

§ 14.330 Decision.

The adjudicative officer shall issue an initial decision on the application within 30 days after completion of proceedings on the application. The decision shall include written findings and conclusions on such of the following as are relevant to the decision:

- (a) The applicant's status as a prevailing party;
- (b) The applicant's qualification as a party under 5 U.S.C. 504(b)(1)(B);
- (c) Whether the agency's position was substantially justified;
- (d) Whether special circumstances make an award unjust;
- (e) Whether the applicant during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; and
- (f) The amounts, if any, awarded for fees and other expenses, with reasons for any difference between the amount requested and the amount awarded.

If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 14.335 Departmental review.

(a) Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the Secretary (or his or her delegate, if any) may decide to review the decision on his or her own initiative, in accordance with the Department's review or appeals procedures applicable to the underlying proceeding. If neither the applicant nor agency counsel seeks review and the Secretary (or his or her delegate, if any) does not take review on his or her own initiative, the initial decision on the application shall become a final decision of the Department in the same manner as a decision in the underlying proceeding becomes final. Whether to review a decision is a matter within the discretion of the Secretary (or his or her delegate, if any). If review is taken, the Department will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

(b) Either party may seek reconsideration of the decision on the fee application in accordance with Rule 29, 24 CFR 20.10.

§ 14.340 Judicial review.

Judicial review of final departmental decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 14.345 Payment of award.

An applicant seeking payment of an award shall submit a copy of the final decision granting the award to: Director, Office of Finance and Accounting, Room 2202, Department of Housing and Urban Development, Washington, DC 20410, with a copy to: Associate General Counsel for Equal Opportunity and Administrative Law, Room 10244, Department of Housing and Urban Development, Washington, DC 20410. A statement that review of the underlying decision is not being sought in the United States courts, or that the process for seeking review of the award, if initiated, has been completed, must also be included. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES

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APPENDIX A TO PART 15—LOCATION INFORMATION FOR HUD FOIA READING ROOMS AND CONTACT INFORMATION FOR REGIONAL COUNSEL

AUTHORITY: 42 U.S.C. 3535(d), 5 U.S.C. 552.

Subpart A—General Provisions

SOURCE: 80 FR 49144, Aug. 17, 2015, unless otherwise noted.

§ 15.1 General provisions.

(a) *Scope.* Requests for material from HUD will be processed as set forth in this part. The Federal Housing Administration and the Government National Mortgage Association are components of HUD and are also covered by this part.

(b) *Subpart B.* Subpart B of this part contains the rules that HUD follows in

processing requests for records under the Freedom of Information Act (FOIA) (5 U.S.C. 552). These rules should be read together with the FOIA, which provides additional information about access to records maintained by HUD. Information routinely provided to the public as part of a regular Department activity may be provided to the public without following this subpart.

(c) *Subpart C.* Subpart C of this part describes the procedures to be followed and standards to be applied in processing demands for the production of material or provision of testimony in legal proceedings among private litigants.

(d) *Subpart D.* Subpart D of this part describes the procedures to be followed and standards to be applied in processing demands for the production of material or provision of testimony in legal proceedings in which the United States is a party.

(e) *Inspector General.* Subparts B and C of this part do not apply to the Office of Inspector General. The procedures that apply to the Office of Inspector General are described in parts 2002 and 2004 of this title.

§ 15.2 Definitions.

(a) The following definitions apply to this part.

Agency record means any documentary material that is either created or obtained by an agency in the transaction of agency business and is under agency control. “Agency record” does not include records that are not already in existence and which would have to be created specifically to meet a request.

Business information means commercial or financial information provided to HUD by a submitter that arguably is protected from disclosure under Exemption 4 (42 U.S.C. 552(b)(4)) of the FOIA.

FOIA means the Freedom of Information Act (5 U.S.C. 552).

HUD means the Department of Housing and Urban Development.

Review means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure (for example,

doing all that is necessary to redact it and prepare it for disclosure). Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure, made by a business submitter under §15.108, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

Secretary means the Secretary of Housing and Urban Development.

Submitter means any person or entity that provides business information, directly or indirectly, to HUD. The term includes, but is not limited to, corporations, State governments, and foreign governments.

(b) The following definitions apply to subparts C and D of this part.

Appropriate Associate General Counsel means the Associate General Counsel for Litigation or the Associate General Counsel for HUD Headquarters employees in those programs for which the Associate General Counsel provides legal advice.

Appropriate Regional Counsel means the Regional Counsel for the regional office having delegated authority over the project or activity with respect to which the information is sought. For assistance in identifying the Appropriate Regional Counsel, see appendix A to this part.

Authorized Approving Official means the Secretary, General Counsel, Appropriate Associate General Counsel, or Appropriate Regional Counsel.

Demand means a subpoena, order, or other demand of a court or other authority that is issued in a legal proceeding and any accompanying submissions.

Employee of the Department means a current or former officer or employee of the United States appointed by or subject to the supervision of the Secretary, but does not include an officer

or employee covered by part 2004 of this title.

Good cause means necessary to prevent a miscarriage of justice or to promote a significant interest of the Department.

Legal proceeding includes any proceeding before a court of law or other authority; e.g., an administrative board or commission, a hearing officer, an arbitrator, or other body conducting a quasi-judicial or legislative proceeding.

Legal proceeding among private litigants means any legal proceeding in which the United States is not a party.

Legal proceeding in which the United States is a party means any legal proceeding including as a named party the United States, the Department of Housing and Urban Development, any other Federal executive or administrative agency or department, or any official thereof in his official capacity.

Material means either documents or information contained in, or relating to contents of, the files of the Department, or documents or information acquired by any person, while such person was an employee of the Department, as a part of the performance of his or her official duties or because of his or her official status.

Production means to produce material by any means other than through the provision of oral testimony.

Testimony means any oral or written statements made in litigation under oath or penalty of perjury.

United States means the Federal Government of the United States (including the Department), the Secretary, and any employees of the Department in their official capacities.

Subpart B—Procedures for Disclosure of Records Under the FOIA

SOURCE: 80 FR 49145, Aug. 17, 2015, unless otherwise noted.

§ 15.101 Proactive disclosures of department records.

(a) *In General.* Records that are required to be made available for public inspection in an electronic format are accessible on the Department's Web site at <http://www.hud.gov/FOIA>. Published agency records, whether or not

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they are available for purchase, are made available for examination. Each HUD office (headquarters and field) has a FOIA Public Liaison that can assist individuals in locating records. A list of the Department's FOIA Public Liaisons is available at <http://www.hud.gov/FOIA>.

(b) *Electronic FOIA reading room.* As required by 5 U.S.C. 552(a)(2), HUD makes records created on or after November 1, 1996, available through its electronic FOIA Reading Room, located on HUD's FOIA Web site at <http://www.hud.gov/FOIA>. These records include:

- (1) Final opinions and orders.
- (2) Public access to high-value, machine readable datasets via <http://www.data.gov>.
- (3) Statements of policy and interpretation, including:
 - (i) HUD's Client and Information Policy Systems (HUDCLIPS);
 - (ii) Housing policy;
 - (iii) Public and Indian Housing policy and regulations;
 - (iv) Public and Indian Housing policy and guidance (PHA Plans); and
 - (v) Community Planning and Development policy and guidance.
- (4) Administrative staff manuals.
- (5) HUD's online library.
- (6) Fair housing information.
- (7) Copies of all records, regardless of form or format that have been released to any person under § 15.105; and
 - (i) Because of the nature of their subject matter, the agency determines that the records have become or are likely to become the subject of subsequent requests for substantially the same records; or
 - (ii) Have been requested three or more times.
- (8) Report for the preceding fiscal year submitted to the U.S. Attorney General and the Director of the Office of Government Information Services (OGIS) as required by 5 U.S.C. 552(e) and the raw statistical data used in each report. This report will be made available:
 - (i) Without charge, license, or registration requirement;
 - (ii) In an aggregated, searchable format; and
 - (iii) In a format that may be downloaded in bulk.

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(c) *Frequently requested materials.* HUD also makes frequently requested materials available on its FOIA Web site at <http://www.hud.gov/FOIA>. These frequently requested materials include information related to:

- (1) Highest-scoring funding grant applications.
- (2) Purchase charge cardholders.
- (3) FHA refunds.
- (4) FHA-approved lenders.
- (5) Homes for sale.
- (6) How to buy a HUD home.
- (7) How to apply for public housing and Section 8 housing.
- (8) Housing for the elderly.
- (9) Housing for individuals with disabilities.
- (10) HUD contracting home page.
- (11) FHA mortgage insurance programs.
- (12) HUD handbooks.
- (13) HUD programs.
- (14) HUD telephone directory.
- (15) HUD homes listing.
- (16) HUD's organization.
- (17) Multifamily housing data.
- (18) Public housing authority contact information.
- (19) Weekly listing of multifamily properties for sale.
- (20) Catalog of Federal Domestic Assistance (CFDA) materials.
- (21) Grants.
- (22) FOIA request logs.

