

§ 1401.4

(f) *Noncommercial scientific institution* means an institution that is not operated on a commercial basis as that term is defined in this section, and that is operated solely for the purpose of conducting scientific research not intended to promote any particular product or industry.

(g) *Records* and any other terms used in this part in reference to information includes any information that would be an agency record subject to the requirements of this part when maintained in any format, including electronic format.

(h) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. News is information about current events or information that would be of interest to the public. Examples of the news media include television or radio stations that broadcast to the public at large and publishers of news periodicals that make their products available to the general public for purchase or subscription. Freelance journalists may be regarded as working for the news media where they demonstrate a reasonable basis for expecting publication through that organization, even though not actually employed by it.

(i) *Request* means a letter or other written communication seeking records or information under FOIA.

(j) *Review* means the process of examining documents that are located during a search to determine if any portion should lawfully be withheld. It is the processing of determining disclosability.

(k) *Search* means to review, manually or by automated means, agency records for the purpose of locating those records responsive to a request.

§ 1401.4 Access to information.

The Office of National Drug Control Policy makes available information pertaining to matters issued, adopted, or promulgated by ONDCP, that are within the scope of 5 U.S.C. 552(a)(2). A public reading area and the ONDCP FOIA Handbook are located at <http://www.whitehousedrugpolicy.gov/about/about.html>.

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§ 1401.5 How to request records.

(a) Each request must reasonably describe the record(s) sought including the type of document, specific event or action, originator of the record, date or time period, subject matter, location, and all other pertinent data.

(b) Requests must be received by ONDCP through the mail or by electronic facsimile transmission. Mailed requests must be addressed to Executive Office of the President, Office of National Drug Control Policy, Office of Legal Counsel, Washington, DC 20503. The applicable fax number is (202) 395-5543.

(c) The words "FOIA REQUEST" or "REQUEST FOR RECORDS" must be clearly marked on the cover-letter, letter and envelope. The time limitations imposed by §1401.7 will not begin until the Office of the General Counsel identifies a letter or fax as a FOIA request.

§ 1401.6 Expedited process.

(a) Requests and appeals will be given expedited treatment whenever ONDCP determines either:

(1) The lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public about an actual or alleged federal government activity occurs and the request is made by a person primarily engaged in disseminating information.

(b) A request for expedited processing may be made at the time of the initial request for records or at a later time.

(c) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. A requester within the category in paragraph (a)(2) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(d) Within ten days of receipt of a request for expedited processing, ONDCP will decide whether to grant it and will

notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 1401.7 Prompt response.

The General Counsel, or designee, will determine within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of a FOIA request whether it is appropriate to grant the request and will provide written notification to the person making the request. If the request is denied, the written notification will include the names of the individuals who participated in the determination, the reasons for the denial, and that an appeal may be lodged within the Office of National Drug Control Policy.

§ 1401.8 Extension of time.

(a) In unusual circumstances, the Office of General Counsel may extend the time limit prescribed in §1401.7 or §1401.9 by written notice to the FOIA requester. The notice will state the reasons for the extension and the date a determination is expected. The extension period may be divided among the initial request and an appeal but will not exceed a total of 10 working days (excepting Saturdays, Sundays, or legal public holidays).

(b) The phrase "unusual circumstances" means:

(1) The requested records are located in establishments that are separated from the office processing the request;

(2) A voluminous amount of separate and distinct records are demanded in a single request; or

(3) Another agency or two or more components in the same agency have substantial interest in the determination of the request.

(c) Where unusual circumstance exist, ONDCP may provide an opportunity for amendment of the initial request so that the request may be timely processed. Refusal by the person to reasonably modify the request or arrange an alternative time frame shall be considered as a factor for purposes of 5 U.S.C. 552 (a)(6)(C).

(d) ONDCP may aggregate requests by a requester or a group of requestors where multiple requests reasonably appear to be a single request.

§ 1401.9 Appeals.

An appeal to the ONDCP must explain in writing the legal and factual basis for the appeal. It must be received by mail at the address specified in §1401.5 within 30 days of receipt of a denial. The Director or designee will decide the appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays). If the Director or designee deny an appeal in whole or in part, the written determination will contain the reason for the denial, the names of the individuals who participated in the determination, and the provisions for judicial review.

§ 1401.10 Fees to be charged—general.

ONDCP will recoup the full allowable costs it incurs in response to a FOIA request.

(a) *Manual search for records.* ONDCP will charge 116% of the salary of the individual(s) making a search.

(b) *Computerized search for records.* ONDCP will charge 116% of the salary of the programmer/operator and the apportionable time of the central processing unit directly attributed to the search.

(c) *Review of records.* ONDCP will charge 116% of the salary of the individual(s) conducting a review. Records or portions of records withheld under an exemption subsequently determined not to apply may be reviewed to determine the applicability of exemptions not considered. The cost for a subsequent review is assessable.

(d) *Duplication of records.* Request for copies prepared by computer will cost 116% of the apportionable operator time and the cost of the tape or disk. Other methods of duplication will cost 116% of the salary of the individual copying the data plus 15 cents per copy of 8½×11 inch original.

(e) *Other charges.* ONDCP will recover the costs of providing other services such as certifying records or sending records by special methods.