

## § 265.10

(5) *Commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request properly belongs in this category, the Postal Service will look to the use to which the requester will put the documents requested. If the use is not clear from the request itself, or if there is reasonable cause to doubt the requester's stated use, the custodian shall seek additional clarification from the requester before assigning the request to this category.

(6) *Educational institution* refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis as that term is defined in paragraph (h)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Requests by news organizations for information that will be used for the furtherance of the organization's commercial interests, rather than for the dissemination of news to the public, shall be considered commercial use requests. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. A

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"freelance" journalist will be regarded as a representative of the news media if he can demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. This may be demonstrated either by a publication contract with the news organization or by the past publication record of the requester.

[52 FR 13668, Apr. 24, 1987, as amended at 53 FR 49983, Dec. 13, 1988; 54 FR 7417, Feb. 21, 1989. Redesignated at 56 FR 56934, Nov. 7, 1991, and amended at 56 FR 57805, Nov. 14, 1991; 59 FR 11550, Mar. 11, 1994; 60 FR 57345, Nov. 15, 1995; 64 FR 41290, July 30, 1999; 68 FR 56559, Oct. 1, 2003; 69 FR 34935, June 23, 2004]

### § 265.10 Annual report.

A report concerning the administration of the Freedom of Information Act and this part will be submitted to the Attorney General of the United States on or before February 1 of each year, with the first such report, for fiscal year 1998, due on or before February 1, 1999. Data for the report will be collected on the basis of fiscal year that begins on October 1 of each year. The Attorney General, in consultation with the Director, Office of Management and Budget, will prescribe the form and content of the report. The report will be made available to the public at the headquarters Library and on the Postal Service's world wide web site at <http://www.usps.com/foia>.

[63 FR 6483, Feb. 9, 1998, as amended at 68 FR 56559, Oct. 1, 2003]

### § 265.11 Compliance with subpoena duces tecum, court orders, and summonses.

(a) *Compliance with subpoena duces tecum.* (1) Except as required by Part 262, produce other records of the Postal Service only in compliance with a subpoena duces tecum or appropriate court order.

(2) Time, leave, and payroll records of postal employees are subject to production when a subpoena duces tecum or appropriate court order has been properly served. The custodian of the records may designate a postal employee to present the records. The presentation by a designee rather than the employee named in the subpoena or

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court order must meet with the approval of the attorneys for each side. In addition, such records may be released if authorized in writing by the employee.

(3) If the subpoena involves a job-connected injury, the records are under the exclusive jurisdiction of the Office of Workers' Compensation Programs, Department of Labor. Requests for authorization to produce these records shall be addressed to: Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, DC 20210-0001. Also notify the attorney responsible for the issuance of the subpoena or court order.

(4) Employee medical records are primarily under the exclusive jurisdiction of the U.S. Civil Service Commission. The Commission has delegated authority to the Postal Service and to the Commission's Regional Directors to release medical information, in response to proper requests and upon competent medical advice, in accordance with the following criteria:

(i) Except in response to a subpoena or court order, do not release any medical information about an employee to any non-Federal entity or individual without authorization from the employee.

(ii) With authorization from the employee, the Area, Information Systems Service Center, or Chief Field Counsel will respond as follows to a request from a non-Federal source for medical information:

(a) If, in the opinion of a Federal medical officer, the medical information indicates the existence of a malignancy, a mental condition, or other condition about which a prudent physician would hesitate to inform a person suffering from such a condition as to its exact nature and probable outcome, do not release the medical information to the employee or to any individual designated by him, except to a physician, designated by the employee in writing. If a subpoena or court order was issued, the responding official shall caution the moving party as to the possible dangers involved if the medical information is divulged.

(b) If, in the opinion of a Federal medical officer, the medical information does not indicate the presence of

any condition which would cause a prudent physician to hesitate to inform a person of the exact nature and probable outcome of his condition, release it in response to a subpoena or court order, or to the employee or to any person, firm, or organization he authorizes in writing.

(c) If a Federal medical officer is not available, refer the request to the Civil Service Commission regional office with the medical certificates or other medical reports concerned.

(5) Do not release any records containing information as to the employee's security or loyalty.

(6) Honor subpoenas or court orders only when disclosure is authorized.

(7) When authorized to comply with a subpoena duces tecum, do not leave the original records with the court.

(b) [Reserved]

[40 FR 7331, Feb. 19, 1975, as amended at 51 FR 26386, July 23, 1986; 56 FR 55824, Oct. 30, 1991. Redesignated at 56 FR 56934, Nov. 7, 1991; 60 FR 36712, July 18, 1995; 60 FR 57345, Nov. 15, 1995]

### **§ 265.12 Demands for testimony or records in certain legal proceedings.**

(a) *Scope and applicability of this section.* (1) This section establishes procedures to be followed if the Postal Service or any Postal Service employee receives a demand for testimony concerning or disclosure of:

(i) Records contained in the files of the Postal Service;

(ii) Information relating to records contained in the files of the Postal Service; or

(iii) Information or records acquired or produced by the employee in the course of his or her official duties or because of the employee's official status.

(2) This section does not create any right or benefit, substantive or procedural, enforceable by any person against the Postal Service.

(3) This section does not apply to any of the following:

(i) Any legal proceeding in which the United States is a party;

(ii) A demand for testimony or records made by either House of Congress or, to the extent of matter within