

## § 5.35

wanting the records. However, you are not required to give any explanation.

(c) *Review process.* Before making a decision on an appeal of a denial, the designated review official will consult with the General Counsel to ensure that the rights and interests of all parties affected by the request are protected. Also, the concurrence of the Assistant Secretary for Public Affairs is required in all appeal decisions, including those on fees. When the review official responds to an appeal, that constitutes the Department's final action on the request. If the review official grants your appeal, we will send the records to you promptly or let you inspect them, or else we will explain the reason for any delay and the approximate date you will receive copies or be allowed to inspect the records. If the decision is to deny your appeal, the official will state the reasons for the decision in writing and inform you of the FOIA provision for judicial review.

### § 5.35 Time limits.

(a) *General.* FOIA sets certain time limits for us to decide whether to disclose the records you requested, and to decide appeals. If we fail to meet the deadlines, you may proceed as if we had denied your request or your appeal. We will try diligently to comply with the time limits, but if it appears that processing your request may take longer than we would wish, we will acknowledge your request and tell you its status. Since requests may be misaddressed or misrouted, you should call or write to confirm that we have the request and to learn its status if you have not heard from us in a reasonable time.

(b) *Time allowed.* (1) We will decide whether to release records within 10 working days after your request reaches the appropriate FOI office, as identified in § 5.31 of this part. When we decide to release records, we will actually provide the records, or let you inspect them, as soon as possible after that decision.

(2) We will decide an appeal within 20 working days after the appeal reaches the appropriate review official.

(c) *Extension of time limits.* FOI Officers of review officials may extend the time limits in unusual circumstances.

## 45 CFR Subtitle A (10–1–12 Edition)

Extension at the request stage and at the appeal stage may total up to 10 working days. We will notify you in writing of any extension. "Unusual circumstances" include situations when we:

(1) Search for and collect records from field facilities, archives, or locations other than the office processing the request.

(2) Search for, collect, or examine a great many records in response to a single request.

(3) Consult with another office or agency that has substantial interest in the determination of the request.

(4) Conduct negotiations with submitters and requesters of information to determine the nature and extent of non-disclosable proprietary materials.

## Subpart D—Fees

### § 5.41 Fees to be charged—categories of requests.

The paragraphs below state, for each category of request, the type of fees that we will generally charge. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given in §§ 5.42 through 5.45 or for other reasons.

(a) *Commercial use request.* If your request is for a commercial use, HHS will charge you the costs of search, review, and duplication.

(b) *Educational and scientific institutions and news media.* If you are an educational institution or a non-commercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and your request is not for a commercial use, HHS will charge you only for the duplication of documents. Also, HHS will not charge you the copying costs for the first 100 pages of duplication.

(c) *Other requesters.* If your request is not the kind described by paragraph (a) or (b) of this section, then HHS will charge you only for the search and the duplication. Also, we will not charge you for the first two hours of search time or for the copying costs of the first 100 pages of duplication.