[80 FR 49145, Aug. 17, 2015, as amended at 82 FR 3622, Jan. 12, 2017; 82 FR 21694, May 10, 2017]

§ 15.102 Requirements for making requests for records.

(a) *In general.* Any request for HUD records must be made in writing and submitted to the FOIA Public Liaison in the HUD field office where the records are located or to the Office of the Executive Secretariat in HUD Headquarters if the request is for records located in HUD Headquarters.

(b) *HUD field office records.* Requests for records located in a HUD field office may be submitted by mail (including courier or delivery service), email, or facsimile to the FOIA Public Liaison at the field office.

(c) *HUD headquarters records.* Requests for records located in HUD Headquarters may be submitted via an electronic request form on HUD's FOIA

Web site at <http://www.hud.gov/FOIA>. Requests can also be submitted in person or by mail (including courier or delivery service), email, or facsimile to the Office of the Executive Secretariat in HUD Headquarters.

(d) *Form of requests.* FOIA requests should:

(1) Be in writing and clearly identifiable as a FOIA request. To facilitate identification, the requester should place the phrase “FOIA Request” on the front of the envelope or on the cover sheet or other transmittal document used when submitting the request in person or by mail, email, facsimile, or electronic request form;

(2) Include, whenever possible, detailed and specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. The more specific the FOIA request for records, the more likely HUD officials will be able to locate the records requested. Requests for categories of information should be for specific and well-defined categories. Insufficient descriptions may lead HUD officials to contact the requester to seek additional information for their record search;

(3) Indicate the form or format in which the requester would like the record made available, if the requester has a preference;

(4) Specify the fee amount the requester is willing to pay. In general, HUD provides records at no cost up to \$25. Requesters are required to agree to pay for any costs that exceed \$25. Requesters may also request a dollar amount above which HUD should consult with them before they agree to pay the fee. If a requester seeks a fee waiver or reduction, the requester should include this request with the FOIA disclosure request and should describe, consistent with §15.106(k), how the disclosure of the requested information 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;

(5) Indicate the fee category that the requester believes applies to each of his or her requests (fee categories are defined in §15.106(b));

(6) Include verification information of the requester’s identity, if the requester requests agency records pertaining to the requester, a minor, or an individual who is legally incompetent. Information about what constitutes acceptable verification information can be found in HUD’s Privacy Act regulations in 24 CFR part 16;

(7) Contain signed authorization from the other person, if the requester makes a request on another person’s behalf for information about that person. If necessary, HUD will inform the requester of the authorization needed from the other person and give the requester an opportunity to provide such authorization. Requests for information about another person should be accompanied by either written, notarized authorization or proof that the individual is deceased (for example, a copy of a death certificate or an obituary), or the request will be deemed insufficient; and

(8) Contain a detailed explanation of the basis for the request, if the requester makes a request for expedited processing as provided by §15.104(c). The requester should also include a statement certifying the truth of the circumstances alleged or other evidence, acceptable to HUD, of the requester’s compelling need.

§15.103 Timing of responses to requests.

(a) *In general.* HUD will generally make a determination whether to comply with a FOIA request within 20 working days, depending on the size of the request. The 20-day period will begin on the day the request is received by the appropriate component of HUD, but in any event not later than 10 working days after the request is received by any component of HUD designated to receive FOIA requests.

(b) *Tolling the 20-day time period.* Under the OPEN Government Act of 2007, HUD may toll the 20-day period:

(1) One time to make a reasonable request for additional information from the requester; or

(2) As many times as necessary to clarify issues regarding fee assessment with the requester. The agency’s receipt of the requester’s response to the agency’s request for information or

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resolution of all fee assessment issues ends the tolling period.

(c) *Extension of time periods for processing a request.* In unusual circumstances, as defined in this paragraph, HUD may extend the time period for processing a FOIA request. In such circumstances, HUD will provide the requester with written notice setting forth the unusual circumstances for the extension and the date on which a determination is expected to be dispatched. If processing a request would require more than 10 working days beyond the general time limit established in paragraph (a) of this section, HUD will offer the requester an opportunity to limit the scope of the request so that HUD may process it within the extra 10-day working period or arrange an alternative time period within which the FOIA request will be processed. To aid the requester, HUD shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and HUD, and notify the requester of the right of the requester to seek dispute resolution services from the Office of Government Information Services. For purposes of this section, unusual circumstances include:

(1) The need to search for and collect records not located in the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records; or

(3) The need to consult with another agency or two or more HUD components having a substantial interest in the determination of the FOIA request.

(d) *Aggregating multiple requests.* (1) HUD may aggregate multiple requests in cases where unusual circumstances exist and HUD determines that:

(i) Certain requests from the same requester or from a group of requesters acting in concert actually constitute a single request; and

(ii) The requests involve clearly related matters.

(2) Aggregation of requests for this purpose will be conducted independent of aggregation of requests for fee purposes under § 15.106(h).

[80 FR 49145, Aug. 17, 2015, as amended at 82 FR 3622, Jan. 12, 2017]

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§ 15.104 Procedures for processing FOIA requests.

(a) *In general.* HUD will ordinarily respond to FOIA requests according to their order of receipt.

(b) *Tracking number.* FOIA requests will be logged in the order that they are received and be assigned a tracking number. A requester should use the tracking number to identify his or her request when contacting the FOIA office for any reason.

(c) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(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;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information; or

(iii) The loss of substantial due process rights.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing should be received by the proper office designated to receive FOIA requests as provided in § 15.102.

(3) A requester who seeks expedited processing should 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. For example, a requester who makes a request under paragraph (c)(1)(ii) of this section, if not a full-time member of the news media, should establish that he or she is a person primarily engaged in disseminating information, though it need not be his or her sole occupation. A requester making a request under paragraph (c)(1)(ii) of this section also should establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) HUD will make a determination within 10 calendar days of receipt by the appropriate component of HUD, as provided in §15.103, whether to grant or deny a request for expedited processing and notify the requester of HUD's determination. FOIA requests accepted for expedited processing will be processed as soon as practicable and on a priority basis.

(d) *Multitrack processing.* (1) For requests that do not qualify for expedited processing, HUD may use two or more processing tracks by distinguishing between simple and complex FOIA requests based on the following: The time and work necessary to process the FOIA request and the volume of agency records responsive to the FOIA request.

(2) When HUD uses multitrack processing, it may provide requesters in its slower track an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of HUD's faster track. When HUD chooses to provide this option, HUD will contact the requester by telephone, letter, or email, whichever is more efficient in each case.

[80 FR 49145, Aug. 17, 2015, as amended at 82 FR 3622, Jan. 12, 2017]

§ 15.105 Responses to requests.

(a) *Acknowledgements of requests.* The FOIA office in the Office of the Executive Secretariat in HUD Headquarters and FOIA Public Liaison in each HUD field office will ordinarily send an acknowledgement letter to the requester that will confirm receipt of the request by the appropriate HUD office and provide an assigned tracking number, as provided by §15.104(b), for further reference.

(b) *Consultations, coordination, and referrals.* When HUD receives a request for a record in its possession, it shall determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA or whether it should be disclosed as a matter of administrative discretion. If HUD determines that it is best able to determine whether the record is exempt from disclosure, then it shall do so. If HUD determines that it is not best able to make that determination, then it shall either:

(1) Respond to the request regarding that record, after consulting with the agency best able to determine whether to disclose it and with any other agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the agency that originated the record, but only if that agency is subject to the FOIA. Ordinarily, the agency with which the record originated will be presumed to be best able to determine whether to disclose it.

(c) *Fee estimates.* HUD will notify the requester if HUD's estimate of the fee is more than the requester has agreed to pay. Consistent with §15.106(e), the requester shall have 15 working days to agree to pay the higher fee.

(d) *Forms of response.* Once HUD makes a determination regarding whether to comply with a request pursuant to time limits established in §15.103(a), HUD shall immediately notify the requester of such determination and the reasons therefor, and the requester's right to seek assistance from the FOIA Public Liaison.

(1) *Granting requests in whole or in part.* If HUD makes a determination to grant a request in whole or in part, it will notify the requester in writing. HUD will make a record available in the form or format requested, if the record is readily reproducible in that format. HUD will inform the requester in the notice of any fee charged under §15.106 and disclose records to the requester promptly upon payment of any applicable fee. Records disclosed in part will be marked or annotated to show the amount of information deleted and the exemption(s) under which each deletion is made, unless doing so would harm an interest protected by an applicable FOIA exemption. The location of the information deleted and the exemption(s) under which the deletion is made will be indicated directly on the record itself, if technically feasible.

