

these Guidelines in the exercise of their authority.

§ 1608.10 Standard of review.

(a) *Affirmative action plans or programs not specifically relying on these guidelines.* If, during the investigation of a charge of discrimination filed with the Commission, a respondent asserts that the action complained of was taken pursuant to an in accordance with a plan or program of the type described in these Guidelines, the Commission will determine whether the assertion is true, and if so, whether such a plan or program conforms to the requirements of these guidelines. If the Commission so finds, it will issue a determination of no reasonable cause and, where appropriate, will state that the determination constitutes a written interpretation or opinion of the Commission under section 713(b)(1). This interpretation may be relied upon by the respondent and asserted as a defense in the event that new charges involving similar facts and circumstances are thereafter filed against the respondent, which are based on actions taken pursuant to the affirmative action plan or program. If the Commission does not so find, it will proceed with the investigation in the usual manner.

(b) *Reliance on these guidelines.* If a respondent asserts that the action taken was pursuant to and in accordance with a plan or program which was adopted or implemented in good faith, in conformity with, and in reliance upon these Guidelines, and the self analysis and plan are in writing, the Commission will determine whether such assertion is true. If the Commission so finds, it will so state in the determination of no reasonable cause and will advise the respondent that:

(1) The Commission has found that the respondent is entitled to the protection of section 713(b)(1) of title VII; and

(2) That the determination is itself an additional written interpretation or opinion of the Commission pursuant to section 713(b)(1).

§ 1608.11 Limitations on the application of these guidelines.

(a) *No determination of adequacy of plan or program.* These Guidelines are

applicable only with respect to the circumstances described in §1608.1(d), of this part. They do not apply to, and the section 713(b)(1) defense is not available for the purpose of, determining the adequacy of an affirmative action plan or program to eliminate discrimination. Whether an employer who takes such affirmative action has done enough to remedy such discrimination will remain a question of fact in each case.

(b) *Guidelines inapplicable in absence of affirmative action.* Where an affirmative action plan or program does not exist, or where the plan or program is not the basis of the action complained of, these Guidelines are inapplicable.

(c) *Currency of plan or program.* Under section 713(b)(1), persons may rely on the plan or program only during the time when it is current. Currency is related to such factors as progress in correcting the conditions disclosed by the self analysis. The currency of the plan or program is a question of fact to be determined on a case by case basis. Programs developed under Executive Order 11246, as amended, will be deemed current in accordance with Department of Labor regulations at 41 CFR chapter 60, or successor orders or regulations.

§ 1608.12 Equal employment opportunity plans adopted pursuant to section 717 of title VII.

If adherence to an Equal Employment Opportunity Plan, adopted pursuant to section 717 of title VII, and approved by an appropriate official of the U.S. Civil Service Commission, is the basis of a complaint filed under title VII, or is alleged to be the justification for an action under title VII, these Guidelines will apply in a manner similar to that set forth in §1608.5. The Commission will issue regulations setting forth the procedure for processing such complaints.

PART 1610—AVAILABILITY OF RECORDS

Subpart A—Production or Disclosure Under 5 U.S.C. 552

- Sec.
- 1610.1 Definitions.
- 1610.2 Statutory requirements.
- 1610.3 Purpose and scope.

§ 1610.1

29 CFR Ch. XIV (7–1–16 Edition)

- 1610.4 Public reference facilities and current index.
- 1610.5 Request for records.
- 1610.6 Records of other agencies.
- 1610.7 Where to make request; form.
- 1610.8 Authority to determine.
- 1610.9 Responses: timing.
- 1610.10 Responses: form and content.
- 1610.11 Appeals to the Legal Counsel from initial denials.
- 1610.13 Maintenance of files.
- 1610.14 Waiver of user charges.
- 1610.15 Schedule of fees and method of payment for services rendered.
- 1610.16 Payment of fees.
- 1610.17 Exemptions.
- 1610.18 Information to be disclosed.
- 1610.19 Predisclosure notification procedures for confidential commercial information.
- 1610.20 [Reserved]
- 1610.21 Annual report.

Subpart B—Production in Response to Subpoenas or Demands of Courts or Other Authorities

- 1610.30 Purpose and scope.
- 1610.32 Production prohibited unless approved by the Legal Counsel.
- 1610.34 Procedure in the event of a demand for production or disclosure.
- 1610.36 Procedure in the event of an adverse ruling.

AUTHORITY: 42 U.S.C. 2000e–12(a), 5 U.S.C. 552 as amended by Pub. L. 93–502, Pub. L. 99–570, and Pub. L. 105–231; for §1610.15, non-search or copy portions are issued under 31 U.S.C. 9701.

Subpart A—Production or Disclosure Under 5 U.S.C. 552

§ 1610.1 Definitions.

(a) *Title VII* refers to title VII of the Civil Rights Act of 1964, as amended by Public Law 92–261, 42 U.S.C. (Supp. II) 2000e *et seq.*

(b) *Commission* refers to the Equal Employment Opportunity Commission.

(c) *Freedom of Information Act* refers to 5 U.S.C. 552 (Pub. L. 90–23 as amended by Pub. L. 93–502).

(d) *Commercial use* refers to a use or purpose by the requester of information for the information that furthers the requester’s commercial, trade or profit interests. Requests for charge files by profit-making entities, other than educational and noncommercial scientific institutions and representatives of the new media, shall be considered for commercial use unless the re-

quest demonstrates a noncommercial use.

