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Counsel (OSC) in processing requests for records under the Freedom of Information Act (FOIA), as amended, at 5 U.S.C. 552. These rules and procedures should be read together with the FOIA, which provides additional information about access to agency records. Further information about the FOIA and access to OSC records is available on the FOIA page of OSC's Web site (*http://www.osc.gov/foia.htm*). Information routinely provided to the public as part of a regular OSC activity—for example, forms, press releases issued by the public affairs officer, records published on the agency's Web site (*http://www.osc.gov*), or public lists maintained at OSC headquarters offices pursuant to 5 U.S.C. 1219—may be requested and provided to the public without following this part. This part also addresses responses to demands by a court or other authority to an employee for production of official records or testimony in legal proceedings.

§ 1820.2 Requirements for making FOIA requests.

(a) *How made and addressed.* A request for OSC records under the FOIA should be made by writing to the agency. The request should be sent by regular mail addressed to: FOIA Officer, U.S. Office of Special Counsel, 1730 M Street, N.W. (Suite 218), Washington, DC 20036–4505. Such requests may also be faxed to the FOIA Officer at the number provided on the FOIA page of OSC's web site (see §1820.1). For the quickest handling, both the request letter and envelope or any fax cover sheet should be clearly marked ''FOIA Request.'' Whether sent by mail or by fax, a FOIA request will not be considered to have been received by OSC until it reaches the FOIA Officer.

(b) *Description of records sought.* Requesters must describe the records sought in enough detail for them to be located with a reasonable amount of effort. When requesting records about an OSC case file, the case file number, name, and type (for example, prohibited personnel practice, Hatch Act, USERRA or other complaint; Hatch Act advisory opinion; or whistleblower disclosure) should be provided, if known. Whenever possible, requests should describe any particular record sought, such as the date, title or name, author, recipient, and subject matter.

(c) *Agreement to pay fees.* Making a FOIA request shall be considered an agreement by the requester to pay all applicable fees chargeable under §1820.7, up to and including the amount of $25.00, unless the requester asks for a waiver of fees. When making a request, a requester may specify a willingness to pay a greater or lesser amount.

§ 1820.3 Consultations and referrals.

When OSC receives a FOIA request for a record in the agency's possession, it may determine that another Federal agency is better able to decide whether or not the record is exempt from disclosure under the FOIA. If so, OSC will either:

(a) Respond to the request for the record after consulting with the other agency and with any other agency that has a substantial interest in the record; or

(b) Refer the responsibility for responding to the request to the other agency deemed better able to determine whether to disclose it. Consultations and referrals will be handled according to the date that the FOIA request was initially received by the first agency.

§ 1820.4 Timing of responses to requests.

(a) *In general.*OSC ordinarily will respond to FOIA requests according to their order of receipt. In determining which records are responsive to a request, OSC ordinarily will include only records in its possession as of the date on which it begins its search for them. If any other date is used, OSC will inform the requester of that date.

(b) *Multitrack processing.* (1) OSC may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request.

(2) When using multitrack processing, OSC may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the faster track(s).

(c) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever OSC has established to its satisfaction that:

(i) Failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) With respect to a request made by a person primarily engaged in disseminating information, an urgency exists to inform the public about an actual or alleged federal government activity; or

(iii) Records requested relate to an appeal that is pending before, or that the requester faces an imminent deadline for filing with, the Merit Systems Protection Board or other administrative tribunal or a court of law, seeking personal relief pursuant to a complaint filed by the requester with OSC, or referred to OSC pursuant to title 38 of the U.S. Code.

(2) A request for expedited processing must be made in writing and sent to OSC's FOIA Officer. Such a request will not be considered to have been received until it reaches the FOIA Officer.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (c)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. The formality of certification may be waived as a matter of OSC's administrative discretion.

(4) OSC shall decide whether to grant a request for expedited processing and notify the requester of its decision within 10 calendar days of the FOIA Officer's receipt of the request. If the request for expedited processing is granted, the request for records shall be processed as soon as practicable. If a request for expedited processing is denied, any administrative appeal of that decision shall be acted on expeditiously.

(d) *Aggregated requests.* OSC may aggregate multiple requests by the same requester, or by a group of requesters acting in concert, if it reasonably believes that such requests actually constitute a single request involving unusual circumstances, as defined by the FOIA, supporting an extension of time to respond, and the requests involve clearly related matters.

§ 1820.5 Responses to requests.

(a) *General.* Ordinarily, OSC shall have 20 business days from when a request is received to determine whether to grant or deny the request. Once OSC makes a determination to grant a FOIA request for records, or makes an adverse determination denying a request in any respect, it will notify the requester in writing. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited treatment.

(b) *Adverse determinations.* A notification to a requester of an adverse determination on a request shall include:

(1) A brief statement of the reason(s) for the denial of the request, including any FOIA exemption applied by OSC in denying the request; and

(2) A statement that the denial may be appealed under section 1820.6(a), with a description of the requirements of that subsection.

§ 1820.6 Appeals.

(a) *Appeals of adverse determinations.* A requester may appeal an adverse determination denying a FOIA request in any respect to the Legal Counsel and Policy Division, U.S. Office of Special Counsel, 1730 M Street, NW., (Suite 218), Washington, DC 20036–4505. The appeal must be in writing, and sent by regular mail or by fax. The appeal must be received by the Legal Counsel and Policy Division within 45 days of