(2) *Adverse determination of requests.* If a determination is made to deny a request in any respect, HUD shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include: A determination to withhold any requested record, in whole or in part; a determination

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that a requested record does not exist, cannot be located, or has not been retained; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver or reduction; and a denial of a request for expedited treatment. The denial letter shall be signed by the Director of the Office of the Executive Secretariat, or a designee of the Director, in HUD Headquarters or the FOIA Public Liaison for the HUD field office where the adverse determination was made, and shall include:

(i) The name and title or position of the person responsible for the denial;

(ii) A brief statement of the reason(s) for the denial, including any FOIA exemption applied by HUD in denying the request;

(iii) An estimate of the volume of records or information withheld, when appropriate, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

(iv) Notice of the right of the requester to appeal to the head of the agency, within a period determined by the head of the agency that is not less than 90 days after the date of such adverse determination;

(v) Notice of the right of the requester to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services;

(vi) A statement that the denial may be appealed as provided by §15.109 and a description of the requirements for appeal.

[80 FR 49145, Aug. 17, 2015, as amended at 82 FR 3622, Jan. 12, 2017; 82 FR 21694, May 10, 2017]

§ 15.106 Fees.

(a) *In general.* HUD will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited

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under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (k) of this section. HUD shall collect all applicable fees before sending copies of requested records to a requester. In order to resolve any fee issues that arise under this section, HUD may contact a requester for additional information. Requesters shall pay fees by check or money order made payable to the United States Treasury.

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

Commercial use means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. HUD shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because HUD has reasonable cause to doubt a requester's stated use, HUD shall provide the requester a reasonable opportunity to submit further clarification.

Direct costs means those expenses that HUD actually incurs in searching for and duplicating and, in the case of commercial use requests, reviewing records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work and the cost of operating computers and other electronic equipment, such as for mainframe computer run time. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting a facility.

Duplication means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, audiovisual materials, or machine readable documentation (e.g., diskette), among others. HUD shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format by the office responding to the request.

Educational institution means:

(i)(A) A preschool;

(B) A public or private elementary or secondary school;

(C) An institution of graduate higher education;

(D) An institution of undergraduate higher education;

(E) An institution of professional education; or

(F) An institution of vocational education, that primarily (or solely) operates a program or programs of scholarly research.

(ii) To be in this category, a requester should show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research. Records requested for the intention of fulfilling credit requirements are not considered to be sought for a scholarly purpose.

Other requester means any requester that does not fall within the categories of requesters described in this section.

Noncommercial scientific institution means an institution that is not operated on a "commercial" basis, as defined in this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester should show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

Representative of the news media, or news media requester, means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to 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 broadcasting to the public at large and publishers of periodicals that disseminate news and make their products available to the general public through a variety of means. For freelance journalists to be regarded as working for a news media entity, they should demonstrate a solid basis for expecting publication through a news media entity. A publication contract would be the clearest proof, but HUD will also look to the past publication record of a requester in making this determination. To be in this category a requester should not be seeking the requested records for a commercial use. However, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use.

(c) *Fees—(1) Schedule.* In responding to FOIA requests, HUD will use the fee schedule set out in the following table, unless a waiver or reduction of fees has been granted under paragraph (k) of this section.

FOIA FEE SCHEDULE

Activity	Rate	Commercial use requester	News media, educational institution, or noncommercial scientific institution requester	Other requester
(i) Professional search	\$13 per quarter hour	Applies	Does not apply	Applies. No charge for first 2 hours of cumulative search time.
(ii) Professional review	\$13 per quarter hour	Applies	Does not apply	Does not apply.
(iii) Clerical search	\$6 per quarter hour	Applies	Does not apply	Applies. No charge for first 2 hours of cumulative search time.
(iv) Clerical review	\$6 per quarter hour	Applies	Does not apply	Does not apply.
(v) Programming services required.	Direct costs associated with search.	Applies	Does not apply	Applies.
(vi) Duplication costs ...	\$0.10 per page	Applies	Applies. No charge for first 100 pages.	Applies. No charge for first 100 pages.
(vii) Duplication costs—tape, CD ROM or diskette.	Actual cost	Applies	Applies	Applies.

(2) *Search.* (i) Search fees will be charged for all requests other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media, subject to the limitations of paragraph (d) of this section. HUD may charge for time spent searching even if HUD does not locate any responsive record or if HUD withholds the record(s) located as entirely exempt from disclosure.

(ii) For each hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be \$13 per quarter hour for professional personnel and \$6 per quarter hour for clerical personnel.

(iii) Requesters will be charged the direct costs associated with conducting any search that requires the creation of a new program to locate the requested records.

