

## Department of Veterans Affairs

## § 1.526

a Department of Veterans Affairs employee, for purpose of having an authorized copy made. Copying of material in a file shall not be permitted except in connection with the performance of authorized functions under the power of attorney or requisite declaration of a recognized attorney.

(6) In any case involving litigation against the Government, whether contemplated or initiated, inspection, subject to the foregoing, shall be within the discretion of the General Counsel or Regional Counsel, except that in insurance suits under 38 U.S.C. 1975, 1984, inspection shall be within the discretion of the official having jurisdiction of the claim. Files in such cases may be released to the Department of Justice, but close liaison will be maintained to insure their return intact upon termination of the litigation.

(c) Facility heads and the directors of the services concerned in central office will be responsible for the administrative compliance with and accomplishment of the foregoing within their jurisdiction, and any violations of the prescribed conditions for inspection of files or release of information therefrom will be brought to the immediate attention of the Secretary.

(d) Any person holding power of attorney, a recognized attorney who has filed the requisite declaration, or the accredited representative of a recognized organization holding power of attorney shall be supplied with a copy of each notice to the claimant respecting the adjudication of the claim. If a claimant dies before action on the claim is completed, the person or organization holding power of attorney or the attorney who has filed the requisite declaration may continue to act until the action is completed except where the power of attorney or requisite declaration was filed on behalf of a dependent.

(e) When in developing a claim the accredited representative of a recognized organization finds it necessary to call upon a local representative to assemble information or evidence, he or she may make such disclosures to the local representative as the circumstances of the case may warrant, provided the power of attorney to the recognized organization contains an

authorization permitting such disclosure.

[13 FR 7002, Nov. 27, 1948, as amended at 31 FR 3459, Mar. 5, 1966; 32 FR 10849, July 25, 1967; 33 FR 6536, Apr. 30, 1968]

### § 1.526 Copies of records and papers.

(a) Any person desiring a copy of any record or document in the custody of the Department of Veterans Affairs, which is subject to be furnished under §§1.501 through 1.526, must make written application for such copy to the Department of Veterans Affairs installation having custody of the subject matter desired, stating specifically: (1) The particular record or document the copy of which is desired and whether certified and validated, or uncertified, (2) the purpose for which such copy is desired to be used.

(b) The types of services provided by the Department of Veterans Affairs for which fees will be charged are identified in paragraph (i) of this section.

(c) This section applies to the services furnished in paragraph (b) of this section when rendered to members of the public by the Department of Veterans Affairs. It does not apply to such services when rendered to or for other agencies or branches of the Federal Government, or State and local governments when furnishing the service will help to accomplish an objective of the Department of Veterans Affairs, or when performed in connection with a special research study or compilation when the party requesting such services is charged an amount for the whole job.

(d) When copies of a record or document are furnished under §§1.506, 1.507, 1.510, and 1.514, such copies shall be supplied without charge. Moreover, free service may be provided, to the extent of one copy, to persons who have been required to furnish original documents for retention by the Department of Veterans Affairs.

(e) The following are circumstances under which services may be provided free at the discretion of facility heads or responsible Central Office officials:

(1) When requested by a court, when the copy will serve as a substitute for personal court appearance of a Government witness.

§ 1.526

38 CFR Ch. I (7-1-19 Edition)

(2) When furnishing the service free saves costs or yields income equal to the direct costs of the agency providing the service. This includes cases where the fee for the service would be included in a billing against the Government (for example, in cost-type contracts, or in the case of private physicians who are treating Government beneficiaries at Government expense).

(3) When a service is occasional and incidental, not of a type that is requested often, and if it is administratively determined that a fee would be inappropriate in such an occasional case.

(f) When information, statistics, or reports are released or furnished under §1.501 or §1.519, the fee charge, if any, will be determined upon the merits of each individual application.

(g) In those cases where it is determined that a fee shall be charged, the

applicant will be advised to deposit the amount of the lawful charge for the copy desired. The amount of such charge will be determined in accordance with the schedule of fees prescribed in paragraph (i) of this section. The desired copy will not be delivered, except under court subpoena, until the full amount of the lawful charge is deposited. Any excess deposit of \$1 or more over the lawful charge will be returned to the applicant. Excess deposits of less than \$1 will be returned upon request. When a deposit is received with an application, such a deposit will be returned to the applicant should the application be denied.

(h) Copies of reports or records received from other Government departments or agencies will not be furnished except as provided in §1.513.

(i) *Fees to be charged*—(1) *Schedule of fees:*

Activity	Fees
(i) Duplication of document by any type of reproduction process to produce plain one-sided paper copies of a standard size (8½" × 11"; 8½" × 14"; 11" × 14").	\$0.15 per page after first 100 one-sided pages.
(ii) Duplication of non-paper records, such as microforms, audiovisual materials (motion pictures, slides, laser optical disks, video tapes, audiotapes, etc.) computer tapes and disks, diskettes for personal computers, and any other automated media output.	Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.
(iii) Duplication of documents by any type of reproduction process not covered by paragraphs (i)(1) (i) and (ii) of this section to produce a copy in a form reasonably usable by a requester.	Actual direct cost to the Agency as defined in § 1.555(a)(2) of this part to the extent that it pertains to the cost of duplication.
(iv) Providing special information, statistics, reports, drawings, specifications, lists of names and addresses (either in paper or machine readable form), computer or other machine readable output.	Actual cost to the Agency including computer and manual search costs, copying costs, labor, and material and overhead expenses.
(v) Attestation under the seal of the Agency .....	\$3.00 per document so certified.
(vi) Providing abstracts or copies of medical and dental records to insurance companies for other than litigation purposes.	\$10.00 per request.
(vii) Providing files under court subpoena .....	Actual direct cost to the Agency.

