

## § 16.8

component. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* A component shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* Whenever a component decides to disclose information over the objection of a submitter, the component shall provide the submitter written notice, which shall include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component shall promptly notify the submitter.

(i) *Requester notification.* The component shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

### § 16.8 Administrative appeals.

(a) *Requirements for making an appeal.* A requester may appeal any adverse determinations to OIP. The contact information for OIP is contained in the FOIA Reference Guide, which is available at [http://www.justice.gov/oip/04\\_3.html](http://www.justice.gov/oip/04_3.html). Appeals can be submitted through the web portal accessible on OIP's Web site. Examples of adverse determinations are provided in § 16.6(d). The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 60 calendar days after the date of the response. The appeal should clearly identify the component's determination that is being appealed and the assigned request number. To facili-

## 28 CFR Ch. I (7-1-16 Edition)

tate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Freedom of Information Act Appeal."

(b) *Adjudication of appeals.* (1) The Director of OIP or designee will act on behalf of the Attorney General on all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, OIP shall take appropriate action to ensure compliance with part 17 of this title.

(c) *Decisions on appeals.* A decision on an appeal must be made in writing. A decision that upholds a component's determination will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation. If a component's decision is remanded or modified on appeal, the requester will be notified of that determination in writing. The component will thereafter further process the request in accordance with that appeal determination and respond directly to the requester.

(d) *When appeal is required.* Before seeking review by a court of a component's adverse determination, a requester generally must first submit a timely administrative appeal.

### § 16.9 Preservation of records.

Each component shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 14 of the National Archives and Records Administration. Records shall not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.