(e) *Direct costs* refers to those expenses that EEOC actually incurs in searching for and duplicating (and, in the case of commercial requesters, reviewing) records to respond to a request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(f) *Search* refers to the time spent looking for and retrieving material that is responsive to a request. It includes page-by-page or line-by-line identification of information within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic formats. EEOC employees should ensure that searching for materials is done in the most efficient and least expensive manner reasonably possible. For example, employees shall not search line-by-line when merely duplicating a document would be quicker and less expensive.

(g) *Duplication* refers to the process of making a copy of a record or document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, electronic formats (for example magnetic tape or disk), among others. Employees shall honor a requester’s specified preference of format of disclosure if the record is readily reproducible with reasonable efforts in the requested format by the office responding to the request.

(h) *Attestation* refers to the authentication of copies of Commission documents by an affidavit or unsworn declaration from the records custodian without the Commission Seal.

(i) *Certification* refers to the authentication of copies of Commission documents by an affidavit or unsworn declaration from the records custodian under the Commission Seal.

(j) *Agency record* includes any information maintained for an agency by an

Equal Employment Opportunity Comm.

§ 1610.4

entity under Government contract, for the purposes of records management.

(k) *Fee category* means one of the three categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication, including commercial requesters, non-commercial scientific or educational institutions or news media requesters, and all other requesters.

(l) *Fee waiver* means the waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a commercial interest.

(m) *FOIA Public Liaison* means an agency official who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(n) *News* refers to information about current events that would be of current interest to the public.

(o) *Representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. Examples of news media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “news”) who make their products available for purchase by, subscription by, or free distribution to, the general public. As methods of news delivery evolve (for example, the implementation of electronic dissemination of newspapers through telecommunication services), such alternative media shall be considered to be news-media services. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Commission may also consider the past

publication record of the requester in making such a determination.

[40 FR 8171, Feb. 26, 1975, as amended at 52 FR 13830, Apr. 27, 1987; 70 FR 57511, Oct. 3, 2005; 78 FR 36650, June 19, 2013]

§ 1610.2 Statutory requirements.

5 U.S.C. 552(a)(3) requires each Agency, upon request for reasonably described records made in accordance with published rules stating the time, place, fees, if any, and procedure to be followed, to make such records promptly available to any person. 5 U.S.C. 552(b) exempts specified classes of records from the public access requirements of 5 U.S.C. 552(a) and permits them to be withheld.

[40 FR 8171, Feb. 26, 1975]

§ 1610.3 Purpose and scope.

This subpart contains the regulations of the Equal Employment Opportunity Commission implementing 5 U.S.C. 552. The regulations of this subpart provide information concerning the procedures by which records may be obtained from all organizational units within the Commission. Official records of the Commission made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public only as prescribed by this subpart. Officers and employees of the Commission may continue to furnish to the public, informally and without compliance with the procedures prescribed herein, information and records which prior to the enactment of 5 U.S.C. 552 were furnished customarily in the regular performance of their duties. To the extent that it is not prohibited by other laws, the Commission also will make available records which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

§ 1610.4 Public reference facilities and current index.

(a) The Commission will maintain in a public reading area located in the Commission’s library at 131 M Street, NE., Washington, DC 20507, the materials which are required by 5 U.S.C. 552(a)(2) and 552(a)(5) to be made available for public inspection and copying.

§ 1610.5

Any such materials created on or after November 1, 1996 may also be accessed through the Internet at <http://www.eeoc.gov>. The Commission will maintain and make available for public inspection and copying in this public reading area a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated after July 4, 1967, and which is required to be indexed by 5 U.S.C. 552(a)(2). The Commission in its discretion may, however, include precedential materials issued, adopted, or promulgated prior to July 4, 1967. The Commission will also maintain on file in this public reading area all material published by the Commission in the FEDERAL REGISTER and currently in effect.

(b) The Commission offices designated in §1610.4(c) shall maintain and make available for public inspection and copying a copy of:

(1) The Commission's notices and regulatory amendments which are not yet published in the Code of Federal Regulations;

(2) The Commission's annual reports;

(3) The Commission's Compliance Manual;

(4) Blank forms relating to the Commission's procedures as they affect the public;

(5) The Commission's Orders (agency directives);

(6) "CCH Equal Employment Opportunity Commission Decisions" (1973 and 1983); and

(7) Commission awarded contracts.

(c) The Commission's District Offices with public reading areas are:

Atlanta District Office, Sam Nunn Atlanta Federal Center, 100 Alabama Street, SW., Suite 4R30, Atlanta, GA 30303 (includes the Savannah Local Office).

Birmingham District Office, Ridge Park Place, 1130 22nd Street South, Suite 2000, Birmingham, AL 35205-2397 (includes the Jackson Area Office and the Mobile Local Office).

Charlotte District Office, 129 West Trade Street, Suite 400, Charlotte, NC 28202 (includes the Raleigh Area Office, the Greensboro Local Office, the Greenville Local Office, the Norfolk Local Office, and the Richmond Local Office).

Chicago District Office, 500 West Madison Street, Suite 2000, Chicago, IL 60661 (includes the Milwaukee Area Office and the Minneapolis Area Office).

