

Miscellaneous Agencies

§ 456.14

the requirements of Executive Order 12600 (Predisclosure Notification Procedures for Confidential Commercial Information); or

(4) The designation made by the Submitter under paragraph (b) of this section appears obviously frivolous in which case the NCPC shall, within a reasonable time prior to a specified disclosure date, give the Submitter written notice of any final decision to disclose the Confidential Commercial Information.

(h) Whenever a Requester files a lawsuit seeking to compel the disclosure of Confidential Commercial Information, the NCPC shall promptly notify the Submitter.

(i) Whenever the NCPC provides a Submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the NCPC shall also notify the Requester. Whenever the NCPC notifies a Submitter of its intent to disclose Requested Information under paragraph (f) of this section, the NCPC shall also notify the Requester. Whenever a Submitter files a lawsuit seeking to prevent the disclosure of Confidential Commercial Information, the NCPC shall notify the Requester.

§ 456.13 Appeals.

(a) An appeal of an Adverse Determination shall be made in writing to the Chairman of the Commission (Chairman). An appeal may be submitted via U.S. mail or other type of manual delivery service or via email or facsimile within 30 Workdays of the date of a notice of an Adverse Determination. To facilitate handling of an appeal, the words Freedom of Information Act Appeal shall appear prominently on the transmittal envelope or the subject line of a Request sent via electronic-mail or facsimile.

(b) An appeal of an Adverse Determination shall include a detailed statement of the legal, factual or other basis for the Requester's objections to an Adverse Determination; a daytime phone number or email address where the Requester can be reached if the NCPC requires additional information or clarification regarding the appeal; copies of the initial Request and the NCPC's written response; and for an

Adverse Determination of a Request for Expedited Processing or a Fee Waiver, a demonstration of compliance with the requirements of §§ 456.9(a) and (c) or 456.14(a) through (c) respectively.

(c) The Chairman shall respond to an appeal of an Adverse Determination in writing within 20 Workdays of receipt. If the Chairman grants the appeal, the Chairman shall notify the Requester, and the NCPC shall make available copies of the Requested Records promptly thereafter upon receipt of the appropriate fee determined in accordance with § 456.14. If the Chairman denies the appeal in whole or in part, the letter to the Requester shall state the reason(s) for the denial, including the FOIA exemptions(s) applied; a statement that the decision is final; and notification of the Requester's right to seek judicial review of the denial in the District Court of the United States in either the locale in which the Requester resides, the locale in which the Requester has his/her principal place of business, or in the District of Columbia. The Chairman's letter of denial shall also advise the Requester that the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between a Requester and the NCPC as a non-exclusive alternative to litigation. Contact information for OGIS can be obtained from the OGIS Web site at ogis@nara.gov.

(d) The NCPC shall not act on an appeal of an Adverse Determination if the underlying FOIA Request becomes the subject of FOIA litigation.

(e) A party seeking court review of an Adverse Determination must first appeal the decision under this section to NCPC.

§ 456.14 Fees.

(a) In responding to FOIA Requests, the NCPC shall charge the following fees unless a Fee Waiver has been granted under § 456.15.

(1) Search Fees shall be as follows:

(i) Search fees shall be charged for all Requests, subject to the limitations of paragraph (b) of this section. The NCPC may charge for time spent conducting a Search even if it fails to locate any responsive Records or if the