

# Rules and Regulations

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 4

[Docket ID OCC–2010–0008]

RIN 1557–AD22

#### Freedom of Information Act

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its regulations governing the disclosure of information pursuant to requests made under the Freedom of Information Act (FOIA) to reflect changes to the FOIA made by the Openness Promotes Effectiveness in Our National Government Act of 2007 (OPEN Government Act)<sup>1</sup> and to make other changes that update the OCC's FOIA regulations.

**DATES:** *Effective Date:* This final rule is effective May 10, 2010.

**FOR FURTHER INFORMATION CONTACT:** Lee Walzer, Counsel, or Michele Meyer, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090; or Frank Vance, Manager, Disclosure Services and Administrative Operations, Communications Division, (202) 874–5378.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The OPEN Government Act: Revised definitions contained in the FOIA; changed standards for recovering attorneys fees in FOIA litigation; revised time limits for agencies to act on FOIA requests; provided that search fees would not be charged if an agency fails

to comply with time limits if no unusual or exceptional circumstances apply to the processing of the request; required agencies to establish a tracking system enabling requesters to check the status of their requests; added new reporting requirements to agencies' annual FOIA reports; and required agencies to describe the FOIA exemptions relied upon in redacting records that they release to requesters. Many provisions of the OPEN Government Act took effect upon enactment; others (including some related to the amendments to Part 4 in this final rule) were effective as of December 31, 2008.

Twelve CFR part 4, subpart B, sets forth OCC policies regarding the availability of information under the FOIA and procedures for requesters to follow when seeking such information. On April 24, 2009, the OCC published a notice of proposed rulemaking (NPRM)<sup>2</sup> to amend part 4 to comport with changes to the FOIA made by the OPEN Government Act, enacted on December 31, 2007. The comment period closed on June 23, 2009. The OCC received no comments on the NPRM and, accordingly, we are adopting the regulatory changes as proposed.

##### II. Description of the Final Rule

The final rule is substantively identical to the proposal, with minor wording changes to improve technical descriptions.

##### *Required Description of FOIA Exemptions Used To Justify Non-Disclosure*

The OPEN Government Act amended the FOIA by requiring that an agency detail the specific FOIA exemption under which material is deleted from information sought by a FOIA requester. If technically feasible, the agency should indicate the exemption under which the deletion was made at the place in the record where the agency deleted the material, and should indicate the amount of material that has been deleted.<sup>3</sup>

The OCC is adopting its proposed amendment to 12 CFR 4.12(d) to provide that the OCC will indicate the amount of information deleted, and the exemption pursuant to which the

deletion was made, on the released portion of the material, unless doing so would harm an interest protected by an exemption under § 4.12(b). Where technically feasible, the OCC will indicate the amount of information deleted and the exemption relied upon for the deletion at the place where such deletion was made.

##### *Time Period for Responding to a FOIA Request*

The OCC is adopting its proposed revision of 12 CFR 4.15 to provide for the 20-day response period to a FOIA request permitted by the statute and to specify that the 20-day period does not include Saturdays, Sundays, and holidays. The OCC is also amending 12 CFR 4.15 to provide that the 20-day time period may be tolled when the OCC: (1) makes a one-time request for additional information from the requester; or (2) needs to clarify a fee-related issue with the requester. The tolling period would end upon receipt of the requested information or resolution of the fee issue, as the case may be.<sup>4</sup>

Finally, the OCC is adopting as proposed its amendment to 12 CFR 4.17 to clarify that a requester will not be required to pay any otherwise applicable search or duplication fees, as relevant, if the OCC fails to comply with applicable time limits, if no "unusual" or "exceptional" circumstances, as described in the FOIA and set forth in OCC regulations, apply to the processing of the FOIA request.<sup>5</sup>

##### *Definition of "Representative of the News Media"*

The OCC is adopting as proposed its amendment to the definition of "representative of the news media" in 12 CFR 4.17(a)(8) to comport with the new definition in FOIA, as amended by the OPEN Government Act. The final rule clarifies the circumstances in which a freelance writer will be deemed to be working as a representative of the news media. Consistent with the OPEN Government Act, freelance writers will be regarded as representatives of the news media if they can demonstrate a

<sup>4</sup> The OPEN Government Act did not amend or repeal the FOIA provisions permitting agencies to extend the time for replying to FOIA requests in unusual circumstances. *Id.* at 552(a)(6)(B) and (C). Therefore, the OCC's rules continue to extend the time in such cases for up to an additional 10 business days. 12 CFR 4.15(f)(3).