29 CFR Ch. XIV (7-1-16 Edition)

Dallas District Office, 207 S. Houston Street, 3rd Floor, Dallas, TX 75202-4726 (includes the San Antonio Field Office and the El Paso Area Office).

Houston District Office, Total Plaza, 1201 Louisiana Street, 6th Floor, Houston, TX 77002 (includes the New Orleans Field Office).

Indianapolis District Office, 101 West Ohio Street, Suite 1900, Indianapolis, IN 46204-4203 (includes the Detroit Field Office, the Cincinnati Area Office, and the Louisville Area Office).

Los Angeles District Office, Roybal Federal Building, 255 East Temple Street, 4th Floor, Los Angeles, CA 90012 (includes the Fresno Local Office, the Honolulu Local Office, the Las Vegas Local Office, and the San Diego Local Office).

Memphis District Office, 1407 Union Avenue, 9th Floor, Memphis, TN 38104 (includes the Little Rock Area Office, and the Nashville Area Office).

Miami District Office, Miami Tower, 100 SE 2nd Street, Suite 1500, Miami, FL 33131 (includes the Tampa Field Office and the San Juan Local Office).

New York District Office, 33 Whitehall Street, 5th Floor, New York, NY 10004 (includes the Boston Area Office, the Newark Area Office, and the Buffalo Local Office).

Philadelphia District Office, 801 Market Street, Suite 1300, Philadelphia, PA 19107-3127 (includes the Baltimore Field Office, the Cleveland Field Office, and the Pittsburgh Area Office).

Phoenix District Office, 3300 N. Central Avenue, Suite 690, Phoenix, AZ 85012-2504 (includes the Denver Field Office, and the Albuquerque Area Office).

San Francisco District Office, 350 The Embarcadero, Suite 500, San Francisco, CA 94105-1260 (includes the Seattle Field Office, the Oakland Local Office, and the San Jose Local Office).

St. Louis District Office, Robert A. Young Federal Building, 1222 Spruce Street, Room 8100, St. Louis, MO 63103 (includes the Kansas City Area Office, and the Oklahoma City Area Office).

[78 FR 36650, June 19, 2013]

§ 1610.5 Request for records.

(a) A written request for inspection or copying of a record of the Commission may be presented in person, or by mail, or by fax, or by email, or through <https://egov.eeoc.gov/foia/> to the Commission employee designated in §1610.7. Every request, regardless of format, must contain the requester's name and may identify a non-electronic mailing address. In-person requests must be

Equal Employment Opportunity Comm.

§ 1610.8

presented during business hours on any business day.

(b) A request must be clearly and prominently identified as a request for information under the “Freedom of Information Act.” If submitted by mail, or otherwise submitted under any cover, the envelope or other cover must be similarly identified.

(c) A respondent must always provide a copy of the “Filed” stamped court complaint when requesting a copy of a charge file. The charging party must provide a copy of the “Filed” stamped court complaint when requesting a copy of the charge file if the Notice of Right to Sue has expired.

(d) Each request must contain information which reasonably describes the records sought and, when known, should contain a name, date, subject matter and location for the record requested in order to permit the record to be promptly located.

(e) Where a request is not considered reasonably descriptive or requires the production of voluminous records, or necessitates the utilization of a considerable number of work hours to the detriment of the business of the Commission, the Commission may require the person making the request or such person’s agent to confer with a Commission representative in order to attempt to verify the scope of the request and, if possible, narrow such request.

[40 FR 8171, Feb. 26, 1975, as amended at 56 FR 29578, June 28, 1991; 63 FR 1341, Jan. 9, 1998; 78 FR 36651, June 19, 2013]

§ 1610.6 Records of other agencies.

Requests for records that originated in another Agency and are in the custody of the Commission will be referred to that Agency and the person submitting the request shall be so notified. The decision made by that Agency with respect to such records will be honored by the Commission.

[78 FR 36651, June 19, 2013]

§ 1610.7 Where to make request; form.

(a) Requests for the following types of records shall be submitted to the District Director for the pertinent district, field, area, or local office, at the district office address listed in § 1610.4(c) or, in the case of the Wash-

ington Field Office, shall be submitted to the Field Office Director at 131 M Street, NE., Fourth Floor, Washington, DC 20507.

(1) Information about current or former employees of an office;

(2) Existing non-confidential statistical data related to the case processing of an office;

(3) Agreements between the Commission and State or local fair employment agencies operating within the jurisdiction of an office; or

(4) Materials in office investigative files related to charges under: Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act (29 U.S.C. 206(d)); the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*); the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*); or the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff *et seq.*).

(b) A request for any record which does not fall within the ambit of paragraph (a) of this section, or a request for any record the location of which is unknown to the person making the request, shall be submitted in writing to the Assistant Legal Counsel, FOIA Programs, U.S. Equal Employment Opportunity Commission, by mail to 131 M Street, NE., Suite 5NW02E, Washington, DC 20507, or by fax to (202) 663-4679, or by email to FOIA@eeoc.gov, or by Internet to <https://egov.eeoc.gov/foia/>.

(c) Any Commission officer or employee who receives a written Freedom of Information Act request shall promptly forward it to the appropriate official specified in paragraph (a) or (b) of this section. Any Commission officer or employee who receives an oral request under the Freedom of Information Act shall inform the person making the request that it must be in writing and also inform such person of the provisions of this subpart.

