

**PART 10000—PROCEDURES FOR
DISCLOSURE OF RECORDS
UNDER THE FREEDOM OF INFOR-
MATION ACT**

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AUTHORITY: 5 U.S.C. 552, as amended; E.O. 12600, 52 FR 23781, 3 CFR 1987, 1987 Comp., p. 235; 3 CFR 235.

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§ 10000.1 Purpose and scope.

The regulations in this part implement the provisions of the FOIA.

§ 10000.2 Definitions.

The following definitions apply to this part:

Chairperson means the Chairperson of the Council, as appointed by the President, or any person to whom the Council has delegated authority for the matter concerned.

Chief FOIA Officer means the senior official to whom the Council delegated responsibility for efficient and appropriate compliance with the FOIA, currently delegated to the General Counsel.

Commercial use request means a FOIA request from or on behalf of a requester that seeks information for a use or purpose that furthers their commercial, trade, or profit interests, including pursuit of those interests through litigation.

Confidential business information means trade secrets or confidential or privileged commercial or financial information submitted to the Council by a person that may be protected from disclosure under Exemption 4 of the FOIA.

Council means the National Council on Disability, established by the Rehabilitation Act of 1973 (29 U.S.C. 780 *et seq.*), as amended, and amended by the

Workforce Innovation and Opportunity Act (Pub. L. 113-128) in 2014.

Direct costs are those expenses that an agency incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.*, the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research. A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. To fall within this fee category, the request must serve the scholarly research goals of the institution rather than an individual research goal.

(1) *Example 1.* A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

(2) *Example 2.* A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

(3) *Example 3.* A student who makes a request in furtherance of the completion of a course of instruction would be presumed to be carrying out an individual research goal, rather than a scholarly research goal of the institution and would not qualify as part of this fee category.

Fee waiver means the waiver or reduction of fees if a requester can demonstrate meeting the statutory standard that 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.

FOIA means the Freedom of Information Act, 5 U.S.C. 552, as amended. The FOIA applies to requests for agency records.

FOIA Officer means the individual to whom the Council has delegated authority to carry out the Council's day-to-day FOIA administration, currently delegated to the Council's Attorney Advisor.

FOIA Public Liaison means the individual designated by the Chairperson to assist FOIA requesters with concerns about the Council's processing of their FOIA request, including assistance in resolving disputes, currently delegated to the Council's Attorney Advisor.

Non-commercial scientific institution means an organization operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any product or research, and not operated on a commercial basis.

Person includes an individual, partnership, corporation, association, or public or private organization other than an agency.

Record means any writing, drawing, map, recording, diskette, DVD, CD-ROM, tape, film, photograph, or other documentary material, regardless of medium, by which information is preserved, including documentary material stored electronically.

Redact means delete or mark over.

Representative of the news media is any person or entity organized and operated to publish or broadcast news to the public that actively 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. The term "news" means information that is about current events or that would be of current interest to the public. Examples of

news media entities include television or radio stations that broadcast "news" to the public at large and publishers of periodicals that disseminate "news" and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester's past publication record in making this determination.

Requester category means one of the three categories defined by the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Fee Guidelines) in which requesters will be placed for the purpose of determining what if any fees for search, review, or duplication may be assessed. They are:

- (1) Commercial requesters;
- (2) Non-commercial scientific or educational institutions or representatives of the news media; and
- (3) All other requesters.

Submitter means any person or entity from whom the Council obtains confidential or privileged business information, directly or indirectly.

Unusual circumstances exist when:

- (1) The need to search for and collect the requested records from physically separate facilities;
- (2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

[80 FR 49118, Aug. 17, 2015, as amended at 81 FR 93792, Dec. 22, 2016]

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§ 10000.3 Availability of records.

Records that are required by the FOIA to be made available for public inspection and copying may be accessed through the Agency's Web site at *www.ncd.gov*. The Council is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. The Council shall ensure that its Web site of posted records and indices is reviewed and updated on an ongoing basis. The Council's FOIA Public Liaison can assist individuals in locating records particular to a component.

