denial of a request is issued by the PA Officer, the individual's opportunities for further consideration shall be as follows:

(i) As to denial under paragraph (g)(1)(i) of this section, the sole procedure is a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e). Such petition shall be filed with the Commissioner, United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite C-310, El Paso, TX 79902-

1422. If the exception was determined by another agency, the PA Officer will provide the individual with the name and address of the other agency and any relief sought by the individual shall be that provided by the regulations of the other agency. Within the Section, no such denial is administratively final until such a petition has been filed by the individual and disposed of on the merits by the Commissioner.

(ii) As to denial under paragraphs (g)(1), (ii), (iii) or (iv) of this section, the individual may file for review with the Commissioner, as indicated in the PA Officer's initial denial notification.

(h) If a request is partially granted and partially denied, the PA Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 1101.8 Disclosure of records to third-parties.

(a) The Section will not disclose any information about an individual to any person other than the individual except in the following instances:

(1) Upon written request by the individual about whom the information is maintained;

(2) With prior written consent of the individual about whom the information is maintained;

(3) To the parent(s) of a minor child, or the legal guardian of an incompetent person, when said parent(s) or legal guardian act(s) on behalf of said minor or incompetent person.

(4) When permitted under 5 U.S.C. 552a(b) (1) through (11) which provides as follows:

(i) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(ii) Required under 5 U.S.C. 552 of the U.S. Code;

(iii) For a routine use as defined in the Act at 5 U.S.C. 552a(a)(7);

(iv) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the U.S. Code;