(iv) For requests requiring the retrieval of records from any Federal records center, certain additional costs may be incurred in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration.

(3) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee will be \$0.10 per page. For copies in digital format, HUD will charge the direct costs, including operator time, of producing the copy. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication, HUD will charge the direct costs.

(4) *Review.* Review fees will be charged to requesters who make a commercial use request. Review fees will be charged only for the initial record review (the review done where HUD determines whether an exemption applies to a particular record or record portion, at the initial request level). No charge will be made for review at the administrative appeal level for an exemption already applied. However,

records or portions of records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies. The cost of that review is chargeable where it is made necessary by such a change of circumstances. Fees for the review time will be \$13 per quarter hour for professional personnel and \$6 per quarter hour for clerical personnel.

(d) *Restrictions on charging fees.* (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media. In addition, except as provided in paragraphs (d)(5), (d)(6), and (d)(7) of this section, HUD shall not assess any search fees (or, for requesters that are educational institutions, noncommercial scientific institutions or representatives of the news media requesting records not sought for commercial use, duplication fees) if HUD has failed to comply with any time limit described in §15.103.

(2) Search and review fees will be charged in quarter-hour increments. HUD will round up a quarter hour when professional and clerical search and review time exceeds a quarter-hour increment.

(3) Except for requesters seeking records for a commercial use, HUD will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first 2 hours of search (or the cost equivalent).

(4) No fee will be charged whenever a total fee calculated under paragraph (c) of this section is less than HUD's cost to process the payment. Currently, whenever a total fee calculated is \$25 or less, no fee will be charged.

(5) If HUD determines that unusual circumstances apply and HUD provides timely written notice to the requester pursuant to requirements provided in §15.103(c), a failure to comply with any time limit as described in §15.103 is excused for an additional 10 days. If HUD fails to comply with the extended time limit, HUD may not assess any search fees (or for requesters that are educational or noncommercial scientific institutions or representatives of the

news media requesting records not sought for commercial use, duplication fees).

(6) If unusual circumstances apply and more than 5000 pages are necessary to respond to the request, HUD may charge search fees or, for requesters that are educational or noncommercial scientific institutions or representatives of the news media requesting records not sought for commercial use, duplication fees, if timely written notice has been made to the requester pursuant to requirements provided in § 15.103(c) and HUD has discussed with the requester through written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request as stipulated in § 15.103(c).

(7)(i) If a court has determined that exceptional circumstances exist, a failure to comply with any time limit as described in § 15.103 shall be excused for the length of time provided by the court order.

(ii) For purposes of this section, the term "exceptional circumstances" does not include a delay that results from a predictable workload of requests, unless HUD demonstrates reasonable progress in reducing its backlog of pending requests. However, refusal by the requester to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) after HUD gives them an opportunity to do so shall be considered a factor in determining whether exceptional circumstances exist.

(e) *Notice of anticipated fees in excess of \$25.* When HUD determines or estimates that the fees to be charged under this section will amount to more than \$25, HUD will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as the amount anticipated. If only a portion of the fee can be readily estimated, HUD shall advise the requester that the estimated fee may be only a portion of the total fee. In cases in which a requester has been notified that actual or estimated fees amount to more than \$25, the request will be held in abeyance for 15 working days. Further

work will not be done on that request until the requester has either made a firm commitment to pay the anticipated total fee, or has made payment in advance if the total fee exceeds \$250. Any such agreement should be memorialized by the requester in writing, should indicate a given dollar amount, and should be received by HUD within the time period specified by HUD in its notice to the requester. If the requester does not provide a firm commitment to pay the anticipated fee within the time period specified by HUD, the request will be closed. A notice under this paragraph will offer the requester an opportunity to discuss the matter of fees with HUD personnel in order to reformulate the request to meet the requester's needs at a lower cost. HUD is not required to accept payments in installments.

(f) *Charges for other services.* Although not required to provide special services, if HUD chooses to do so as a matter of administrative discretion, HUD will charge the direct costs of providing these services. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending documents by means other than ordinary mail.

(g) *Charging interest.* HUD may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by HUD. HUD will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* If HUD reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, HUD may aggregate those requests and charge accordingly. HUD may presume that multiple requests of this type made within a 30-day period have been made in order to

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avoid fees. Where requests are separated by a longer period, HUD will aggregate them only where there is a reasonable basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated. Aggregation of requests for fee purposes under this paragraph will be conducted independent of aggregation of requests under § 15.103(d).

