AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

SUBCHAPTER B—ADMINISTRATION

PARTS 100–101 [RESERVED]

PART 102—DISCLOSURE OF GOVERNMENT INFORMATION

Subpart A—Freedom of Information Act

Sec.
102.1 General.
102.2 Public reference facilities.
102.3 Records under FOIA.
102.4 Requirements for making requests.
102.5 Responsibility for responding to requests.
102.6 Time limits and expedited processing.
102.7 Responses to requests.
102.9 Business Information.
102.10 Appeals from initial determinations or untimely delays.
102.11 Fees.

Subpart B—Privacy Act

102.21 Purpose and scope.
102.22 Definitions.
102.23 Procedures for making inquiries.
102.24 Procedures for making requests for records.
102.25 Disclosure of requested records to individuals.
102.26 Special procedures: Medical records.
102.27 Procedures for making requests for correction or amendment.
102.28 Review of requests for correction or amendment.
102.29 Appeal of initial adverse determination on correction or amendment.
102.30 Disclosure of record to person other than the individual to whom it pertains.
102.31 Fees.
102.32 Penalties.
102.33 General exemptions.
102.34 Specific exemptions.

APPENDIX TO PART 102—SYSTEMS OF RECORDS NOTICED BY OTHER FEDERAL AGENCIES AND APPLICABLE TO USPTO RECORDS, AND APPLICABILITY OF THIS PART THERETO

AUTHORITY: 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 35 U.S.C. 2(b)(2), 21, 41, 42, 122; 44 U.S.C. 3101.

SOURCE: 65 FR 52917, Aug. 31, 2000, unless otherwise noted.

Subpart A—Freedom of Information Act

§ 102.1 General.

(a) The information in this part is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552). This part sets forth the procedures the United States Patent and Trademark Office (USPTO) follows to make publicly available the materials and indices specified in 5 U.S.C. 552(a)(2) and records requested under 5 U.S.C. 552(a)(3). Information routinely provided to the public as part of a regular USPTO activity (for example, press releases issued by the Office of Public Affairs) may be provided to the public without following this part. USPTO's policy is to make discretionary disclosures of records or information exempt from disclosure under FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(b) As used in this subpart, *FOIA Officer* means the USPTO employee designated to administer FOIA for USPTO. To ensure prompt processing of a request, correspondence should be addressed to the FOIA Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450, or delivered by hand to 10B20, Madison Building East, 600 Dulany Street, Alexandria, Virginia.

[65 FR 52917, Aug. 31, 2000, as amended at 68 FR 14338, Mar. 25, 2003; 70 FR 10489, Mar. 4, 2005]

§ 102.2 Public reference facilities.

(a) USPTO maintains a public reference facility that contains the records FOIA requires to be made regularly available for public inspection and copying; furnishes information and otherwise assists the public concerning USPTO operations under FOIA; and receives and processes requests for records under FOIA. The FOIA Officer is responsible for determining which of USPTO's records are required to be made available for public inspection and copying, and for making those records available in USPTO's reference and records inspection facility. The FOIA Officer shall maintain and make available for public inspection and copying a current subject-matter index

of USPTO's public inspection facility records. Each index shall be updated regularly, at least quarterly, with respect to newly included records. In accordance with 5 U.S.C. 552(a)(2), USPTO has determined that it is unnecessary and impracticable to publish quarterly, or more frequently, and distribute copies of the index and supplements thereto. The public reference facility is located in the Public Search Room, Madison Building East, First Floor, 600 Dulany Street, Alexandria, Virginia.

(b) The FOIA Officer shall also make public inspection facility records created by USPTO on or after November 1, 1996, available electronically through USPTO's World Wide Web site (*http://www.uspto.gov*). Information available at the site shall include:

(1) The FOIA Officer's index of the public inspection facility records, which indicates which records are available electronically; and

(2) The general index referred to in paragraph (c)(3) of this section.

(c) USPTO maintains and makes available for public inspection and copying:

(1) A current index providing identifying information for the public as to any matter that is issued, adopted, or promulgated after July 4, 1967, and that is retained as a record and is required to be made available or published. Copies of the index are available upon request after payment of the direct cost of duplication;

(2) Copies of records that have been released and that the FOIA Officer determines, because of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records;

(3) A general index of the records described in paragraph (c)(2) of this section;

(4) Final opinions and orders, including concurring and dissenting opinions made in the adjudication of cases;

(5) Those statements of policy and interpretations that have been adopted by USPTO and are not published in the FEDERAL REGISTER; and

(6) Administrative staff manuals and instructions to staff that affect a member of the public.

[65 FR 52917, Aug. 31, 2000, as amended at 75 FR 36295, June 25, 2010]

§ 102.3 Records under FOIA.

(a) Records under FOIA include all Government records, regardless of format, medium or physical characteristics, and include electronic records and information, audiotapes, videotapes, and photographs.

(b) There is no obligation to create, compile, or obtain from outside USPTO a record to satisfy a FOIA request. With regard to electronic data, the issue of whether records are created or merely extracted from an existing database is not always apparent. When responding to FOIA requests for electronic data where creation of a record or programming becomes an issue, USPTO shall undertake reasonable efforts to search for the information in electronic format.

(c) USPTO officials may, upon request, create and provide new information pursuant to user fee statutes, such as the first paragraph of 15 U.S.C. 1525, or in accordance with authority otherwise provided by law. This is outside the scope of FOIA.

(d) The FOIA Officer shall preserve all correspondence pertaining to the requests received under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by Title 44 of the United States Code or a National Archives and Records Administration's General Records Schedule. The FOIA Officer shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under FOIA.

§ 102.4 Requirements for making requests.

(a) A request for USPTO records that are not customarily made available to the public as part of USPTO's regular informational services must be in writing, and shall be processed under FOIA, regardless of whether FOIA is mentioned in the request. Requests should be sent to the USPTO FOIA Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450 (records FOIA requires