[45 FR 40604, June 16, 1980, as amended at 47 FR 46275, Oct. 18, 1982; 52 FR 4902, Feb. 18, 1987; 54 FR 32062, Aug. 4, 1989; 56 FR 29578, June 28, 1991; 71 FR 26830, May 9, 2006; 74 FR 3430, Jan. 21, 2009; 74 FR 63983, Dec. 7, 2009; 78 FR 36651, June 19, 2013]

§ 1610.8 Authority to determine.

The Assistant Legal Counsel, FOIA Programs, the District Director, or the

§ 1610.9

29 CFR Ch. XIV (7–1–16 Edition)

District Director's designee, when receiving a request pursuant to these regulations, shall grant or deny such request. That decision shall be final, subject only to administrative review as provided in §1610.11 of this subpart.

[78 FR 36651, June 19, 2013]

§ 1610.9 Responses: timing.

(a) The EEOC utilizes a multitrack system for responding to FOIA requests. After review, a FOIA request is placed on one of three tracks: the simple track, the complex track, or the expedited track. EEOC distinguishes between simple and complex track requests based on the amount of work and time needed to process the request.

(b) The Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee shall, within 10 days from receipt of a request, notify the requester in writing of the date EEOC received the request, the expected date of issuance of the determination, the individualized FOIA tracking number assigned to the request, and the telephone number or Internet site where requesters may inquire about the status of their request.

(c) If a FOIA request is submitted to the incorrect EEOC-FOIA office, that office shall forward the misdirected request to the appropriate EEOC-FOIA office within 10 business days. If a misdirected request is forwarded to the correct EEOC-FOIA office more than 10 business days after its receipt by the EEOC, then, pursuant to 5 U.S.C. 552(a)(6)(A), the statutory 20 business days to respond to the request is reduced by the number of days in excess of 10 that it took the EEOC to forward the request to the correct EEOC-FOIA office.

(d) Within 20 business days after receipt of the request, the Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee shall either grant or deny the request for agency records, unless additional time is required for one of the following reasons:

(1) It is necessary to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) It is necessary to search for, collect, and appropriately examine a voluminous number of separate and distinct records which are demanded in a single request; or

(3) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial interest therein.

(e) When additional time is required for one of the reasons stated in paragraph (d) of this Section, the Assistant Legal Counsel, FOIA Programs, District Director, or the District Director's designee shall, within the statutory 20 business day period, issue to the requester a brief written statement of the reason for the delay and an indication of the date on which it is expected that a determination as to disclosure will be forthcoming. If more than 10 additional business days are needed, the requester shall be notified and provided an opportunity to limit the scope of the request or to arrange for an alternate time frame for processing the request.

(f)(1) A request for records may be eligible for expedited processing if the requester demonstrates a compelling need. For the purposes of this section, compelling need means:

(i) That the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) That the requester is a representative of the news media as described in §1610.1(o) and there is an urgency to inform the public concerning actual or alleged Federal government activity.

(2) 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 determination on the request for expedited processing will be made and the requester notified within 10 calendar days. The Legal Counsel or designee, or the Assistant Legal Counsel, FOIA Programs, as appropriate, shall promptly respond to any appeal of the denial of a request for expedited processing.

Equal Employment Opportunity Comm.

§ 1610.11

(g) The Commission may toll the statutory time period to issue its determination on a FOIA request one time during the processing of the request to obtain clarification from the requester. The statutory time period to issue the determination on disclosure is tolled until EEOC receives the information reasonably requested from the requester. The agency may also toll the statutory time period to issue the determination to clarify with the requester issues regarding fees. There is no limit on the number of times the agency may request clarifying fee information from the requester.

[78 FR 36651, June 19, 2013]

§ 1610.10 Responses: form and content.

(a) Once a requested record is identified and available, the requester will be notified of when and where the record will be made available and the cost assessed for processing the request. Records shall be made available in the form or format indicated by the requester, if the record is readily reproducible in that form or format. Fees for processing requests will be determined in accordance with the schedule set forth in §1610.15. Checks shall be made payable to the Treasurer of the United States.

(b) A reply either granting or denying a written request for a record shall be in writing, signed by the Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee, and shall include:

(1) His or her name and title, telephone number, and email address;

(2) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld, or a statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed under §1610.9 (d), and that the denial will be reconsidered as soon as the search or examination is complete; and

(3) A written statement that the denial may be appealed to the Legal Counsel, or Assistant Legal Counsel, FOIA Programs, as appropriate, within

30 calendar days of receipt of the denial or partial denial.

(c) When a request for records is denied, the Commission shall provide to the requester a written statement identifying the estimated volume of denied material unless providing such estimate would harm an interest protected by the exemptions in 5 U.S.C. 522(b). When a reasonably segregable portion of a record is provided, the amount of information deleted from the released portion and, to the extent technically feasible, the place in the record where such deletion was made, and the exemption upon which the deletion was based, shall be indicated on the record provided to the requester.

(d) If a requested record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of, the person making the request shall be so notified.

[40 FR 8171, Feb. 26, 1975, as amended at 52 FR 4902, Feb. 18, 1987; 56 FR 29579, June 28, 1991; 63 FR 1342, Jan. 9, 1998; 78 FR 36652, June 19, 2013]

§ 1610.11 Appeals to the legal counsel from initial denials.