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (3) of this section, HUD will not require the requester to make an advance payment before work is begun or continued on a request. Payment owed for work already completed, such as prepayment before copies are sent to a requester, is not an advance payment.

(2) If HUD determines or estimates that a total fee to be charged under this section will be more than \$250, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester who has a history of prompt payment.

(3) If a requester has previously failed to pay a properly charged FOIA fee to HUD within 30 days of the date of billing, before HUD begins to process a new request or continues to process a pending request from that requester, HUD will require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee. If HUD has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, HUD may require that the requester provide proof of identity.

(4) When HUD requires advance payment, the request will be held in abeyance for 15 working days to allow the requester an opportunity to make payment in advance and/or modify the scope of the request. If the requester does not pay the advance payment or modify the scope of the request within the allotted time frame, the request will be closed.

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(j) *Other statutes specifically providing for fees.* The fee schedule in this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. Where records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, HUD will inform requesters of the contact information for that source.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section if HUD determines, based on all available information, that the requester has demonstrated the following:

(i) Disclosure of the requested 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

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, HUD will consider the following factors:

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

(ii) The disclosable portions of the requested records should be meaningfully informative about government operations or activities and “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 a duplicative or a substantially identical form, would not be as likely to contribute to such increased understanding, where nothing new would be added to the public’s understanding.

(iii) The disclosure should 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 and ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, should be enhanced by the disclosure to a significant extent. However, HUD will not make value judgments about whether information at issue is "important" enough to be made public.

(3) To determine whether the second fee waiver requirement is met, HUD will consider the following factors:

(i) HUD will identify any commercial interest of the requester as defined in paragraph (b) of this section, or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater than that of any identified commercial interest in disclosure. HUD ordinarily will 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 will not be presumed to primarily serve the public interest.

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

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k)(2) and (3) of this section, insofar as they apply to each request. In deciding to grant waivers or reductions of fees, HUD will exercise its discretion to consider the cost effectiveness of its investment of administrative resources.

[80 FR 49145, Aug. 17, 2015, as amended at 82 FR 3622, Jan. 12, 2017]

§ 15.107 Documents generally protected from disclosure.

(a) HUD shall withhold information only if HUD reasonably foresees that disclosure would harm an interest protected by an exemption as provided in paragraph (b) of this section, or disclosure is prohibited by law. HUD will consider whether partial disclosure of information is possible whenever HUD determines that a full disclosure of a requested record is not possible, and will take reasonable steps necessary to segregate and release nonexempt information. Nothing in this section requires disclosure of information that is otherwise prohibited from disclosure by law, or otherwise exempted from disclosure as provided in paragraph (b)(3) of this section.

(b) The FOIA contains nine exemptions (5 U.S.C. 552(b)) that authorize agencies to withhold various records from disclosure. With regard to certain types of records, HUD generally applies the exemptions as follows:

(1) *Classified documents.* Exemption 1 (5 U.S.C. 552(b)(1)) protects classified national defense and foreign relations information. HUD seldom relies on this exception to withhold documents. However, where applicable, HUD will refer a request for records classified under Executive Order 13526 and the pertinent records to the originating agency for processing. HUD may refuse to confirm or deny the existence of the requested information if the originating agency determines that the fact of the existence of the information itself is classified.

(2) *Internal agency rules and practices.* Exemption 2 (5 U.S.C. 552(b)(2)) protects records relating to internal personnel rules and practices.

(3) *Information prohibited from disclosure by another statute.* Exemption 3 (5 U.S.C. 552(b)(3)) protects information that is prohibited from disclosure by another Federal law. HUD generally will not disclose competitive proposals prior to contract award, competitive proposals that are not set forth or incorporated by reference into the awarded contract (see 41 U.S.C. 4702), or, during the selection process, any covered selection information regarding such selection, either directly or indirectly (see 42 U.S.C. 3537a).

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(4) *Commercial or financial information.* Exemption 4 (5 U.S.C. 552(b)(4)) protects trade secrets and commercial or financial information obtained from a person and privileged or confidential. HUD will handle this type of information as provided by § 15.108.

(5) *Certain interagency or intra-agency communications.* Exemption 5 (5 U.S.C. 552(b)(5)) protects interagency or intra-agency communications that are protected by legal privileges, such as the attorney-client privilege, attorney work-product privilege, or communications reflecting the agency's deliberative process. The deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

(6) *Personal privacy.* Exemption 6 (5 U.S.C. 552(b)(6)) protects information involving matters of personal privacy. This information may include personnel, medical, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Names, addresses, telephone numbers, and email addresses of persons residing in public or assisted housing or of borrowers in FHA-insured single family mortgage transactions generally will not be disclosed.