<sup>5</sup> See 5 U.S.C. 552(a)(6)(B)–(C); 12 CFR 4.15(f)(3).

<sup>1</sup> Public Law 110–175, 110th Cong., 1st Sess., 121 Stat. 2524 (2007).

<sup>2</sup> See 74 FR 18,659 (April 24, 2009).

<sup>3</sup> OPEN Government Act, section 12, *amending* 5 U.S.C. 552(b).

“solid basis” for expecting publication. The definition further permits the OCC to consider a requester’s publication history in assessing whether the requester should be deemed a representative of the news media.

*Tracking and Contact Information*

To comply with the OPEN Government Act’s requirements, the OCC launched an Internet Web site at <https://appsec.occ.gov/publicaccesslink/> in December, 2008, to provide the public the ability to check the status of a FOIA request online using an assigned tracking number. The final rule includes a new § 4.18, which provides the Internet address and explains that a tracking number will be assigned to every FOIA request. The new § 4.18 also addresses how individuals without Internet access can continue to receive status updates about their FOIA requests. To facilitate the operation of the new tracking service, the OCC is also amending 12 CFR 4.15(c) to include a request for an electronic mail address in the requester’s contact information, where such information is available and the requester chooses to provide it.

**III. Regulatory Analysis**

*Regulatory Flexibility Act*

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under Section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule. The final rule will not have such an impact on small entities because the changes being proposed affect mainly the OCC and its processing of FOIA requests, and impose no costs on filers of these requests. Pursuant to Section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

*Executive Order 12866*

The OCC has determined that the final rule is not a significant regulatory action under Executive Order 12866.

*Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), we have reviewed the final rule to assess any information collections. There are no collections of

information as defined by the Paperwork Reduction Act.

*Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, this proposal is not subject to Section 202 of the Unfunded Mandates Act.

**List of Subjects in 12 CFR Part 4**

National banks, Reporting and recordkeeping requirements, Administrative practice and procedure, Freedom of Information Act, Records. ■ For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

**PART 4—ORGANIZATION AND AVAILABILITY OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT**

■ 1. The authority citation for part 4 continues to read as follows:

**Authority:** 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1817(a)(3), 1818(u) and (v), 1820(d)(6), 1820(k), 1821(c), 1821(o), 1821(t), 1831m, 1831p–1, 1831o, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e.

■ 2. Amend § 4.12 by adding two sentences at the end of paragraph (d) to read as follows:

**§ 4.12 Information available under the FOIA.**

\* \* \* \* \* (d) *Segregability.* \* \* \* The OCC will note the location and extent of any deletion, and identify the FOIA

exemption under which material has been deleted, on the released portion of the material, unless doing so would harm an interest protected by the exemption under paragraph (b) of this section pursuant to which the deletion was made. Where technically feasible, the amount of information redacted and the exemption pursuant to which the redaction was made will be indicated at the site(s) of the deletion.

- 3. Amend § 4.15 by:
  - a. Revising the section heading, the heading for paragraph (c)(1), paragraph (c)(1)(i), the heading for paragraph (f), and paragraph (f)(1); and
  - b. Removing the word “or” at the end of paragraph (f)(3)(ii), removing the period at the end of paragraph (f)(3)(iii) and by adding in lieu thereof “; or”, and adding paragraph (f)(3)(iv).

The revisions and addition read as follows.

**§ 4.15 How to request records.**

\* \* \* \* \* (c) \* \* \* (1) *Contact information and what the request for records must include.* \* \* \*

(i) The requester’s full name, address, telephone number and, at the requester’s option, electronic mail address.

