

Federal Emergency Management Agency, DHS

§ 5.70

compel disclosure of business information covered by paragraph (c) of this section, FEMA shall promptly notify the submitter.

(2) Whenever a submitter brings legal action seeking to prevent disclosure of business information covered by paragraph (c) of this section, FEMA shall promptly notify the requester.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) FEMA determines that the information shall not be disclosed;

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

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The information was required in the course of a lawful investigation of a possible violation of criminal law.

[53 FR 2740, Feb. 1, 1988]

§ 5.58 Exhaustion of administrative remedies.

Any person making a request to FEMA for records under this part shall be deemed to have exhausted his administrative remedies with respect to the request if the agency fails to comply with the applicable time limit provisions set forth in §§ 5.52 and 5.55.

[44 FR 50287, Aug. 27, 1979. Redesignated at 53 FR 2740, Feb. 1, 1988]

§ 5.59 Judicial relief available to the public.

Upon denial of a requestor's appeal by the Deputy Administrator the requester may file a complaint in a district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4)(B).

[44 FR 50287, Aug. 27, 1979. Redesignated at 53 FR 2740, Feb. 1, 1988]

§ 5.60 Disciplinary action against employees for "arbitrary or capricious" denial.

Pursuant to 5 U.S.C. 552(a)(4)(F), whenever the district court, described in § 5.59 orders the production of any

FEMA records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether FEMA personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel in the Merit Systems Protection Board is required to initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who primarily was responsible for the withholding. The Special Counsel after investigation and consideration of the evidence submitted, submits findings and recommendations to the Administrator of FEMA and sends copies of the findings and recommendations to the officer or employee or his or her representative. The law requires the Administrator to take any corrective action which the Special Counsel recommends.

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1422, Jan. 7, 1980. Redesignated and amended at 53 FR 2740, Feb. 1, 1988]

§ 5.61 Contempt for noncompliance.

In the event of noncompliance by FEMA with an order of a district court pursuant to § 5.60, the district court may punish for contempt the FEMA employee responsible for the noncompliance, pursuant to 5 U.S.C. 552(a)(4)(G).

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1422, Jan. 7, 1980; 50 FR 40006, Oct. 1, 1985. Redesignated and amended at 53 FR 2740, Feb. 1, 1988]

Subpart E—Exemptions

§ 5.70 General.

The exemptions enumerated in 5 U.S.C. 552(b), under which the provisions for availability of records and informational materials will not apply, are general in nature. FEMA will decide each case on its merits in accordance with the FEMA policy expressed in subpart A.