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the Council shall return it to the requester and advise the requester in what respect the request is deficient. The requester may then resubmit the request, which the Council shall treat as a new request. A determination by the Council that a request is deficient in any respect is not a denial of a request for records, and such determinations are not subject to appeal.

(d) *Processing of request containing technical deficiency*. Notwithstanding paragraph (c) of this section, the Council shall not reject a request solely due to one or more technical deficiencies contained in the request. For the purposes of this paragraph, the term ''technical deficiency'' means an error or omission with respect to an item of information required by paragraph (b) of this section which, by itself, does not prevent that part of the request from conforming to the applicable requirement, and includes without limitation a non-material error relating to the contact information for the requester, or similar error or omission regarding the date, title or name, author, recipient, or subject matter of the record requested.

§ 1301.6 Responsibility for responding to requests for Council records.

(a) *In general*. In determining which records are responsive to a request, the Council ordinarily will include only information contained in records that the Council maintains, or are in its possession and control, as of the date the Council begins its search for responsive records. If any other date is used, the Council shall inform the requester of that date.

(b) *Authority to grant or deny requests*. The records officer shall be authorized to make an initial determination to grant or deny, in whole or in part, a request for a record.

(c) *Referrals*. When the Council receives a request for a record or any portion of a record in its possession that originated with another agency, including but not limited to a constituent agency of the Council, it shall:

(1) In the case of a record originated by a federal agency subject to the FOIA, refer the responsibility for responding to the request regarding that record to the originating agency to determine whether to disclose it; and

(2) In the case of a record originated by a state agency, respond to the request after giving notice to the originating state agency and a reasonable opportunity to provide input or to assert any applicable privileges.

(d) *Notice of referral*. Whenever the Council refers all or any part of the responsibility for responding to a request to another agency, the Council shall notify the requester of the referral and inform the requester of the name of each agency to which the request has been referred and of the part of the request that has been referred.

§ 1301.7 Timing of responses to requests for Council records.

(a) *In general*. Except as set forth in paragraphs (b) through (d) of this section, the Council shall respond to requests according to their order of receipt.

(b) *Multitrack processing*. (1) The Council may establish tracks to process separately simple and complex requests. The Council may assign a request to the simple or complex track based on the amount of work and/or time needed to process the request. The Council shall process requests in each track according to the order of their receipt.

(2) The Council may provide a requester in its complex track with an opportunity to limit the scope of the request to qualify for faster processing within the specified limits of the simple track(s).

(c) *Requests for expedited processing*. (1) The Council shall respond to a request out of order and on an expedited basis whenever a requester demonstrates a compelling need for expedited processing in accordance with the requirements of this paragraph (c).

(2) *Form and content of a request for expedited processing*. A request for expedited processing shall be made as follows:

(i) A request for expedited processing shall be made in writing or via the Internet and submitted as part of the initial request for records. When a request for records includes a request for expedited processing, both the envelope and the request itself must be clearly

marked ''Expedited Processing Requested.'' A request for expedited processing that is not clearly so marked, but satisfies the requirements in §1301.7(c)(2)(ii) and (iii), may nevertheless be granted.

(ii) A request for expedited processing shall contain a statement that demonstrates a compelling need for the requester to obtain expedited processing of the requested records. A ''compelling need'' may be established under the standard in either paragraph (c)(2)(ii)(A) or (B) of this section by demonstrating that:

(A) Failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester shall fully explain the circumstances warranting such an expected threat so that the Council may make a reasoned determination that a delay in obtaining the requested records would pose such a threat; or

(B) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity. A person ''primarily engaged in disseminating information'' does not include individuals who are engaged only incidentally in the dissemination of information. The standard of ''urgency to inform'' requires that the records requested pertain to a matter of current exigency to the American general public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the American general public. The requester must adequately explain the matter or activity and why the records sought are necessary to be provided on an expedited basis.

(iii) The requester shall certify the written statement that purports to demonstrate a compelling need for expedited processing to be true and correct to the best of the requester's knowledge and belief. The certification must be in the form prescribed by 28 U.S.C. 1746: ''I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date].''