(a) When the Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee has denied a request for records in whole or in part, the requester may appeal within 30 calendar days of receipt of the determination letter. The appeal must be in writing, addressed to the Legal Counsel, or the Assistant Legal Counsel, FOIA Programs, as appropriate, and submitted by mail to the Equal Employment Opportunity Commission, 131 M Street, NE., Suite 5NW02E, Washington, DC 20507, by fax to (202) 663-4679, by email to FOIA@eeoc.gov, or by Internet to <https://egov.eeoc.gov/foia/>. Every appeal filed under this section must be clearly labeled as a "Freedom of Information Act Appeal." Any appeal of a determination issued by a District Director or the District Director's designee must include a copy of the District Director's or the District Director's designee's determination. If a FOIA appeal is misdirected to a District Office, the District Office shall forward the appeal to the Legal Counsel, or the Assistant

§ 1610.13

29 CFR Ch. XIV (7–1–16 Edition)

Legal Counsel, FOIA Programs, as appropriate, within 10 business days.

(b) The Legal Counsel or designee, or the Assistant Legal Counsel, FOIA Programs, as appropriate, shall act upon the appeal within 20 business days of its receipt, and more rapidly if practicable. If the decision is in favor of the person making the request, the decision shall order that records be promptly made available to the person making the request. The Legal Counsel or designee, or the Assistant Legal Counsel, FOIA Programs, as appropriate, may extend the 20 business day period in which to render a decision on an appeal for that period of time which could have been claimed and used by the Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee under § 1610.9, but which was not in fact used in making the original determination.

(c) The decision on appeal shall be in writing and signed by the Legal Counsel or designee, or the Assistant Legal Counsel, FOIA Programs, as appropriate. A denial in whole or in part of a request on appeal shall set forth the exemption relied on, a brief explanation of how the exemption applies to the records withheld, and the reasons for asserting it, if different from those described by the Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee under § 1610.9. The decision on appeal shall indicate that the person making the request may, if dissatisfied with the decision, file a civil action in the United States District Court for the district in which the person resides or has his principal place of business, for the district where the records reside, or for the District of Columbia.

(d) No personal appearance, oral argument or hearing will ordinarily be permitted in connection with an appeal to the Legal Counsel or the Assistant Legal Counsel, FOIA Programs.

(e) On appeal, the Legal Counsel or designee, or the Assistant Legal Counsel, FOIA Programs, as appropriate, may reduce any fees previously assessed.

(f) In the event that the Commission terminates its proceedings on a charge after the District Director or the District Director's designee denies a re-

quest, in whole or in part, for the charge file but during consideration of the requester's appeal from that denial, the request may be remanded for re-determination. The requester retains a right to appeal to the Assistant Legal Counsel, FOIA Programs, from the decision on remand.

(g) A response to an appeal will advise the requester that the 2007 amendments to FOIA created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. A requester may contact OGIS in any of the following ways: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, MD 20740; <https://ogis.archives.gov>; email—ogis@nara.gov; telephone—202-741-5770; facsimile—202-741-5769; toll-free—1-877-684-6448.

[78 FR 36652, June 19, 2013]

§ 1610.13 Maintenance of files.

The Legal Counsel or designee, the Assistant Legal Counsel, FOIA Programs, and the District Directors or designees shall maintain files containing all material required to be retained by or furnished to them under this subpart. The material shall be filed by individual request.

[78 FR 36653, June 19, 2013]

§ 1610.14 Waiver of user charges.

(a) Except as provided in paragraph (b) of this section, the Legal Counsel or designee, the Assistant Legal Counsel, FOIA Programs, and the District Directors or designees shall assess fees where applicable in accordance with § 1610.15 for search, review, and duplication of records requested. They shall also have authority to furnish documents without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(b) District directors, field directors, area directors, local directors and the

librarian are hereby authorized to collect fees where applicable in accordance with §1610.15 for duplication of records which are to be made available for public inspection and copying in the district, field, area or local office, or in the headquarters library in accordance with §1610.4(b). District directors, field directors, area directors, local directors and the librarian are hereby authorized to duplicate such records without charge, or at a reduced charge in accordance with the criteria of paragraph (a) of this section.

[52 FR 13830, Apr. 27, 1987, as amended at 54 FR 32062, Aug. 4, 1989; 56 FR 29578, June 28, 1991; 63 FR 1342, Jan. 9, 1998; 71 FR 26830, May 9, 2006; 78 FR 36653, June 19, 2013]

§ 1610.15 Schedule of fees and method of payment for services rendered.

(a) Fees shall be assessed in accordance with the fee schedule set forth in paragraph (c) of this section as follows:

(1) When records are requested for commercial use, the Commission shall charge the full amount of its direct costs for document search, review and duplication. The Commission shall not charge for review at the administrative appeal level of an exemption already applied.

(2) When records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, or a representative of the news media, the Commission shall charge the direct costs of document duplication after the first 100 pages. The first 100 pages of duplication under paragraph (a)(2) shall be provided without charge.

(3) For all other record requests not falling under paragraph (a) (1) or (2) of this section, the Commission shall charge the direct costs for document search time after the first two hours and the direct costs for document duplication after the first 100 pages. The first two hours of search time and the first 100 pages of duplication under paragraph (a)(3) shall be provided without charge.

