

§9.27

10 CFR Ch. I (1–1–16 Edition)

Advisory Committee has primary responsibility. If, as a result of the review specified in paragraph (f) of this section, the Executive Assistant to the Secretary of the Commission finds that agency records originated by or transmitted to the Commission or a Commissioner, or records originated by, or for which the Office of the Secretary or an Advisory Committee has primary responsibility, are exempt from disclosure and should be denied in whole or in part, and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the Executive Assistant to the Secretary of the Commission will submit that finding to the Freedom of Information Act and Privacy Act Officer who will notify the requester of the determination in the manner provided in §9.27.

(3) *Initial disclosure determination for records originated by, or for which the Office of the General Counsel has principal responsibility.* If, as a result of the review specified in paragraph (f) of this section, the General Counsel finds that agency records that are originated by, or for which the Office of the General Counsel has primary responsibility, are exempt from disclosure and should be denied in whole or in part, and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the General Counsel will submit that finding to the Freedom of Information Act and Privacy Act Officer who will notify the requester of the determination in the manner provided in §9.27.

(h) *Initial disclosure determinations on requests for records other than those for which the initial disclosure determination is made by the Assistant Inspector General for Investigations, the Executive Assistant to the Secretary of the Commission, or the General Counsel.* If, as a result of the review specified in paragraph (f) of this section, the head of the responsible office finds that agency records other than those described in paragraph (g) of this section, that are originated by, or for which the office has primary responsibility, should be denied in whole or in part, the head of the office will submit that finding to the Freedom of Information Act and Privacy Act Officer, who will, in consultation with the Office of the General

Counsel, make an independent determination whether the agency records should be denied in whole or in part. If the Freedom of Information Act and Privacy Act Officer determines that the agency records sought are exempt from disclosure and disclosure of the records is contrary to the public interest and will adversely affect the rights of any person, the Freedom of Information Act and Privacy Act Officer will notify the requester of the determination in the manner provided in §9.27.

(i) *Records and information originated by another Federal agency.* If a requested record is located that was originated or contains information originated by another Federal Government agency, or deals with subject matter over which an agency other than the NRC has exclusive or primary responsibility, the NRC will promptly refer the record to that Federal Government agency for disposition or for guidance regarding disposition.

(j) If the NRC does not respond to a request within the 20 working-day period, or within the extended periods described in paragraph (b) of this section, the requester may treat that delay as a denial of the request and immediately appeal as provided in §9.29(a) or sue in a Federal District Court as noted in §9.29(c).

[63 FR 2876, Jan. 20, 1998, as amended at 70 FR 34306, June 14, 2005]

§9.27 Form and content of responses.

(a) When the NRC has located a requested agency record and has determined to disclose the agency record, the Freedom of Information Act and Privacy Act Officer will promptly furnish the agency record or notify the requester where and when the agency record will be available for inspection and copying. The NRC will also advise the requester of any applicable fees under §§9.35 and 9.37. The NRC will routinely make copies of non-sensitive records disclosed in response to Freedom of Information Act requests publicly available through the Agencywide Document Access and Management System (ADAMS) located in the NRC Library that can be accessed via the NRC Web site at <http://www.nrc.gov/NRC/reading-rm/adams.html>. Records that contain information personal to

the requester, involve matters that are not likely to be of public interest to anyone other than the requester or contain privileged or confidential information that should only be disclosed to the requester will not be made publicly available on the NRC Web site.

(b) When the NRC denies access to a requested agency record or denies a request for expedited processing or for a waiver or reduction of fees, the Freedom of Information Act and Privacy Act Officer will notify the requester in writing. The denial will include as appropriate—

(1) The reason for the denial;

(2) A reference to the specific exemption under the Freedom of Information Act, or other appropriate reason, and the Commission's regulations authorizing the denial;

(3) The name and title or position of each person responsible for the denial of the request, including the head of the office recommending denial of the record;

(4) A statement stating why the request does not meet the requirements of § 9.41 if the request is for a waiver or reduction of fees; and

(5) A statement that the denial may be appealed within 30 calendar days from the date of the denial to the Executive Director for Operations, to the Secretary of the Commission, or to the Inspector General, as appropriate.

(c) The Freedom of Information Act and Privacy Act Officer will maintain a copy of each letter granting or denying requested agency records, denying a request for expedited processing, or denying a request for a waiver or reduction of fees in accordance with the NRC Comprehensive Records Disposition Schedule.

[63 FR 2876, Jan. 20, 1998, as amended at 70 FR 34307, June 14, 2005; 76 FR 72084, Nov. 22, 2011]

§ 9.28 Predisclosure notification procedures for information containing trade secrets or confidential commercial or financial information.

(a) *Notice of opportunity to object to NRC's initial disclosure determination.* Whenever NRC makes an initial determination that information should be disclosed in response to a Freedom of Information Act request or a Freedom

of Information Act appeal which has been designated by the submitter as trade secrets or confidential commercial or financial information, or the NRC believes the information contains such trade secrets or confidential commercial or financial information, the NRC will give the submitter of the information written notice of NRC's initial determination, or NRC's need for information on which to base a determination, and an opportunity to object. The notice must describe the business information requested or include copies of the requested records or record portions containing the information.

(b) *Submitter objection to disclosure.* The submitter will be allowed 30 calendar days from date of the notice described in paragraph (a) of this section to object to disclosure, unless the Commission determines that a shorter period of time to respond is necessary in a particular instance. If a submitter has any objection to disclosure, the submitter must provide a detailed written statement. The statement must specify all grounds that support why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified in the notice, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received until after the date specified for response will not be considered unless that date is extended by the Freedom of Information Act and Privacy Act Officer upon request by the submitter.

(c) *Notice of final decision to disclose.* The NRC shall consider a submitter's written statement and specific grounds for nondisclosure. If the NRC agrees to withhold the information from public disclosure, the NRC will inform the requester in the manner described in § 9.27 of the agency decision to deny access to the requested information. Whenever the NRC denies the submitter's request for nondisclosure and decides to disclose the information, the NRC shall give the submitter written notice, which must include:

(1) A statement of the reason(s) for the determination;