

place of birth, and type of file in which the record is believed to be located.

(b) *Verification of identity.* The following standards are applicable to any individual who requests records concerning himself, unless other provisions for identity verification are specified in the published notice pertaining to the particular system of records.

(1) An individual seeking access to records about himself in person shall establish his identity by the presentation of a single document bearing a photograph (such as a passport, Permanent Resident Card or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license, or credit card).

(2) Individuals seeking access to records about themselves by mail shall establish their identity by submitting a notarized signature along with their address, date of birth, place of birth, and alien or employee identification number if applicable. Form DOJ 361, Certification of Identity, may be obtained from any Service office and used to obtain the notarized signature needed to verify identity.

(c) *Verification of guardianship.* The parent or guardian of a child or of a person judicially determined to be incompetent and seeking to act on behalf of such child or incompetent, shall, in addition to establishing his own identity, establish the identity of the child or other person he represents as required in paragraph (b) of this section, and establish his own parentage or guardianship of the subject of the record by furnishing either a copy of a birth certificate showing parentage or a court order establishing the guardianship.

(d) *Accompanying persons.* An individual seeking to review records pertaining to himself may be accompanied by another individual of his own choosing. Both the individual seeking access and the individual accompanying him shall be required to sign the required form indicating that the Service is authorized to discuss the contents of the subject record in the presence of both individuals.

(e) *Specification of records sought.* Requests for access to records, either in

person or by mail, shall describe the nature of the records sought, the approximate dates covered by the record, the system in which it is thought to be included as described in the "Notice of Systems of Records" published in the FEDERAL REGISTER, and the identity of the individual or office of the Service having custody of the system of records. In addition, the published "Notice of Systems of Records" for individual systems may include further requirements of specification, where necessary, to retrieve the individual record from the system.

(f) *Agreement to pay fees.* In accordance with 28 CFR 16.3(c) a requester automatically agrees to pay fees up to \$25.00 by filing a Privacy Act request unless a waiver or reduction of fees is sought. Accordingly, all letters of acknowledgement must confirm the requester's obligation to pay.

[40 FR 44481, Sept. 26, 1975; 40 FR 46092, Oct. 6, 1975, as amended at 42 FR 33025, June 29, 1977; 48 FR 49653, Oct. 27, 1983; 58 FR 31149, June 1, 1993; 63 FR 70315, Dec. 21, 1998]

#### § 103.22 Records exempt in whole or in part.

(a) When individuals request records about themselves which are exempt from access pursuant to the Privacy Act exemptions in 5 U.S.C. 552a(d)(5), (j) or (k), their requests shall also be considered under the Freedom of Information Act, 5 U.S.C. 552, and, unless the records are exempt under both Acts, the request shall be granted. If exemptions under both Acts permit the denial of the records sought and there is good reason to invoke the exemptions, the individual shall be provided a denial of his/her request in writing with the governing exemptions cited. If the disclosure of the existence of a criminal law enforcement proceeding record could itself interfere with a pending law enforcement proceeding of which there is reason to believe the subject is unaware, the Service may, during only such time as the circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552.

(b) Individual requests for access to records which have been exempted from access pursuant to 5 U.S.C. 552a(k) shall be processed as follows:

## § 103.23

(1) A request for information classified by the Service under *Executive Order 12356 on National Security Information* requires the Service to review the information to determine whether it continues to warrant classification under the criteria of the Executive Order. Information which no longer warrants classification shall be declassified and made available to the individual, if not otherwise exempt. If the information continues to warrant classification, the individual shall be advised that the information sought is classified; that it has been reviewed and continues to warrant classification; and that it has been exempted from access under 5 U.S.C. 552a(k)(1). Information which has been exempted under 5 U.S.C. 552a(j) and which is also classified, shall be reviewed as required by this paragraph but the response to the individual shall be in the form prescribed by paragraph (a) of this section.

(2) Requests for information which has been exempted from disclosure pursuant to 5 U.S.C. 552a(k)(2) shall be responded to in the manner provided in paragraph (a) of this section unless a review of the information indicates that the information has been used or is being used to deny the individual any right, privilege or benefit for which he is eligible or to which he would otherwise be entitled under Federal law. In that event, the individual shall be advised of the existence of the record and shall be provided the information except to the extent it would identify a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletions made or the summary shall be furnished to the requester.

(3) Information compiled as part of an employee background investigation which has been exempted pursuant to 5 U.S.C. 552a(k)(5) shall be made available to an individual upon request except to the extent that it identifies a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of

## 8 CFR Ch. I (1-1-10 Edition)

the confidential source, the document with deletions made or the summary shall be furnished to the requester.

(4) Testing or examination material which has been exempted pursuant to 5 U.S.C. 552a(k)(6) shall not be made available to an individual if disclosure would compromise the objectivity or fairness of the testing or examination process but shall be made available if no such compromise possibility exists.

(5) The Service records which are exempted and the reasons for the exemptions are enumerated in 28 CFR 16.99.

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983; 58 FR 31149, June, 1, 1993]

### § 103.23 Special access procedures.

(a) *Records of other agencies.* When information sought from a system of records of the Service includes information from other agencies or components of the Department of Justice that has been classified under Executive Order 12356, the request and the requested documents shall be referred to the appropriate agency or other component for classification review and processing. Only with the consent of the responsible agency or component, may the requester be informed of the referral as specified in section 3.4(f) of E.O. 12356.

(b) *Medical records.* When an individual requests medical records concerning himself, which are not otherwise exempt from disclosure, the responsible official as specified in §103.10(a) of this part shall, if deemed necessary, advise the individual that records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation, the responsible official as specified in §103.10(a) of this part will permit the physician to review the records or to receive copies of the records by mail, upon proper verification of identity. The determination of which records should be made available directly to the individual and which records should not be disclosed because of possible harm to the individual shall be made by the physician.

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983; 58 FR 31149, 31150, June, 1, 1993]