

## Office of the Secretary, Education

## § 5.10

AUTHORITY: 5 U.S.C. 552, 20 U.S.C. 1221e-3, and 20 U.S.C. 3474.

SOURCE: 75 FR 33510, June 14, 2010, unless otherwise noted.

### Subpart A—General Provisions

#### § 5.1 Purpose.

This part contains the regulations that the United States Department of Education follows in processing requests for records under the Freedom of Information Act, as amended, 5 U.S.C. 552. These regulations must be read in conjunction with the FOIA, including its exemptions to disclosure, and, when appropriate, in conjunction with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, and its implementing regulations in 34 CFR part 5b.

(Authority: 5 U.S.C. 552(a), 20 U.S.C. 3474)

#### § 5.2 Definitions.

As used in this part:

(a) *Act* or *FOIA* means the Freedom of Information Act, as amended, 5 U.S.C. 552.

(b) *Department* means the United States Department of Education.

(c) *Component* means each separate bureau, office, board, division, commission, service, administration, or other organizational entity of the Department.

(d) *FOIA request* means a written request for agency records that reasonably describes the agency records sought, made by any person, including a member of the public (U.S. or foreign citizen/entity), partnership, corporation, association, and foreign or domestic governments (excluding Federal agencies).

(e)(1) *Agency records* are documentary materials regardless of physical form or characteristics that—

(i) Are either created or obtained by the Department; and

(ii) Are under the Department's control at the time it receives a FOIA request.

(2) *Agency records* include—

(i) Records created, stored, and retrievable in electronic format;

(ii) Records maintained for the Department by a private entity under a records management contract with the Federal Government; and

(iii) Documentary materials preserved by the Department as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Department or because of the informational value of data contained therein.

(3) *Agency records* do not include tangible, evidentiary objects or equipment; library or museum materials made or acquired and preserved solely for reference or exhibition purposes; extra copies of documents preserved only for convenience of reference; stocks of publications; and personal records created for the convenience of an individual and not used to conduct Department business or incorporated into the Department's record keeping system or files.

(Authority: 5 U.S.C. 552(a), 20 U.S.C. 3474)

### Subpart B—Agency Records Available to the Public

#### § 5.10 Public reading room.

(a) *Electronic inspection*. (1) Pursuant to 5 U.S.C. 552(a)(2), the Department makes available for public inspection in an electronic format the following records created on or after November 1, 1996:

(i) Final opinions and orders in adjudications;

(ii) Statements of policy and interpretations adopted by the Department and not published in the FEDERAL REGISTER;

(iii) Administrative staff manuals and instructions affecting the public; and

(iv) Copies of all agency records regardless of form or format released to the public pursuant to a FOIA request that the Department determines are likely to be the subject of future FOIA requests or have been requested three or more times.

(2) The Department currently makes the agency records described in paragraph (a)(1) of this section available for public inspection in an electronic format through its electronic reading room located on the Department's FOIA website at <http://www2.ed.gov/policy/gen/leg/foia/readingroom.html>.

(b) *Public reading room*. The Department may maintain a public reading

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room containing the agency records described in paragraph (a)(1) of this section. The Department's public reading room is currently located at the National Library of Education, 400 Maryland Avenue SW, Plaza Level (Level B), Washington, DC 20202-0008. To visit the public reading room, members of the public can contact the Department's FOIA Service Center via email at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

(c) *Hard copies.* For any agency records that are not made available for public inspection in the FEDERAL REGISTER or pursuant to paragraph (a) of this section, the Department will, upon request, provide hard copies in accordance with 5 U.S.C. 552(a)(3).

(Authority: 5 U.S.C. 552(a), 5 U.S.C. 552(a)(2), 20 U.S.C. 3474)

[75 FR 33510, June 14, 2010, as amended at 84 FR 67867, Dec. 12, 2019]

### §5.11 Business information.

(a) *General.* The Department discloses business information it obtains from a submitter under the Act in accordance with this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* means commercial or financial information obtained by the Department from a submitter that may be protected from disclosure under 5 U.S.C. 552(b)(4) (Exemption 4 of the Act).

(2) *Submitter* means any person or entity (including corporations; State, local, and tribal governments; and foreign governments) from whom the Department obtains business information.

(c) *Designation of business information.*

(1) A submitter must use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portion of its submission that it considers to be business information protected from disclosure under Exemption 4 of the Act.

(2) A submitter's designations are not binding on the Department and will expire 10 years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(3) A blanket designation on each page of a submission that all information contained on the page is protected

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from disclosure under Exemption 4 presumptively will not be considered a good faith effort.

(d) *Notice to submitters.* Except as provided in paragraph (g) of this section, the Department promptly notifies a submitter whenever a FOIA request or administrative appeal is made under the Act seeking disclosure of the information the submitter has designated in good faith as business information protected from disclosure under paragraph (c) of this section, or the Department otherwise has reason to believe that it may be required to disclose information sought to be designated by the submitter as business information protected from disclosure under Exemption 4 of the Act. This notice includes either a description of the business information requested or copies of the requested agency records or portions of agency records containing the requested business information as well as a time period, consistent with §5.21(c), within which the submitter can object to the disclosure pursuant to paragraph (e) of this section.

(e) *Opportunity to object to disclosure.*

(1) If a submitter objects to disclosure, it must submit to the Department a detailed written statement specifying all grounds under Exemption 4 of the Act for denying access to the information, or a portion of the information sought.

(2) A submitter's failure to object to the disclosure by the deadline established by the Department in the notice provided under paragraph (d) of this section constitutes a waiver of the submitter's right to object to disclosure under paragraph (e) of this section.

(3) A submitter's response to a notice from the Department under paragraph (d) of this section may itself be subject to disclosure under the Act.

(f) *Notice of intent to disclose.* The Department considers a submitter's objections and submissions made in support thereof in deciding whether to disclose business information sought to be protected by the submitter. Whenever the Department decides to disclose information over a submitter's objection, the Department gives the submitter written notice, which includes: