

§ 102.3

37 CFR Ch. I (7-1-12 Edition)

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

to be made regularly available for public inspection and copying are addressed in §102.2(c)). For the quickest handling, the request letter and envelope should be marked "Freedom of Information Act Request." For requests for records about oneself, §102.24 contains additional requirements. For requests for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to the requester or proof that individual is deceased (for example, a copy of a death certificate or an obituary) facilitates processing the request.

(b) The records requested must be described in enough detail to enable USPTO personnel to locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record, and the name and location of the office where the record is located. Also, if records about a court case are sought, the title of the case, the court in which the case was filed, and the nature of the case should be included. If known, any file designations or descriptions for the requested records should be included. In general, the more specifically the request describes the records sought, the greater the likelihood that USPTO will locate those records. If the FOIA Officer determines that a request does not reasonably describe records, the FOIA Officer will inform the requester what additional information is needed or why the request is otherwise insufficient. The FOIA Officer also may give the requester an opportunity to discuss the request so that it may be modified to meet the requirements of this section.

[65 FR 52917, Aug. 31, 2000, as amended at 68 FR 14338, Mar. 25, 2003]

§102.5 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraph (b) of this section, the USPTO will process FOIA requests directed to USPTO. In determining records responsive to a request, the FOIA Officer shall include only those records within USPTO's possession and

control as of the date the FOIA Officer receives the request.

(b) *Consultations and referrals.* If the FOIA Officer receives a request for a record in USPTO's possession in which another Federal agency subject to FOIA has the primary interest, the FOIA Officer shall refer the record to that agency for direct response to the requester. The FOIA Officer shall consult with another Federal agency before responding to a requester if the FOIA Officer receives a request for a record in which another Federal agency subject to FOIA has a significant interest, but not the primary interest; or another Federal agency not subject to FOIA has the primary interest or a significant interest. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it.

(c) *Notice of referral.* Whenever a FOIA Officer refers a document to another Federal agency for direct response to the requester, the FOIA Officer will ordinarily notify the requester in writing of the referral and inform the requester of the name of the agency to which the document was referred.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals shall be handled according to the date the FOIA request was received by the first Federal agency.

(e) *Agreements regarding consultations and referrals.* The FOIA Officer may make agreements with other Federal agencies to eliminate the need for consultations or referrals for particular types of records.

§102.6 Time limits and expedited processing.

(a) *In general.* The FOIA Officer ordinarily shall respond to requests according to their order of receipt.

(b) *Initial response and appeal.* Subject to paragraph (c)(1) of this section, an initial response shall be made within 20 working days (*i.e.*, excluding Saturdays, Sundays, and legal public holidays) of the receipt of a request for a record under this part by the proper FOIA Officer identified in accordance with §102.5(a), and an appeal shall be decided within 20 working days of its receipt by the Office of the General Counsel.