(b) When the Commission reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Commission shall aggregate

any such requests and charge accordingly.

(c) Except as otherwise provided, the following specific fees for direct costs shall be applicable with respect to services rendered to members of the public under this subpart:

(1) For manual search and review time:

(i) By clerical personnel—at the rate of \$5.00 per quarter hour.

(ii) By paralegals—at the rate of \$9.00 per quarter hour.

(iii) By professional personnel—at the rate of \$10.00 per quarter hour.

(iv) By managers—at the rate of \$17.50 per quarter hour.

(v) By SES employees—at the rate of \$20.00 per quarter hour.

(2) For computer searches of records, requesters will be charged at the actual direct cost of providing the service. This includes the operator/programmer salary apportionable to the search based on the rates listed in paragraph (c)(1) of this section.

(3) For copies made by photocopy—\$0.15 per page (maximum of 10 copies). For copies prepared by computer, such as tapes or printouts, EEOC will charge the direct cost incurred by the agency, including operator time. For other forms of duplication, EEOC will charge the actual costs of that duplication.

(4) For attestation of documents—\$25.00 per authenticating affidavit or declaration. Additionally, there may be search and review charges assessed in accordance with the rates listed in paragraph (c)(1) of this section.

(5) For certification of document—\$50.00 per authenticating affidavit or declaration. Additionally, there may be search and review charges assessed in accordance with the rates listed in paragraph (c)(1) of this section.

(6) For each signed statement of negative result of search for record—\$10.00. Additionally, there may be search charges assessed in accordance with the rates listed in paragraph (c)(1) of this section.

(7) For retrieval of records from a Federal Records Center—the amount charged to EEOC for retrieval of such records.

(8) All other direct costs of search, review, duplication or delivery (other than normal mail), shall be charged to

§ 1610.16

the requester as appropriate in the same amount as incurred by the agency.

(d) The Commission shall not charge a fee if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

(e) The Commission shall charge interest at the rate prescribed in 31 U.S.C. 3717, accruing from the date of billing, to those requesters who fail to pay fees charged beginning on the 31st day following the day on which the billing was sent.

(f) While the fees charged for search and copying will in no event exceed those specified in paragraph (c) of this section, the Commission reserves the right to limit the number of copies that will be provided of any document or to require that special arrangements for copying be made in the case of records or requests presenting unusual problems of reproduction or handling.

(g) A search fee will not be charged to requesters specified in paragraphs (a)(1) and (a)(3) of this section, and a duplication fee will not be charged to requesters specified in paragraph (a)(2) of this section, if the Commission issues an untimely determination and the untimeliness is not due to unusual or exceptional circumstances.

[52 FR 13830, Apr. 27, 1987, as amended at 63 FR 1342, Jan. 9, 1998; 70 FR 57511, Oct. 3, 2005; 78 FR 36653, June 19, 2013]

§ 1610.16 Payment of fees.

(a) Unless a person making a request under the Freedom of Information Act states that he or she will bear all assessed fees levied by the Commission in searching for and, where applicable, reproducing requested data, said person will be held liable for assessed fees not to exceed \$25.00. A request which the Commission expects to exceed \$25.00 and which does not state acceptance of responsibility for all assessed fees will not be deemed to have been received until the person making the request is promptly advised of the anticipated fees and agrees to bear them.

(b) A search fee will be assessable notwithstanding that no records responsive to the request or that no records not exempt from disclosure are found.

29 CFR Ch. XIV (7-1-16 Edition)

(c) The Commission shall require payment in full prior to the commencement or continuation of work on a request if:

(1) It estimates or determines that the allowable charges will exceed \$250, unless the requester has a history of prompt payment of FOIA fees, in which case the Commission may obtain satisfactory assurance of prompt payment; or

(2) The requester has previously failed to pay fees within 30 days of the date of billing.

[40 FR 8171, Feb. 26, 1975, as amended at 52 FR 13830, Apr. 27, 1987]

§ 1610.17 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in 552(b). These categories include such matters as national defense and foreign policy information, investigatory files, internal procedures and communications, materials exempted from disclosure by other statutes, information given in confidence, and matters involving personal privacy.

(b) Section 706(b) of title VII provides that the Commission shall not make public charges which have been filed. It also provides that (subsequent to the filing of a charge, an investigation, and a finding that there is reasonable cause to believe that the charge is true) nothing said or done during and as a part of the Commission's endeavors to eliminate any alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion may be made public by the Commission without the written consent of the parties concerned; nor may it be used as evidence in a subsequent proceeding. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of section 706(b) shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than 1 year.

(c) Section 709 of title VII authorizes the Commission to conduct investigations of charges filed under section 706, engage in cooperative efforts with State and local agencies charged with

the administration of State or local fair employment practices laws, and issue regulations concerning reports and record-keeping. Section (e) of section 709 provides that it shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under section 709 prior to the institution of any proceeding under the act involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of section 709(e) shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than 1 year.

(d) Special disclosure rules apply to the case files for charging parties, aggrieved persons on whose behalf a charge has been filed, and entities against whom charges have been filed. The special disclosure rules are available in the public reading areas of the Commission. Under sections 706 and 709, case files involved in the administrative process of the Commission are not available to the public.

