

Agency for International Development

§ 212.4

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Subpart A—General Provisions

§ 212.1 Purpose and scope.

This subpart contains the rules that the United States Agency of International Development (hereinafter “USAID” or “the Agency”) follows in processing requests for records under the Freedom of Information Act (“FOIA”), 5 U.S.C. 552. The rules in this subpart should be read in conjunction with the text of the FOIA. Requests made by individuals for records about themselves under the Privacy Act of 1974, are processed under Subpart O. Definitions of FOIA terms are referenced in Subpart L.

§ 212.2 Policy.

(a) As a general policy, USAID follows a balanced approach in administering the FOIA. USAID recognizes the right of the public to access information in the possession of the Agency. USAID also recognizes the legitimate interests of organizations or persons who have submitted records to the Agency or who would otherwise be affected by release of records. USAID has no discretion to release certain records, such as trade secrets and confidential commercial information, prohibited from release by law. USAID’s policy calls for the fullest responsible disclosure consistent with those requirements of administrative necessity and confidentiality which are recognized under the FOIA.

(b) *Definitions.* For purposes of subparts A through K, M, and O of this part, *record* means information regardless of its physical form or characteristics including information created, stored, and retrievable by electronic means that is created or obtained by the Agency and under the control of the Agency at the time of the request,

including information maintained for the Agency by an entity under Government contract for records management purposes. It does not include records that are not already in existence and that would have to be created specifically to respond to a request. Information available in electronic form shall be searched and compiled in response to a request unless such search and compilation would significantly interfere with the operation of the Agency’s automated information systems.

§ 212.3 Records available on the Agency’s Web site.

Information that is required to be published in the FEDERAL REGISTER under 5 U.S.C. 552(a)(1) is regularly updated by the Agency and found on its public Web site: www.usaid.gov/foia-requests. Records that are required by the FOIA to be made available for public inspection in an electronic format under 5 U.S.C. 552(a)(2) also are available on the Agency’s public Web site.

Subpart B—Proactive Disclosures of Agency Records

§ 212.4 Materials available for public inspection and in electronic format.

(a) In accordance with this subpart, the Agency shall make the following materials available for public inspection in an electronic format:

(1) Operational policy in USAID’s Automated Directives System (ADS) which have been adopted by the Agency and are not published in the FEDERAL REGISTER;

(2) Administrative staff manuals and instructions to staff that affect any member of the public; and

(3) Copies of all records, regardless of form or format, which have been released pursuant to a FOIA request, and which have been requested three (3) or more times, or because of the nature of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. The Agency shall decide on a case by case basis whether records fall into this category, based on the following factors:

(i) Previous experience with similar records;