§ 10000.4 Categories of exemptions.

(a) The FOIA does not require disclosure of matters that are:

(1) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are, in fact, properly classified under executive order;

(2) Related solely to the internal personnel rules and practices of the Council;

(3) Specifically exempted from disclosure by statute (other than the Government in the Sunshine Act, 5 U.S.C. 552b, as amended), provided that such statute:

(i)(A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld; and

(ii) If enacted after October 28, 2009, specifically cites to Exemption 3 of the FOIA, 5 U.S.C. 552(b)(3);

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters, which would not be available at law to a party other than an agency in litigation with the Council;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

§ 10000.5 Request for records.

(a) You may request copies of records under this part by email to *FOIA@ncd.gov* or in writing addressed to FOIA Officer, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004.

(b) Your request shall reasonably describe the records sought with sufficient specificity, and when possible, include names, dates, and subject matter, in order to permit the FOIA Officer to

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locate the records with a reasonable amount of effort. If the FOIA Officer cannot locate responsive records based on your written description, you will be notified and advised that further identifying information is necessary before the request can be fulfilled. Although requests are considered either FOIA or Privacy Act requests, the Council processes requests for records in accordance with both laws so as to provide the greatest degree of lawful access while safeguarding an individual's personal privacy.

(c) Your request should specify your preferred form or format (including electronic formats) for the records you seek. We will accommodate your request if the record is readily available in that form or format. When you do not specify the form or format of the response, we will provide responsive records in the form or format most convenient to us.

§ 10000.6 Responsibility for responding to requests.

(a) *In general.* The Council delegates authority to grant or deny FOIA requests in whole or in part to the Chief FOIA Officer. When conducting a search for responsive records, the FOIA Officer generally will search for records in existence on the date of the search. If another date is used, the FOIA Officer shall inform the requester of the date used.

(b) *Responses.* The Chief FOIA Officer will notify you of his or her determination to grant or deny your FOIA request in the time frame stated in § 10000.8. The Council will release reasonably segregable non-exempt information. For any adverse determination, including those regarding any disputed fee matter; a denial of a request for a fee waiver; or a determination to withhold a record, in whole or in part, that a record does not exist or cannot be located; or to deny a request for expedited processing; the notice shall include the following information:

(1) FOIA case number and date of the original request;

(2) The name(s) of any person responsible for the determination to deny the request in whole or in part;

(3) A brief statement of the reason(s) for the denial, including any FOIA ex-

emption applied in denying the request. The Chief FOIA Officer will indicate, if technically feasible, the amount of information deleted and the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemption;

(4) An estimate of the volume of information withheld, if applicable. This estimate does not need to be provided if it is ascertainable based on redactions in partially disclosed records or if the disclosure of the estimate would harm an interest protected by an applicable FOIA exemption; and

(5) A statement of the right to seek dispute resolution services from NCD's FOIA Public Liaison and the Office of Government Information Services.

(c) *Consultation, referral, and coordination.* When reviewing records located by the Council in response to a request, the Council shall determine whether another agency of the Federal Government or entity is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be released as a matter of discretion. As to any such record, the Council shall proceed in one of the following ways:

(1) *Consultation.* When records originated with the Council, but contain within them information of interest to another agency, the Council should typically consult with that other agency prior to making a release determination.

(2) *Referral.* (i) When the Council believes that a different agency is best able to determine whether to disclose the record, the Council typically should refer the responsibility for responding to the request regarding that record, as long as the referral is to an agency that is subject to the FOIA. Ordinarily, the agency that originated the record will be presumed to be best able to make the disclosure determination. However, if the Council and the originating agency jointly agree that the former is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever the Council refers any part of the responsibility for responding to a request to another agency, it shall document the referral, maintain a copy of the record that it refers, and notify the requester of the referral and inform the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if the Council responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if the Council locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the Council should coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the Council.

[80 FR 49118, Aug. 17, 2015, as amended at 81 FR 93792, Dec. 22, 2016]

§ 10000.7 Administrative appeals.