(e) Each executed statistical reporting form required under part 1602 of this chapter, such as Employer Information Report EEO-1, etc., relating to a particular employer is exempt from disclosure to the public prior to the institution of a proceeding under title VII involving information from such form.

(f) Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) and section 207(a) of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff-6) explicitly adopt the powers, remedies, and procedures set forth in sections 706 and 709 of title VII. Accordingly, the prohibitions on disclosure contained in sections 706 and 709 of title VII as outlined in paragraphs (b), (c), (d), and (e) of this section, apply with equal force to requests for information related to charges and executed statistical reporting forms filed with the Commission under the Americans with Disabilities Act or the Genetic Information Nondiscrimination Act.

(g) Requests for information relating to open case files covering alleged violations of the Equal Pay Act (29 U.S.C. 206(b)) or the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*) will ordinarily be denied under the seventh exemption of the Freedom of Information Act as investigatory records compiled for law enforcement purposes.

(h) The medical, financial, and personnel files of employees of the Commission are exempt from disclosure to the public.

[40 FR 8171, Feb. 26, 1975, as amended at 45 FR 40605, June 16, 1980; 56 FR 29579, June 28, 1991; 74 FR 63983, Dec. 7, 2009]

§ 1610.18 Information to be disclosed.

The Commission will provide the following information to the public. This information will also be made available electronically:

(a) The Commission will make available for inspection and copying certain tabulations of aggregate industry, area, and other statistics derived from the Commission's reporting programs authorized by section 709(c) of title VII, provide that such tabulations: Were previously compiled by the Commission and are available in documentary form; comprise an aggregation of data from not less than three responding entities; and, do not reveal the identity of an individual or dominant entity in a particular industry or area;

(b) All blank forms used by the Commission;

(c) Subject to the restrictions and procedures set forth in §1610.19, all signed contracts, final bids on all signed contracts, and agreements between the Commission and State or local agencies charged with the administration of State or local fair employment practices laws;

(d) All final reports that do not contain statutorily confidential material in a recognizable form;

(e) All agency correspondence to members of the public, Members of Congress, or other persons not government employees or special government employees, except those containing information that would produce an invasion of privacy if made public;

(f) All administrative staff manuals and instructions to staff that affect

§ 1610.19

29 CFR Ch. XIV (7-1-16 Edition)

members of the public unless the materials are promptly published and copies offered for sale; and

(g) All final votes of each Commissioner, for every Commission meeting, except for votes pertaining to filing suit against respondents until such litigation is commenced.

(h) Underlying annual FOIA report data.

[56 FR 29579, June 28, 1991, as amended at 63 FR 1342, Jan. 9, 1998; 78 FR 36653, June 19, 2013]

§ 1610.19 Predisclosure notification procedures for confidential commercial information.

(a) *In general.* Commercial information provided to the Commission shall not be disclosed except in accordance with this section. For the purposes of this section, the following definitions apply:

(1) *Confidential commercial information* refers to records provided by a submitter containing information that is arguably exempt from disclosure under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* refers to any person or entity who provides confidential commercial information to the government. The term includes, but is not limited to, corporations, State governments, and foreign governments.

(b) *Notice to submitter.* Except as provided in paragraph (g) of this section, the Commission shall provide a submitter with explicit notice of a FOIA request for confidential commercial records whenever:

(1) The Commission reasonably believes that disclosure could cause substantial competitive harm to the submitter;

(2) The information was submitted after January 1, 1988, and the submitter previously, in good faith, designated the records as confidential commercial information. Such designations shall:

(i) Whenever possible, include a statement or certification from an officer or authorized representative of the company that the information is in fact confidential commercial information and has not been disclosed to the public; and

(ii) Expire ten years from the date of submission unless otherwise justified.

(c) *Notice to requester.* When notice is given to a submitter under this section, the requester shall be notified that notice and opportunity to comment are being provided to the submitter.

(d) *Opportunity of submitter to object.* When notification is made pursuant to paragraph (b) of this section, the Commission shall afford the submitter a minimum of five business days to provide it with a detailed statement of objections to disclosure. Such statement shall provide precise identification of the exempted information, and the basis for claiming it as a trade secret or as confidential information pursuant to 5 U.S.C. 552(b)(4), the disclosure of which is likely to cause substantial harm to the submitter's competitive position.

(e) *Notice of intent to disclose.* (1) The Commission shall consider carefully the objections of a submitter provided pursuant to paragraph (d) of this section. When the Commission decides to disclose information despite such objections, it shall provide the submitter with a written statement briefly explaining why the objections were not sustained. Such statement shall be provided a minimum of three business days prior to the specified disclosure date, in order that the submitter may seek a court injunction to prevent release of the records if it so chooses.

(2) When a submitter is notified pursuant to paragraph (e)(1) of this section, notice of the Commission's final disclosure determination and proposed release date shall also be provided to the requester.

(f) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the Commission shall promptly notify the submitter of the legal action.

(g) *Exceptions to the notice requirement.* The notice requirements of this section shall not apply if:

(1) The Commission determines that the information shall not be disclosed;

(2) The information is published or otherwise officially available to the public;

Equal Employment Opportunity Comm.

§ 1610.36

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

[56 FR 29579, June 28, 1991, as amended at 78 FR 36653, June 19, 2013]

§ 1610.20 [Reserved]

§ 1610.21 Annual report.