\* \* \* \* \* (f) *Time limits for responding to FOIA requests.*—(1) The OCC makes an initial determination to grant or deny a request for records within 20 days (excluding Saturday, Sundays, and holidays) after the date of receipt of the request, as described in paragraph (g) of this section, except as stated in paragraph (f)(3) of this section.

(3) \* \* \* (iv) *Tolling of time limits.* (A) The OCC may toll the 20-day time period to:

- (1) Make one request for additional information from the requester; or
- (2) Clarify the applicability or amount of any fees, if necessary, with the requester.

(B) The tolling period ends upon the OCC’s receipt of requested information from the requester or resolution of the fee issue.

- 4. Amend § 4.17 by:
  - a. Revising the section heading, and paragraph (a)(8);
  - b. Adding paragraph (b)(6); and
  - c. Removing, in the parenthetical in paragraph (d), the phrase “10 business days”, and by adding in lieu thereof the phrase “20 business days”.

The revisions and addition are set forth below.

**§ 4.17 FOIA request fees.**

(a) \* \* \*

(8) *Requester who is a representative of the news media* means any person who, or entity that, gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. A freelance journalist shall be regarded as working for a news media entity if the person can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by that entity. A publication contract is one example of a basis for expecting publication that ordinarily would satisfy this standard. The OCC also may consider the past publication record of the requester in determining whether she or he qualifies as a “representative of the news media.”

\* \* \* \* \*

(b) \* \* \*

(6) *No fee if the time limit passes and the OCC has not responded to the request.* The OCC will not assess search or duplication fees, as applicable, if it fails to respond to a requester’s FOIA request within the time limits specified under 12 CFR 4.15, and no “unusual” circumstances (as defined in 5 U.S.C. 552(a)(6)(B) and § 4.15(f)(3)(i) or “exceptional” circumstances (as defined in 5 U.S.C. 552(a)(6)(C)) apply to the processing of the request.

\* \* \* \* \*

■ 5. Add § 4.18 to subpart B to read as follows:

**§ 4.18 How to track a FOIA request.**

(a) *Tracking number.* The OCC will issue a tracking number to all FOIA requesters within 5 days of the receipt of the request (as described in § 4.15(g)) in the OCC’s Communications Department. The tracking number will be sent via electronic mail if the requester has provided an electronic mail address. Otherwise, the OCC will mail the tracking number to the requester’s physical address, as provided in the FOIA request.

(b) *Web site.* FOIA requesters may check the status of their FOIA request(s) at <https://appsec.occ.gov/publicaccesslink/>.

(c) *If a requester does not have Internet access.* Requesters without Internet access may continue to contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, at (202) 874-4700 to check the status of their FOIA request(s).

Dated: April 2, 2010.

**John C. Dugan,***Comptroller of the Currency.*

[FR Doc. 2010-7940 Filed 4-7-10; 8:45 am]

**BILLING CODE 4810-33-P****DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71****[Docket No. FAA-2009-0926; Airspace Docket No. 09-ASW-26]****Amendment of Class E Airspace; Dallas-Fort Worth, TX****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace in the Dallas-Fort Worth, TX area. Additional controlled airspace is necessary to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Bridgeport Municipal Airport, Bridgeport, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Bridgeport Municipal Airport.

**DATES:** Effective 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321-7716.

**SUPPLEMENTARY INFORMATION:****History**

On November 9, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for the Dallas-Fort Worth, TX area (74 FR 57617) Docket No. FAA-2009-0926. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace for the Dallas-Fort Worth, TX area, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate SIAPs at Bridgeport Municipal Airport, Bridgeport, TX. Adjustments to the geographic coordinates will be made in accordance with the FAA’s National Aeronautical Charting Office, as well as a name change for McKinney Municipal Airport to Collin County Regional Airport, McKinney, TX. This action is necessary for the safety and management of IFR operations. With the exception of editorial changes and the changes described above, this rule is the same as that proposed in the NPRM.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace in the Dallas-Fort Worth, TX area.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).