(a) You may appeal an adverse determination related to your FOIA request, or the Council's failure to respond to your FOIA request within the prescribed time limits, by email at FOIA@ncd.gov, or write to the Executive Director, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004.

(b) Your appeal must be in writing and must be postmarked or electronically received by the Executive Director within 90 days of the date of the letter denying your request, in whole or in part. For the most expeditious handling, your appeal letter and envelope should be marked "Freedom of Information Act Appeal" and reference the request number.

(c) The Executive Director shall respond to all administrative appeals in writing and within the time frame stated in §10000.8(d). If the decision affirms, in whole or in part, the Chief FOIA Officer's determination, the letter shall contain a statement of the reasons for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA's provisions for court review. If the Executive Director reverses or modifies the Chief FOIA Officer's determination, in whole or in part, you will be notified in writing and your request will be reprocessed in accordance with that decision. The Council may work with Office of Government Information Services (OGIS) to resolve disputes between FOIA requestors and the Council. A requester may also seek dispute resolution services from NCD's FOIA Public Liaison and OGIS. Facsimile is also available at 202-741-5769.

[80 FR 49118, Aug. 17, 2015, as amended at 81 FR 93792, Dec. 22, 2016]

§ 10000.8 Timeframe for Council's response to a FOIA request or administrative appeal.

(a) *In general.* The Council ordinarily shall respond to requests according to their order of receipt.

(b) *Multi-track processing.* (1) The Council may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including through limits based on the number of pages involved. If the Council does so, it shall advise requesters in its slower track(s) of the limits of its faster track(s).

(2) Using multitrack processing, the Council may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing

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within the specified limits of the Council's faster track(s). In doing so, the Council will contact the requester by telephone, letter, or email, whichever is more efficient in each case.

(c) *Initial decisions.* The Council shall determine whether to comply with a FOIA request within 20 working days after our receipt of the request, unless the time frame for response is extended due to unusual circumstances as further described in paragraph (f) of this section. A request is received by the Council, for purposes of commencing the 20-day timeframe for its response, on the day it is properly received by the FOIA Officer. The request must meet all requirements described by these regulations and the FOIA before the 20-day timeframe commences.

(d) *Administrative appeals.* The Executive Director shall determine whether to affirm or overturn a decision subject to administrative appeal within 20 working days after receipt of the appeal, unless the time frame for response is extended in accordance with paragraph (e) of this section.

(e) *Tolling timelines.* We may toll the 20-day timeframe set forth in paragraph (c) or (d) of this section:

(1) One time to await information that we reasonably requested from you, as permitted by 5 U.S.C. 552(a)(6)(A)(iii)(I);

(2) As necessary to clarify with you any fee-related issue.

(3) If we toll the time frame for response under paragraphs (e)(1) or (2) of this section, the tolling period ends upon our receipt of your response.

(f) *Unusual circumstances.* In the event of unusual circumstances, we may extend the time frame for response provided in paragraph (c) or (d) of this section by providing you with written notice of the unusual circumstances and the date on which a determination is expected to be made. Where the extension is for more than ten working days, we will provide you with an opportunity either to modify your request so that it may be processed within the statutorily-prescribed time limits or to arrange an alternative time period for processing your request or modified request.

(g) *Aggregating requests.* When we reasonably believe that multiple requests

submitted by a requester, or by a group of requesters acting in concert, involving clearly related matters, can be viewed as a single request that involves unusual circumstances, we may aggregate the requests for the purposes of fees and processing activities.

(h) *Expedited processing.* You may request that the Council expedite processing of your FOIA request. To receive expedited processing, you must demonstrate a compelling need for such processing.

(1) For requests for expedited processing, a "compelling need" involves:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) A request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged federal government activity.

(2) Your request for expedited processing must be in writing and may be made at the time of the initial FOIA request or at any later time.

(3) Your request for expedited processing must include a statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail the basis for requesting expedited processing. If you are a person primarily engaged in disseminating information, you must establish a particular urgency to inform the public about the federal government activity involved in the request.