(a) The Legal Counsel shall, on or before February 1, submit individual Freedom of Information Act reports for each principal agency FOIA component and one for the entire agency covering the preceding fiscal year to the Attorney General of the United States. The reports shall include those matters required by 5 U.S.C. 552(e), and shall be made available electronically on the agency Web site.

(b) When and as directed by the Attorney General, the Chief FOIA Officer, through the Office of the Chair, shall review and report to the Attorney General on the agency's performance in implementing its responsibilities under FOIA.

[78 FR 36653, June 19, 2013]

Subpart B—Production in Response to Subpenas or Demands of Courts or Other Authorities

§ 1610.30 Purpose and scope.

This subpart contains the regulations of the Commission concerning procedures to be followed when a subpoena, order, or other demand (hereinafter in this subpart referred to as a "demand") of a court or other authority is issued for the production or disclosure of (a) any material contained in the files of the Commission; (b) any information relating to material contained in the files of the Commission; or (c) any information or material acquired by any person while such person was an employee of the Commission as a part of the performance of his official duties or because of his official status.

[32 FR 16261, Nov. 29, 1967]

§ 1610.32 Production prohibited unless approved by the Legal Counsel.

No employee or former employee of the Commission shall, in response to a

demand of a court or other authority, produce any material contained in the files of the Commission or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without the prior approval of the Legal Counsel.

[32 FR 16261, Nov. 29, 1967, as amended at 47 FR 46275, Oct. 18, 1982]

§ 1610.34 Procedure in the event of a demand for production or disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Commission for the production of material or the disclosure of information described in §1610.30, he shall immediately notify the Legal Counsel. If possible, the Legal Counsel shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before instructions from the Legal Counsel are received, an attorney designated for that purpose by the Commission shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration by the Legal Counsel. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Legal Counsel.

[32 FR 16261, Nov. 29, 1967, as amended at 47 FR 46275, Oct. 18, 1982; 63 FR 1342, Jan. 9, 1998]

§ 1610.36 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with §1610.34(b) pending receipt of instructions from the Legal Counsel, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Legal Counsel not to produce the material or disclose the

information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand (United States ex rel. *Touhy v. Ragen*, 340 U.S. 462 (1951)).

[32 FR 16261, Nov. 29, 1967, as amended at 47 FR 46275, Oct. 18, 1982]

PART 1611—PRIVACY ACT REGULATIONS

Sec.

- 1611.1 Purpose and scope.
- 1611.2 Definitions.
- 1611.3 Procedures for requests pertaining to individual records in a record system.
- 1611.4 Times, places, and requirements for identification of individuals making requests.
- 1611.5 Disclosure of requested information to individuals.
- 1611.6 Special procedures: Medical records.
- 1611.7 Request for correction or amendment to record.
- 1611.8 Agency review of request for correction or amendment to record.
- 1611.9 Appeal of initial adverse agency determination on correction or amendment.
- 1611.10 Disclosure of record to person other than the individual to whom it pertains.
- 1611.11 Fees.
- 1611.12 Penalties.
- 1611.13 Specific Exemptions—Charge and complaint files.
- 1611.14 Exemptions—Office of Inspector General Files.
- 1611.15 Exemption—EEOC Personnel Security Files.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 42 FR 7949, Feb. 8, 1977, unless otherwise noted.

§ 1611.1 Purpose and scope.

This part contains the regulations of the Equal Employment Opportunity Commission (the Commission) implementing the Privacy Act of 1974, 5 U.S.C. 552a. It sets forth the basic responsibilities of the Commission under the Privacy Act (the Act) and offers guidance to members of the public who wish to exercise any of the rights established by the Act with regard to records maintained by the Commission. All records contained in system EEOC/GOVT-1, including those maintained by other agencies, are subject to the Commission's Privacy Act regulations. Requests for access to, an accounting

of disclosures for, or amendment of records in EEOC/GOVT-1 must be processed by agency personnel in accordance with this part. Commission records that are contained in a government-wide system of records established by the U.S. Office of Personnel Management (OPM), the General Services Administration (GSA), the Merit Systems Protection Board (MSPB), the Office of Government Ethics (OGE) or the Department of Labor (DOL) for which those agencies have published systems notices are subject to the publishing agency's Privacy Act regulations. Where the government-wide systems notices permit access to these records through the employing agency, an individual should submit requests for access to, for amendment of or for an accounting of disclosures to the Commission offices as indicated in § 1611.3(b).

[56 FR 29580, June 28, 1991]

§ 1611.2 Definitions.

For purposes of this part, the terms *individual*, *maintain*, *record*, and *system of records* shall have the meanings set forth in 5 U.S.C. 552a.

§ 1611.3 Procedures for requests pertaining to individual records in a record system.

(a) Any person who wishes to be notified if a system of records maintained by the Commission contains any record pertaining to him or her, or to request access to such record or to request an accounting of disclosures made of such record, shall submit a written request, either in person or by mail, in accordance with the instructions set forth in the system notice published in the FEDERAL REGISTER. The request shall include:

- (1) The name of the individual making the request;
- (2) The name of the system of records (as set forth in the system notice to which the request relates);
- (3) Any other information specified in the system notice; and
- (4) When the request is for access to records, a statement indicating whether the requester desires to make a personal inspection of the records or be supplied with copies by mail.