(NOTE. If VA regularly contracts for duplicating services related to providing the requested records, such as the duplication of microfilm or architect's plans and drawings, the contractor fees may be included in the actual direct cost to the Agency)

(2) *Benefit records.* When VA benefit records are requested by a VA beneficiary or applicant for VA benefits, the duplication fee for one complete set of such records will be waived.

(Authority: 38 U.S.C. 5702(b))

(j) If the copy is to be transmitted by certified or registered mail, airmail, or special delivery mail, the postal fees therefor shall be added to the other fees provided in paragraph (i) of this section (or the order must include post-

age stamps or stamped return envelopes for the purpose).

(k) Those Department of Veterans Affairs installations not having copying equipment are authorized to arrange with the nearest Department of Veterans Affairs installation having such equipment to make the necessary authorized copies of records or documents.

(l) Administration, staff office, and field facility heads are authorized to designate employees to certify copies

## Department of Veterans Affairs

## § 1.550

of records and papers furnished under the provisions of paragraph (a) of this section.

[19 FR 3224, June 2, 1954, as amended at 32 FR 10850, July 25, 1967; 33 FR 9342, June 26, 1968; 35 FR 20001, Dec. 31, 1970; 37 FR 2676, Feb. 4, 1972; 39 FR 3938, Jan. 31, 1974; 53 FR 10376, Mar. 31, 1988; 54 FR 34980, Aug. 23, 1989]

### § 1.527 Administrative review.

(a) Any person may, in the event of a denial of his or her request to inspect or obtain information from or copies of records within the purview of §§ 1.501 through 1.526, appeal such denial. Such appeal, stating the circumstances of the denial, should be addressed, as appropriate, to the field facility, administration, or staff office head.

(b) A denial action not reversed by a field facility, administration, or staff office head on appeal, will be referred through normal channels to the General Counsel.

(c) The final agency decision in such appeals will be made by the General Counsel or the Deputy General Counsel.

[32 FR 10850, July 25, 1967, as amended at 55 FR 21546, May 25, 1990]

### PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

#### § 1.550 Purpose.

(a) Sections 1.550 through 1.562 contain the rules followed by VA in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. These regulations should be read together with the FOIA, which provides the underlying legal basis for the regulations and other information regarding requests for records in the custody of a Federal agency. The regulations also should be read together with VA's FOIA Reference Guide, available on VA's FOIA home page (see § 1.552(a) for the pertinent Internet address) and FOIA fee guidance provided by the Office of Management and Budget (OMB), Uniform Freedom of Information Act Fee Schedule and Guidelines, available at [http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/foia\\_fee\\_schedule\\_1987.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/foia_fee_schedule_1987.pdf).

(b) Requests for records about an individual, protected under the Privacy Act, 5 U.S.C. 552a, including one's own records and records that pertain to an individual and that may be sensitive, will be processed under the FOIA and the Privacy Act. The FOIA applies to third-party requests for documents concerning the general activities of the Government and of VA in particular. When a U.S. citizen or an individual lawfully admitted for permanent residence requests access to his or her own records, it is considered a Privacy Act request. Such records are maintained by VA under the individual's name or personal identifier. Although requests are considered either FOIA requests or Privacy Act requests, agencies process requests in accordance with both laws, which provides the greatest degree of lawful access while safeguarding an individual's personal privacy. In addition to the following FOIA regulations, see 1.575 through 1.584 for regulations applicable of Privacy Act records.

(c) Requests for records relating to a claim administered by VA pursuant to 38 U.S.C. 5701 will be processed under the FOIA and 38 U.S.C. 5701. In addition to the following FOIA regulations, see §§ 1.500 through 1.527 for regulations implementing 38 U.S.C. 5701.

(d) Requests for records relating to healthcare quality assurance reviews pursuant to 38 U.S.C. 5705 will be processed under the FOIA and 38 U.S.C. 5705. In addition to the following FOIA regulations, see 38 CFR 17.500 through 17.511 for regulations implementing 38 U.S.C. 5705.

(e) Requests for records relating to treatment for the conditions specified in 38 U.S.C. 7332, such as drug abuse, alcoholism or alcohol abuse, infection with the Human Immunodeficiency Virus (HIV), or sickle cell anemia, will be processed under the FOIA and 38 U.S.C. 7332. In addition to the following FOIA regulations, see §§ 1.460 through 1.499 of this part for regulations implementing 38 U.S.C. 7332.

(Authority: Sections 1.550 to 1.562 issued under 72 Stat. 1114; 38 U.S.C. 501, 552, 552a, 5701, 5705, 7332.)G1986

[76 FR 51892, Aug. 19, 2011, as amended at 84 FR 12125, Apr. 1, 2019]