

## § 1012.2

(6) Testimony by employees as expert witnesses on subjects outside their official duties, except that they must obtain prior approval if required by §1012.11.

(d) This part does not affect the rights of any individual or the procedures for obtaining records under the Freedom of Information Act (FOIA), Privacy Act, or statutes governing the certification of official records. The Presidio Trust FOIA and Privacy Act regulations are found at parts 1007 and 1008 of this chapter.

(e) Nothing in this part is intended to impede the appropriate disclosure under applicable laws of Presidio Trust information to Federal, State, territorial, Tribal, or foreign law enforcement, prosecutorial, or regulatory agencies.

(f) This part only provides guidance for the internal operations of the Presidio Trust, and neither creates nor is intended to create any enforceable right or benefit against the United States or the Presidio Trust.

### **§1012.2 What is the Presidio Trust's policy on granting requests for employee testimony or Presidio Trust records?**

(a) Except for proceedings covered by §1012.1(c) and (d), it is the Presidio Trust's general policy not to allow its employees to testify or to produce Presidio Trust records either upon request or by subpoena. However, if the party seeking such testimony or records requests in writing, the Presidio Trust will consider whether to allow testimony or production of records under this part. The Presidio Trust's policy ensures the orderly execution of its mission and programs while not impeding any proceeding inappropriately.

(b) No Presidio Trust employee may testify or produce records in any proceeding to which this part applies unless authorized by the Presidio Trust under §§1012.1 through 1012.11. *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

## 36 CFR Ch. X (7-1-10 Edition)

### RESPONSIBILITIES OF REQUESTERS

### **§ 1012.3 How can I obtain employee testimony or Presidio Trust records?**

(a) To obtain employee testimony, you must submit:

(1) A written request (hereafter a "Touhy Request;" see §1012.5 and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)); and

(2) A statement that you will submit a valid check for costs to the Presidio Trust, in accordance with §1012.6, if your Touhy Request is granted.

(b) To obtain official Presidio Trust records, you must submit:

(1) A Touhy Request; and

(2) A statement that you agree to pay the costs of search and/or duplication in accordance with the provisions governing requests under the Freedom of Information Act in part 1007 of this chapter, if your Touhy Request is granted.

(c) You must send your Touhy Request to both:

(1) The employee; and

(2) The General Counsel of the Presidio Trust.

(d) The address of Presidio Trust employees and the General Counsel is: Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052.

### **§ 1012.4 If I serve a subpoena duces tecum, must I also submit a Touhy request?**

Yes. If you serve a subpoena for employee testimony or if you serve a subpoena duces tecum for records in the possession of the Presidio Trust, you also must submit a Touhy Request.

### **§ 1012.5 What information must I put in my Touhy Request?**

Your Touhy Request must:

(a) Identify the employee or record;

(b) Describe the relevance of the desired testimony or records to your proceeding and provide a copy of the pleadings underlying your request;

(c) Identify the parties to your proceeding and any known relationships they have with the Presidio Trust or to its mission or programs;

(d) Show that the desired testimony or records are not reasonably available from any other source;