(3) *Determinations of requests for expedited processing.* Within ten (10) calendar days of its receipt of a request for expedited processing, the Council shall decide whether to grant the request and shall notify the requester of the determination in writing.

(4) *Effect of granting expedited processing.* If the Council grants a request for expedited processing, then the Council shall give the expedited request priority over non-expedited requests and shall process the expedited request as soon as practicable. The Council may assign expedited requests to their own simple and complex processing tracks based upon the amount of work and/or time needed to process them. Within each such track, an expedited request shall be processed in the order of its receipt.

(5) *Appeals of denials of requests for expedited processing.* If the Council denies a request for expedited processing, then the requester shall have the right to submit an appeal of the denial determination in accordance with §1301.11. The Council shall communicate this appeal right as part of its written notification to the requester denying expedited processing. The requester shall clearly mark its appeal request and any envelope that encloses it with the words ''Appeal for Expedited Processing.''

(d) *Time period for responding to requests for records.* Ordinarily, the Council shall have twenty (20) days (excepting Saturdays, Sundays, and legal public holidays) from when a request that satisfies the requirements of §1301.5(b) is received by the Council to determine whether to grant or deny a request for records. The twenty-day time period set forth in this paragraph shall not be tolled by the Council except that the Council may:

(1) Make one reasonable demand to the requester for clarifying information about the request and toll the twenty-day time period while it awaits the clarifying information; or

(2) Toll the twenty-day time period while awaiting receipt of the requester's response to the Council's request for clarification regarding the assessment of fees.

(e) *Unusual circumstances.* (1) *In general.* Except as provided in paragraph

(e)(2) of this section, if the Council determines that, due to unusual circumstances, it cannot respond either to a request within the time period set forth in paragraph (d) of this section or to an appeal within the time period set forth in § 1301.11, the Council may extend the applicable time periods by informing the requester in writing of the unusual circumstances and of the date by which the Council expects to complete its processing of the request or appeal. Any extension or extensions of time shall not cumulatively total more than ten (10) days (exclusive of Saturdays, Sundays, and legal public holidays).

(2) *Additional time.* If the Council determines that it needs additional time beyond a ten-day extension to process the request or appeal, then the Council shall notify the requester and provide the requester with an opportunity to limit the scope of the request or appeal or to arrange for an alternative time frame for processing the request or appeal or a modified request or appeal. The requester shall retain the right to define the desired scope of the request or appeal, as long as it meets the requirements contained in this part.

(3) As used in this paragraph (e), ''unusual circumstances'' means, but only to the extent reasonably necessary to the proper processing of the particular requests:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components or component offices having substantial subject matter interest therein.

(4) Where the Council reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated. The Council may disaggregate and treat as separate requests a single request that has multiple unrelated components. The Council shall notify the requester if a request is disaggregated.

§ 1301.8 Responses to requests for Council records.

(a) *Acknowledgement of requests.* Upon receipt of a request that meets the requirements of § 1301.5(b), the Council ordinarily shall assign to the request a unique tracking number and shall send an acknowledgement letter or email to the requester that contains the following information:

(1) A brief description of the request;

(2) The applicable request tracking number;

(3) The date of receipt of the request, as determined in accordance with § 1301.5(c); and

(4) A confirmation, with respect to any fees that may apply to the request pursuant to § 1301.12, that the requester has sought a waiver or reduction in such fees, has agreed to pay any and all applicable fees, or has specified an upper limit (of not less than $25) that the requester is willing to pay in fees to process the request.

(b) *Initial determination to grant or deny a request.* (1) *In general.* The Council records officer (as designated in § 1301.6(b)) shall make initial determinations to grant or to deny in whole or in part requests for records.

(2) *Granting of request.* If the request is granted in full or in part, the Council shall provide the requester with a copy of the releasable records, and shall do so in the format specified by the requester to the extent that the records are readily producible by the Council in the requested format. The Council also shall send the requester a statement of the applicable fees, broken down by search, review and duplication fees, either at the time of the determination or shortly thereafter.

(3) *Denial of requests.* If the Council determines that the request for records should be denied in whole or in part,