

earlier FOIA request or if the submitter has made the information public;

(3) Disclosure of the information is required by statute (other than the FOIA) or regulation (other than this subpart);

(4) Disclosure of the information is prohibited by statute; or

(5) The designation of confidentiality made by the submitter appears obviously frivolous. However, the bureau will notify the submitter of any final decision to disclose the information 15 workdays prior to releasing it.

(i) The bureau will inform the submitter within 10 workdays of the Department's receipt of a court complaint if you file a lawsuit for access to any of the withheld records. Similarly, the bureau will notify you within 10 workdays of the Department's receipt of a court complaint if the submitter files a lawsuit to prohibit the bureau from disclosing the records.

(j) If the bureau determines that the requested information is protected from release by exemption (4) of the FOIA, the bureau has no discretion to release the information as doing so would violate the Trade Secrets Act, a criminal provision found at 18 U.S.C. 1905.

[67 FR 64530, Oct. 21, 2002, as amended at 69 FR 58325, Sept. 30, 2004]

§ 2.24 Is a submitter required to designate information that is commercially or financially sensitive?

No. If in the course of responding to a FOIA request, a bureau cannot readily determine whether the information obtained from a person is commercially or financially sensitive information, the bureau will obtain and consider the views of the submitter of the information and provide the submitter an opportunity to object to any decision to disclose the information.

§ 2.25 How will a bureau handle a request for Federally-funded research data in the possession of a private entity?

In accordance with OMB Circular A-110, when published research findings are produced under a grant or other Federal assistance awarded to institutions of higher education, public and

private hospitals, and other quasi-public and private nonprofit organizations, and the findings are used by a bureau in developing an agency action, *e.g.*, a policy or regulation, research data related to such findings are considered agency records. This applies even if the bureau's data are in the possession of the recipient of the Federal financial assistance (recipient).

(a) If you submit a FOIA request for such research data, the bureau will require the recipient to provide the information to it within a reasonable amount of time, so the bureau can consider the data for release to the public under the FOIA.

(b) The bureau will notify you that it may charge you for any additional fees incurred as a result of obtaining the research data from the recipient. This fee is in addition to any fees the bureau may charge to process your request under the FOIA.

(c) The bureau will forward a copy of the request to the recipient, who is responsible for searching for and reviewing the requested information in accordance with DOI's FOIA regulations (43 CFR part 2). The recipient will forward a copy of any responsive records that are located, along with his/her recommendations concerning the releasability of the data, and the total cost incurred in searching for, reviewing, and providing the data to the appropriate bureau FOIA contact.

(d) The bureau will review and consider the recommendations of the recipient regarding the releasability of the requested data. However, it is the bureau, rather than the recipient, that is responsible for deciding whether the information will be released or withheld.

[67 FR 64530, Oct. 21, 2002, as amended at 69 FR 58325, Sept. 30, 2004]

§ 2.26 Does the bureau provide multi-track processing of FOIA requests?

(a) All bureaus will use three processing tracks to distinguish between simple, normal, and complex requests based on the amount of time needed to process the request. FOIA requests will be placed in one of the following tracks:

- (1) Simple: 1-5 workdays;
- (2) Normal: 20 workdays; or

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(3) Complex: Over 20 workdays.

(b) Bureaus will exercise due diligence in processing requests in accordance with the requirements of the FOIA. Requesters should assume, unless notified by the bureau, that their request is in the “Normal” track.

(c) A bureau should, if possible, give requesters in its “Complex” track the opportunity to limit the scope of their request in order to qualify for faster processing. A bureau doing so will contact the requester by telephone (which should be promptly followed up by a written communication) or in writing, whichever is more efficient in each case.

(d) See the Department’s FOIA home page at <http://www.doi.gov/foia/policy.html> for details.

[74 FR 17092, Apr. 14, 2009]

§ 2.27 How will a bureau handle a request for information that is contained in a Privacy Act system of records? (See DOI’s Privacy Act regulations (Subpart G of this part) for additional information.)

(a) When you request information pertaining to yourself that is contained in a Privacy Act system of records applicable to you (*i.e.*, the information contained in the system of records is retrieved by the bureau using your name or other personal identifier), the request will be processed under both the FOIA and the Privacy Act. If you request information about yourself, you must submit certain identifying information, usually an original signature (see the appropriate Privacy Act system notice and, subpart G of this part) before the bureau will process your request. (Note: If you request information about yourself that is not covered by the Privacy Act, *e.g.*, the information may be filed under another subject, such as an organization, activity, event, or an investigation not retrievable by a name or personal identifier, the request will be treated only as a FOIA request.)

(b) The Privacy Act never prohibits disclosure of material that the FOIA requires to be released. Both a Privacy Act and a FOIA exemption must apply to withhold information from you if the information you seek is contained

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in a Privacy Act system of records applicable to you.

(c) Sometimes a request for Privacy Act information is submitted by a “third party” (an individual other than the person who is the subject of the Privacy Act record). If you request Privacy Act information about another individual, the material will not be disclosed without prior written approval by that individual unless—

(1) The release is provided for under one of the Privacy Act conditions of disclosure (5 U.S.C. 552a(b)), one of which is that Privacy Act information is releasable if it is required to be released under the FOIA, or

(2) In most circumstances, if the individual is deceased. See § 2.8(d)(4).

(d) In handling a request covered by paragraph (a) of this section, the fee provisions and time limits under the FOIA will apply, except that with regard to information that is subject to the Privacy Act, the bureau will charge only for duplication and not for search and review time (see appendix C to this part). There will be no charge if the fee for processing the request is \$30 or less.

Subpart D—FOIA Appeals

SOURCE: 67 FR 64530, Oct. 21, 2002, unless otherwise noted.

§ 2.28 When may I file an appeal?

(a) You may file an appeal when:

(1) Records or parts of records have been withheld;

(2) The bureau informs you that you have not adequately described the records you are seeking, or that it does not possess responsive records and you have reason to believe it does or you question the adequacy of the bureau’s search for responsive records;

(3) A decision has not been made on your request within the time limits provided in § 2.12;

(4) The bureau did not address all aspects of your request for records;

(5) You believe there is a procedural deficiency (*e.g.*, fees are improperly calculated);

(6) A fee waiver has been denied; or

(7) A request for expedited processing has been denied or not responded to on time. (Special procedures apply to this type of appeal (see §§ 2.14, 2.29(c), and