(4) The Chief FOIA Officer will decide whether to grant or deny your request for expedited processing and notify the requester within ten calendar days of receipt. You will be notified in writing of the determination. Appeals of adverse decisions regarding expedited processing shall be processed expeditiously.

[80 FR 49118, Aug. 17, 2015, as amended at 81 FR 93792, Dec. 22, 2016]

§ 10000.9 Business information.

(a) *Designation of confidential business information.* In the event a FOIA request is made for confidential business information previously submitted to

the Government by a commercial entity or on behalf of it (hereinafter "submitter"), the regulations in this section apply. When submitting confidential business information, you must use a good-faith effort to designate, by use of appropriate markings, at the time of submission or at a reasonable time thereafter, any portions of your submission that you consider to be exempt from disclosure under FOIA Exemption 4, 5 U.S.C. 552(b)(4). Your designation will expire ten years after the date of submission unless you request, and provide justification for, a longer designation period.

(b) *Notice to submitters.* (1) Whenever you designate confidential business information as provided in paragraph (a) of this section, or the Council has reason to believe that your submission may contain confidential business information, we will provide you with prompt written notice of a FOIA request that seeks your business information. The notice shall:

(i) Give you an opportunity to object to disclosure of your information, in whole or in part;

(ii) Describe the business information requested or include copies of the requested records or record portions containing the information; and

(iii) Inform you of the time frame in which you must respond to the notice.

(2) In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(c) *Opportunity to object to disclosure.* The Council shall allow you a reasonable time to respond to the notice described in paragraph (b) of this section. If you object to the disclosure of your information, in whole or in part, you must provide us with a detailed written statement of your objection. The statement must specify all grounds for withholding any portion of the information under any FOIA exemption and, when relying on FOIA Exemption 4, it must explain why the information is a trade secret or commercial or financial information that is privileged and confidential. If you fail to respond within the time frame specified in the notice, the Council will conclude that you have no objection to disclosure of your infor-

mation. The Council will only consider information that we receive within the time frame specified in the notice.

(d) *Notice of intent to disclose.* The Council will consider your objection and specific grounds for non-disclosure in deciding whether to disclose business information. Whenever the Council decides to disclose business information over your objection, we will provide you with written notice that includes:

(1) A statement of the reasons why each of your bases for withholding were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time after the notice.

(e) *Exceptions to the notice requirement.* The notice requirements of paragraphs (c) and

(d) of this section shall not apply if:

(1) The Council determines that the information is exempt under the FOIA;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600;

(4) The designation made by the submitter under paragraph (a) of this section appears obviously frivolous, except that, in such a case, the Council shall, within a reasonable time prior to the date the disclosure will be made, give the submitter written notice of the final decision to disclose the information.

(f) *Requester notification.* The Council shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 10000.10 Fees.

(a) We will charge fees that recoup the full allowable direct costs we incur in processing your FOIA request. Fees may be charged for search, review or

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duplication. We will use the most efficient and least costly methods to comply with your request.

(b) With regard to manual searches for records, we will charge the salary rate(s) (calculated as the basic rate of pay plus 16 percent of that basic rate to cover benefits) of the employee(s) performing the search.

(c) In calculating charges for computer searches for records, we will charge at the actual direct cost of providing the service, including the cost of operating the central processing unit directly attributable to searching for records potentially responsive to your FOIA request and the portion of the salary of the operators/programmers performing the search.

(d) Review fees shall be charged for requesters who make commercial use requests. Review fees shall be assessed only for the initial review—that is the review undertaken the first time we analyze the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. We may assess the costs for such subsequent review. Review fees are charged at the same rates as those charged for a search.

(e) Notice of anticipated fees in excess of \$25.00:

(1) When the Council determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, the Council shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the Council shall advise the requester accordingly. If the requester is a noncommercial use requester, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication or equivalent at no charge. For example, 100 pages burned to a single CD would be considered equivalent to 100 pages of duplication. And, if the requester is

charged search fees, two hours of search time at no charge, and shall advise the requester whether those entitlements have been provided.

