

to be made regularly available for public inspection and copying are addressed in §102.2(c)). For the quickest handling, the request letter and envelope should be marked "Freedom of Information Act Request." For requests for records about oneself, §102.24 contains additional requirements. For requests for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to the requester or proof that individual is deceased (for example, a copy of a death certificate or an obituary) facilitates processing the request.

(b) The records requested must be described in enough detail to enable USPTO personnel to locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record, and the name and location of the office where the record is located. Also, if records about a court case are sought, the title of the case, the court in which the case was filed, and the nature of the case should be included. If known, any file designations or descriptions for the requested records should be included. In general, the more specifically the request describes the records sought, the greater the likelihood that USPTO will locate those records. If the FOIA Officer determines that a request does not reasonably describe records, the FOIA Officer will inform the requester what additional information is needed or why the request is otherwise insufficient. The FOIA Officer also may give the requester an opportunity to discuss the request so that it may be modified to meet the requirements of this section.

[65 FR 52917, Aug. 31, 2000, as amended at 68 FR 14338, Mar. 25, 2003]

#### §102.5 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraph (b) of this section, the USPTO will process FOIA requests directed to USPTO. In determining records responsive to a request, the FOIA Officer shall include only those records within USPTO's possession and

control as of the date the FOIA Officer receives the request.

(b) *Consultations and referrals.* If the FOIA Officer receives a request for a record in USPTO's possession in which another Federal agency subject to FOIA has the primary interest, the FOIA Officer shall refer the record to that agency for direct response to the requester. The FOIA Officer shall consult with another Federal agency before responding to a requester if the FOIA Officer receives a request for a record in which another Federal agency subject to FOIA has a significant interest, but not the primary interest; or another Federal agency not subject to FOIA has the primary interest or a significant interest. Ordinarily, the agency that originated a record will be presumed to have the primary interest in it.

(c) *Notice of referral.* Whenever a FOIA Officer refers a document to another Federal agency for direct response to the requester, the FOIA Officer will ordinarily notify the requester in writing of the referral and inform the requester of the name of the agency to which the document was referred.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals shall be handled according to the date the FOIA request was received by the first Federal agency.

(e) *Agreements regarding consultations and referrals.* The FOIA Officer may make agreements with other Federal agencies to eliminate the need for consultations or referrals for particular types of records.

#### §102.6 Time limits and expedited processing.

(a) *In general.* The FOIA Officer ordinarily shall respond to requests according to their order of receipt.

(b) *Initial response and appeal.* Subject to paragraph (c)(1) of this section, an initial response shall be made within 20 working days (*i.e.*, excluding Saturdays, Sundays, and legal public holidays) of the receipt of a request for a record under this part by the proper FOIA Officer identified in accordance with §102.5(a), and an appeal shall be decided within 20 working days of its receipt by the Office of the General Counsel.

(c) *Unusual circumstances.* (1) In unusual circumstances as specified in paragraph (c)(2) of this section, the FOIA Officer may extend the time limits in paragraph (b) of this section by notifying the requester in writing as soon as practicable of the unusual circumstances and of the date by which processing of the request is expected to be completed. Extensions of time for the initial determination and extensions on appeal may not exceed a total of ten working days, unless the requester agrees to a longer extension, or the FOIA Officer provides the requester with an opportunity either to limit the scope of the request so that it may be processed within the applicable time limit, or to arrange an alternative time frame for processing the request or a modified request.

(2) As used in this section, *unusual circumstances* means, but only to the extent reasonably necessary to properly process the particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments 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 that are the subject of a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another Federal agency having a substantial interest in the determination of the request.

(3) Unusual circumstances do not include a delay that results from a predictable workload of requests, unless USPTO demonstrates reasonable progress in reducing its backlog of pending requests. Refusal to reasonably modify the scope of a request or arrange an alternate time frame may affect a requester's ability to obtain judicial review.

(4) If the FOIA Officer 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, the FOIA Officer may aggregate them. Multiple requests involving unrelated matters will not be aggregated.

(d) *Multitrack processing.* (1) The FOIA Officer may use two or more processing tracks by distinguishing between simple and more complex requests based on the number of pages involved, or some other measure of the amount of work and/or time needed to process the request, and whether the request qualifies for expedited processing as described in paragraph (e) of this section.

(2) The FOIA Officer may provide requesters in a slower track with an opportunity to limit the scope of their requests in order to qualify for faster processing. The FOIA Officer may contact the requester by telephone or by letter, whichever is most efficient in each case.

(e) *Expedited processing.* (1) Requests and appeals shall be taken out of order and given expedited treatment whenever it is determined they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) The loss of substantial due process rights;

(iii) A matter of widespread and exceptional media interest in which there exist questions about the Government's integrity that affect public confidence; or

(iv) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing should be sent to 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 (e)(1)(iv) 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.

A requester within the category described in paragraph (e)(1)(iv) of this section must also establish a particular urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of receipt of a request for expedited processing, the FOIA Officer will decide whether to grant it and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

#### § 102.7 Responses to requests.

(a) *Grants of requests.* If the FOIA Officer makes a determination to grant a request in whole or in part, the FOIA Officer will notify the requester in writing. The FOIA Officer will inform the requester in the notice of any fee charged under § 102.11 and disclose records to the requester promptly upon payment of any applicable fee. Records disclosed in part shall be marked or annotated to show each applicable FOIA exemption and the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if feasible.

(b) *Adverse determinations of requests.* If the FOIA Officer makes an adverse determination regarding a request, the FOIA Officer will notify the requester of that determination in writing. An adverse determination is a denial of a request in any respect, namely: 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 FOIA (except that a determination under § 102.11(j) that records are to be made available under a fee statute other than FOIA is

not an adverse determination); a determination against the requester on any disputed fee matter, including a denial of a request for a fee waiver; or a denial of a request for expedited treatment. Each denial letter shall be signed by the FOIA Officer and shall include:

(1) The name and title or position of the denying official;

(2) A brief statement of the reason(s) for the denial, including applicable FOIA exemption(s);

(3) An estimate of the volume of records or information withheld, in number of pages or some other reasonable form of estimation. This estimate need not be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable FOIA exemption; and

(4) A statement that the denial may be appealed, and a list of the requirements for filing an appeal under § 102.10(b).

#### § 102.9 Business Information.

(a) *In general.* Business information obtained by USPTO from a submitter will be disclosed under FOIA only under this section.

(b) *Definitions.* For the purposes of this section:

(1) *Business information* means commercial or financial information, obtained by USPTO from a submitter, which may be protected from disclosure under FOIA exemption 4 (5 U.S.C. 552(b)(4)).

(2) *Submitter* means any person or entity outside the Federal Government from whom USPTO obtains business information, directly or indirectly. The term includes corporations; state, local and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information should designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under FOIA exemption 4. These designations will expire ten years after the date of the submission unless the