

### § 4.3

(c) The Department and its components shall maintain and make available electronically for public inspection:

(1) A current index providing information for the public as to any matter that is issued, adopted, or promulgated after July 4, 1997, and that is retained as a record and is required to be made available or published. Copies of the index are available upon request after payment of the direct cost of duplication;

(2) Copies of records that have been released and that the component that maintains them determines, because of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records;

(3) A general index of the records described in paragraph (c)(2) of this section;

(4) Final opinions and orders, including concurring and dissenting opinions made in the adjudication of cases;

(5) Those statements of policy and interpretations that have been adopted by a component and are not published in the FEDERAL REGISTER; and

(6) Administrative staff manuals and instructions to staff that affect a member of the public.

[79 FR 62558, Oct. 20, 2014]

#### § 4.3 Records under the FOIA.

(a) Records under the FOIA include all Government records, regardless of format, medium or physical characteristics, and electronic records and information, audiotapes, videotapes, Compact Disks, DVDs, and photographs.

(b) In response to a FOIA request, the Department has no obligation to create, compile, or obtain from outside the Department a record to satisfy a request (for example, extrapolating information from existing agency records, reformatting available information, preparing new electronic programs or databases, or creating data through calculations of ratios, proportions, percentages, trends, frequency distributions, correlations, or comparisons). In complying with a request for records (including data and other electronically-stored information), whether the Department creates or compiles records (as by undertaking

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significant programming work) or merely extracts them from an existing database is fact dependent. The Department shall undertake reasonable efforts to search for records stored in electronic format (including data and other electronically-stored information).

(c) Department officials may, upon request, create and provide new records to the public pursuant to statutes that authorize the creation and provision of new records for a fee, such as the first paragraph of 15 U.S.C. 1525, or in accordance with authority otherwise provided by law. Such creation and provision of records is outside the scope of the FOIA.

(d) Components shall preserve all correspondence pertaining to the requests they receive under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by Title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Components shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

[66 FR 65632, Dec. 20, 2001, as amended at 79 FR 62558, Oct. 20, 2014]

#### § 4.4 Requirements for making requests.

(a) *How made and addressed.* The Department has a decentralized system for responding to FOIA requests, with each component designating a FOIA office to process records from that component. All components have the capability to receive requests electronically either through electronic mail (email) or the FOIAonline Web site, <http://www.foiaonline.regulations.gov>. A request for Department records that are not customarily made available to the public as part of the Department's regular informational services (or pursuant to a user fee statute), must be in writing and shall be processed under the FOIA, regardless of whether the FOIA is mentioned in the request. Requests must include the requester's full name and a legible return address. Requesters may also include other contact information, such as an email address and a telephone number. For the

quickest handling, the request (and envelope, if the request is mailed or hand delivered) should be marked “Freedom of Information Act Request.” Requests may be submitted by U.S. mail, delivery service, email, facsimile, or online at the FOIAonline Web site, <http://foiaonline.regulations.gov>. Requests made by mail, delivery service, email, or facsimile should be sent to the Department component identified in Appendix A to this part that maintains those records requested, and should be sent to the addresses, email addresses, or numbers listed in Appendix A to this part or the Department’s Web site, <http://www.doc.gov>.<sup>1</sup> If the proper component cannot be determined, the request should be sent to the central facility identified in Appendix A to this part. The central facility will forward the request to the component(s) it believes most likely to have the requested records. Requests will be considered received for purposes of the 20-day time limit of § 4.6 as of the date it is received by the proper component’s FOIA office.

(b) *Requests for records about an individual or oneself.* For requests for records about oneself, § 4.24 of this part contains additional requirements. For requests for records about another individual, either written authorization signed by the individual permitting disclosure of his or her records to the requester or proof that the individual is deceased (for example, a copy of a death certificate or an obituary) will facilitate processing the request.

(c) *Description of records sought.* A FOIA request must reasonably describe the agency records sought, to enable Department 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

might be found. In addition, 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 of the requested records should be included. As a general rule, the more specifically the request describes the records sought, the greater the likelihood that the Department will be able to locate those records. Before submitting their requests, requesters may contact the component’s FOIA contact to discuss the records they are seeking and to receive assistance in describing the records (contact information for these individuals is contained in Appendix A to this part and on the Department’s Web site, <http://www.doc.gov>). If a component determines that a request does not reasonably describe the records sought, it shall inform the requester what additional information is needed or how the request is otherwise insufficient, to enable the requester to modify the request to meet the requirements of this section. Requesters who are attempting to reformulate or modify such a request may discuss their request with the component’s designated FOIA contact. When a requester fails to provide sufficient detail within 30 calendar days after having been asked to reasonably describe the records sought, the component shall notify the requester in writing that the request has not been properly made, that no further action will be taken, and that the FOIA request is closed. Such a notice constitutes an adverse determination under § 4.7(d) for which components shall follow the procedures for a denial letter under § 4.7(e). In cases where a requester has modified his or her request, the date of receipt for purposes of the 20-day time limit of § 4.6 shall be the date of receipt of the modified request.

[79 FR 62558, Oct. 20, 2014, as amended at 79 FR 68609, Nov. 18, 2014]

#### **§ 4.5 Responsibility for responding to requests.**

(a) *In general.* Except as stated in paragraph (b) of this section, the proper component of the Department to respond to a request for records is the

<sup>1</sup>The United States Patent and Trademark Office (USPTO), which is established as an agency of the United States within the Department of Commerce, operates under its own FOIA regulations at 37 CFR part 102, subpart A. Accordingly, requests for USPTO records, and any appeals thereof, should be sent directly to the USPTO.