(2) In cases in which a requester has been notified that the actual or estimated fees are in excess of \$25.00, the request shall not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. The Council is not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the Council estimates that the total fee will exceed that amount, the Council shall toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The Council shall inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The Council shall make available its FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) We will charge you the full costs of providing you with the following services:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express or certified mail.

(g) We may assess interest charges on an unpaid bill starting on the 31st calendar day following the day on which the billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717

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and will accrue from the date of the billing.

(h) We will not charge a search fee for requests by educational institutions, non-commercial scientific institutions, or representatives of the news media. A search fee will be charged for a commercial use requests.

(i) Except for a commercial use request, we will not charge you for the first 100 pages of duplication and the first two hours of search.

(j) If the Council fails to comply with the time limits in which to respond to a request, and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, it may not charge search fees, or, in the instances of requests from requesters requests by educational institutions (unless the records are sought for a commercial use), noncommercial scientific institutions, or representatives of the news media, may not charge duplication fees.

(k) After processing, actual fees must be equal to or exceed \$25, for the Council to require payment of fees.

(l) You may not file multiple requests, each seeking portions of a document or documents, solely for the purpose of avoiding payment of fees. When the Council reasonably believes that a requester, or a group of requesters acting in concert, has submitted requests that constitute a single request involving clearly related matters, we may aggregate those requests and charge accordingly.

(m) We may not require you to make payment before we begin work to satisfy the request or to continue work on a request, unless:

(1) We estimate or determine that the allowable charges that you may be required to pay are likely to exceed \$250; or

(2) You have previously failed to pay a fee charged within 30 days of the date of billing.

(n) Upon written request, we may waive or reduce fees that are otherwise chargeable under this part. If you request a waiver or reduction in fees, you must demonstrate that a waiver or reduction in fees is in the public interest because disclosure of the requested records is likely to contribute signifi-

cantly to the public understanding of the operations or activities of the government and is not primarily in your commercial interest.

(1) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government, the Council shall consider all four of the following factors:

(i) The subject of the request must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, components shall not make value judgments about whether the information at issue is "important" enough to be made public.

(2) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Council shall consider the following factors:

(i) The Council shall identify any commercial interest of the requester, as defined in §10000.2, that would be furthered by the requested disclosure.

Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure. The Council ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received.

PART 10001—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

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- 10001.6 Fees.
- 10001.7 Penalties.

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

SOURCE: 80 FR 49118, Aug. 17, 2015, unless otherwise noted.

§ 10001.1 Purpose and scope.

The regulations in this part implement the provisions of the Privacy Act.

§ 10001.2 Definitions.

The following terms used in this part are defined in the Privacy Act: *Indi-*

vidual, maintain, record, routine use, statistical record, system of records. The following definitions also apply in this part:

Chairperson means the Chairperson of the Council, as appointed by the President, or any person to whom the Council has delegated authority for the matter concerned.

Council means the National Council on Disability, established by the Rehabilitation Act of 1973 (29 U.S.C. 780 *et seq.*), as amended, and amended by the Workforce Innovation and Opportunity Act (Pub. L. 113–128) in 2014.

General Counsel means the Council's principal legal advisor, or his or her designee.

Privacy Act means the Privacy Act of 1974, 5 U.S.C. 552a, as amended.

Privacy Act Officer means the person designated by the Council to be responsible for the day-to-day administration of the Privacy Act, currently delegated to the Council's Management Analyst.

§ 10001.3 Privacy Act requests.

(a) *Requests to determine if you are the subject of a record.* You may request that the Council inform you if we maintain a system of records that contains records about you. Your request must follow the procedures described in paragraph (b) of this section.

(b) *Requests for access.* You may request access to a Council record about you in writing or by appearing in person. You should direct your request to the Privacy Act Officer. Written requests may be sent to: Privacy Act Officer, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004. Your request should include the following information:

(1) Your name, address, and telephone number;

(2) The system(s) of records in which the requested information is contained; and

(3) At your option, authorization for copying expenses.

(4) *Written requests.* In addition to the information described in paragraphs (b)(1) through (3) of this section, written requests must include a statement affirming your identity, signed by you and witnessed by two persons (including witnesses' addresses) or notarized.