

§ 310.20

32 CFR Ch. I (7-1-10 Edition)

(i) The request for amendment and access.

(ii) Copies of the DoD Component's reply granting or denying the request;

(iii) Any appeals from the individual;

(iv) Copies of the action regarding the appeal with supporting documentation that is not in the basic file; and

(v) Any other correspondence generated in processing the appeal, to include coordination documentation.

(3) Only the items listed in paragraphs (p)(4) and (p)(5) of this section may be included in the system of records challenged for amendment or for which access is sought. Do not retain copies of the original record in the basic record system if the request for amendment is granted and the record has been amended.

(4) The following items relating to an amendment request may be included in the disputed record system:

(i) Copies of the amended record.

(ii) Copies of the individual's statement of disagreement (see paragraph (m) of this section).

(iii) Copies of the Component's statement of reasons for refusing to amend (see paragraph (o) of this section).

(iv) Supporting documentation submitted by the individual.

(5) The following items relating to an access request may be included in the basic records system:

(i) Copies of the request;

(ii) Copies of the Component's action granting total or partial access. (NOTE: A separate Privacy case file need not be created in such cases.)

(iii) Copies of the Component's action denying access.

(iv) Copies of any appeals filed.

(v) Copies of the reply to the appeal.

(6) Privacy case files shall not be furnished or disclosed to anyone for use in making any determination about the individual other than determinations made under this part.

§ 310.20 Reproduction fees.

(a) *Assessing fees.* (1) Charge the individual only the direct cost of reproduction.

(2) Do not charge reproduction fees if copying is:

(i) The only means to make the record available to the individual (for example, a copy of the record must be

made to delete classified information); or

(ii) For the convenience of the DoD Component (for example, the Component has no reading room where an individual may review the record, or reproduction is done to keep the original in the Component's file).

(iii) No fees shall be charged when the record may be obtained without charge under any other Regulation, Directive, or statute.

(iv) Do not use fees to discourage requests.

(b) *No minimum fees authorized.* Use fees only to recoup direct reproduction costs associated with granting access. Minimum fees for duplication are not authorized and there is no automatic charge for processing a request.

(c) *Prohibited fees.* Do not charge or collect fees for:

(1) Search and retrieval of records;

(2) Review of records to determine releasability;

(3) Copying records for the DoD Component convenience or when the individual has not specifically requested a copy;

(4) Transportation of records and personnel; or

(5) Normal postage.

(d) *Waiver of fees.* (1) Normally, fees are waived automatically if the direct costs of a given request are less than \$30. This fee waiver provision does not apply when a waiver has been granted to the individual before, and later requests appear to be an extension or duplication of that original request. A DoD Component may, however, set aside this automatic fee waiver provision when, on the basis of good evidence, it determines the waiver of fees is not in the public interest.

(2) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis.

(e) *Fees for members of Congress.* Do not charge members of Congress for copying records furnished even when the records are requested under the Privacy Act on behalf of a constituent (See § 310.22(i)). When replying to a constituent inquiry and the fees involved are substantial, consider suggesting to the Congressman that the constituent can obtain the information directly by

writing to the appropriate offices and paying the costs. When practical, suggest to the Congressman that the record can be examined at no cost if the constituent wishes to visit the custodian of the record.

(f) *Reproduction fees computation.* Compute fees using the appropriate portions of the fee schedule in 32 CFR part 286.

Subpart E—Disclosure of Personal Information to Other Agencies and Third Parties

§ 310.21 Conditions of disclosure.

(a) *Disclosures to third parties.* (1) The Privacy Act only compels disclosure of records from a system of records to the individuals to whom they pertain unless the records are contained in a system for which an exemption to the access provisions of this part has been claimed.

(2) Requests by other individuals (third parties) for the records of individuals that are contained in a system of records shall be processed under 32 CFR part 286 except for requests by the parents of a minor or the legal guardian of an individual for access to the records pertaining to the minor or individual.

(b) *Disclosures among the DoD Components.* For the purposes of disclosure and disclosure accounting, the Department of Defense is considered a single agency (see § 310.22(a)).

(c) *Disclosures outside the Department of Defense.* Do not disclose personal information from a system of records outside the Department of Defense unless:

(1) The record has been requested by the individual to whom it pertains.

(2) The written consent of the individual to whom the record pertains has been obtained for release of the record to the requesting Agency, activity, or individual; or

(3) The release is authorized pursuant to one of the specific non-consensual conditions of disclosure as set forth in § 310.22.

(d) *Validation before disclosure.* Except for releases made in accordance with 32 CFR part 286, the following steps shall be taken before disclosing any records to any recipient outside the Depart-

ment of Defense, other than a Federal agency or the individual to whom it pertains:

(1) Ensure the records are accurate, timely, complete, and relevant for agency purposes;

(2) Contact the individual, if reasonably available, to verify the accuracy, timeliness, completeness, and relevancy of the information, if this cannot be determined from the record; or

(3) If the information is not current and the individual is not reasonably available, advise the recipient that the information is believed accurate as of a specific date and any other known factors bearing on its accuracy and relevancy.

§ 310.22 Non-consensual conditions of disclosure.

(a) *Disclosures within the Department of Defense.* (1) Records pertaining to an individual may be disclosed to a DoD official or employee provided:

(i) The requester has a need for the record in the performance of his or her assigned duties. The requester shall articulate in sufficient detail why the records are required so the custodian of the records may make an informed decision regarding their release;

(ii) The intended use of the record generally relates to the purpose for which the record is maintained; and

(iii) Only those records as are minimally required to accomplish the intended use are disclosed. The entire record is not released if only a part of the record will be responsive to the request.

(2) Rank, position, or title alone does not authorize access to personal information about others.

(b) *Disclosures required by the FOIA.*

(1) All records must be disclosed if their release is required by FOIA (5 U.S.C. 552), as implemented by 32 CFR part 286. The FOIA requires records be made available to the public unless withholding is authorized pursuant to one of nine exemptions or one of three law enforcement exclusions under the Act.

(i) The DoD Component must be in receipt of a FOIA request and a determination made that the records are not