

Office of Management and Budget

§ 1305.3

for an expeditious resolution of allegations that may be damaging to his reputation.

(i) *Hearing rights.* The hearing shall include, as a minimum, the right to represent oneself or to be represented by counsel; the right to introduce and examine witnesses and to submit physical evidence; the right to confront and cross-examine adverse witnesses; the right to present oral argument; and, on request, the right to have a transcript or recording of the proceedings.

(j) *Burden of proof.* OMB has the burden of proof and must establish substantial evidence of a violation.

(k) *Decision.* The hearing examiner shall make a decision based exclusively on matters of record in the proceedings. All findings of fact and conclusions of law relevant to the matters at issue shall be set forth in the decision.

(l) *Appeal within OMB.* Within 30 days of the date of the hearing examiner's decision, either party may appeal the decision to the Director. The Director shall make a decision on the appeal based solely on the record of the proceedings or on those portions of the record agreed to by the parties to limit the issues. If the Director modifies or reverses the hearing examiner's decision, he shall specify the findings of fact and conclusions of law that are different from those of the hearing examiner.

(m) *Administrative sanctions.* Administrative sanctions may be taken if the former Government employee fails to request a hearing after receipt of adequate notice or if a final administrative determination of a violation of 18 U.S.C. 207 (a), (b) or (c) or regulations promulgated thereunder has been made. The Director may prohibit the former Government employee from appearance or communication with OMB on behalf of another for a period not to exceed five years (5 CFR 737.27(a)(9)(i)) or take other appropriate disciplinary action (5 CFR 737.27(a)(9)(ii)).

(n) *Judicial review.* Any person found by an OMB administrative decision to have participated in a violation of 18 U.S.C. 207 (a), (b) or (c) or regulations promulgated thereunder may seek judicial review of the administrative decision.

PART 1305—RELEASE OF OFFICIAL INFORMATION, AND TESTIMONY BY OMB PERSONNEL AS WITNESSES, IN LITIGATION

Sec.

1305.1 Purpose and scope.

1305.2 Production prohibited unless approved.

1305.3 Procedures in the event of a demand for disclosure.

1305.4 Procedure in the event of an adverse ruling.

1305.5 No private right of action.

AUTHORITY: 31 U.S.C. 502.

SOURCE: 62 FR 29285, May 30, 1997, unless otherwise noted.

§ 1305.1 Purpose and scope.

This part contains the regulations of the Office of Management and Budget (OMB) concerning procedures to be followed when, in litigation (including administrative proceedings), a subpoena, order or other demand (hereinafter in this part referred to as a "demand") of a court or other authority is issued for the production or disclosure of:

(a) Any material contained in the files of OMB;

(b) Any information relating to materials contained in the files of OMB; or

(c) Any information or material acquired by any person while such person was an employee of OMB as a part of the performance of the person's official duties or because of the person's official status.

§ 1305.2 Production prohibited unless approved.

No employee or former employee of OMB shall, in response to a demand of a court or other authority, produce any material contained in the files of OMB, disclose any information relating to materials contained in the files of OMB, or disclose any information or produce any material acquired as part of the performance of the person's official duties, or because of the person's official status, without the prior approval of the General Counsel.

§ 1305.3 Procedures in the event of a demand for disclosure.

(a) Whenever a demand is made upon an employee or former employee of

§ 1305.4

OMB for the production of material or the disclosure of information described in §1305.2, he shall immediately notify the General Counsel. If possible, the General Counsel shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If information or material is sought by a demand in any case or matter in which OMB is not a party, an affidavit (or, if that is not feasible, a statement by the party seeking the information or material, or by his attorney) setting forth a summary of the information or material sought and its relevance to the proceeding, must be submitted before a decision is made as to whether materials will be produced or permission to testify or otherwise provide information will be granted. Any authorization for testimony by a present or former employee of OMB shall be limited to the scope of the demand as summarized in such statement.

(c) If response to a demand is required before instructions from the General Counsel are received, an attorney designated for that purpose by OMB shall appear, and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration by the General Counsel. The court or other authority

5 CFR Ch. III (1–12 Edition)

shall be requested respectfully to stay the demand pending receipt of the requested instructions from the General Counsel.

(Approved by the Office of Management and Budget under control number 0348–0056)

§ 1305.4 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with §1305.3(c) pending receipt of instructions from the General Counsel, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand (*United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)).

(Approved by the Office of Management and Budget under control number 0348–0056)

§ 1305.5 No private right of action.

This part is intended only to provide guidance for the internal operations of OMB, and is not intended to, and does not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party against the United States.