(7) *Law enforcement records.* Exemption 7 (5 U.S.C. 552(b)(7)) protects certain records or information compiled for law enforcement purposes. This exemption protects records where the production could reasonably be expected to interfere with enforcement proceedings; for example, the names of individuals who have filed fair housing complaints. The protection of this exemption also encompasses, but is not limited to, information in law enforcement files that could reasonably be expected to constitute an unwarranted invasion of personal privacy; the names of confidential informants, and techniques and procedures for law enforcement investigations, or guidelines for law enforcement investigations if such disclosure could reasonably be expected to risk circumvention of the law.

(8) *Supervision of financial institutions.* Exemption 8 (5 U.S.C. 552(b)(8)) protects information relating to the supervision of financial institutions. For purposes of Exemption 8, HUD is an

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“agency responsible for the regulation and supervision of financial institutions” for purposes of monitoring fair housing compliance.

(9) *Wells.* Exemption 9 (5 U.S.C. 552(b)(9)) protects geological information on wells.

[82 FR 21694, May 10, 2017]

§ 15.108 Business information.

(a) *In general.* Business information obtained by HUD from a submitter will be disclosed under the FOIA only under this section. In making final confidentiality determinations under this section, HUD relies to a large extent upon the information furnished by the affected business to substantiate its claim of confidentiality. HUD may be unable to verify the accuracy of much of the information submitted by the affected business. HUD will comply with Executive Order 12600 and follow the procedure in this section by giving notice to the affected business and an opportunity for the business to present evidence of its confidentiality claim. If HUD is sued by a requester under the FOIA for nondisclosure of confidential business information, HUD expects the affected business to cooperate to the fullest extent possible in defending such a decision.

(b) *Designation of business information.* A submitter of business information will use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire 10 years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Notice to submitters.* HUD will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks business information, wherever required under paragraph (d) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (e) of this section. The notice will either describe the business information requested or include copies of the requested records or portions of

records containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification.

(d) *Where notice is required.* Notice will be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) HUD has reason to believe that the information may be protected from disclosure under Exemption 4.

(e) *Opportunity to object to disclosure.* HUD will allow a submitter a reasonable time to respond to the notice described in paragraph (c) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, the submitter should submit a detailed written statement specifying the grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, the submitter should show why the information is a trade secret or commercial or financial information that is privileged or confidential. HUD generally will not consider conclusory statements that particular information would be useful to competitors or would impair sales, or other similar statements, sufficient to justify confidential treatment. In the event that a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to the disclosure of the information. Information provided by the submitter that is not received until after the disclosure decision has been made will not be considered by HUD. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* HUD will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever HUD decides to disclose business information over the objection of a submitter, HUD will give the submitter written notice, which will include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

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

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

(g) *Exceptions to notice requirements.* The notice requirements of paragraphs (c) and (f) of this section will not apply if:

(1) HUD determines that the information should not be disclosed;

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

(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.

(h) *Notice of a FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, HUD will promptly notify the submitter.

(i) *Corresponding notice to requesters.* Whenever HUD provides a submitter with notice and an opportunity to object to disclosure under paragraph (f) of this section, HUD will also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, HUD will notify the requester(s).

§ 15.109 Appeals.

(a) *In general.* A requester may appeal an adverse determination denying a request, in any respect, in writing. The letter of appeal should clearly identify the determination that is being appealed and the assigned tracking number. The appeal letter and envelope should be marked "Freedom of Information Act Appeal" for the quickest possible handling. If mailed, the requester's letter of appeal must be post-marked within 90 calendar days of the date of HUD's letter of determination. If the letter of appeal is transmitted electronically or by a means other than the United States Postal Service, it must be received in the appropriate office by the close of business on the 30th calendar day after the date of HUD's letter of determination.

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(b) *Time frames*—(1) Expedited processing. HUD will decide an appeal of a denial of a request to expedite processing of a FOIA request within 10 working days of receipt of the appeal.

(2) *All other appeals*. HUD will make a determination on appeals within 20 working days of receipt, unless unusual circumstances require HUD to extend the time for an additional 10 working days.

(3) *Exceptions*. An appeal ordinarily will not be acted upon if the subject of the appeal is simultaneously being litigated in an applicable Federal court.

(c) *Content of appeals*. An appeal letter should include the following:

(1) A copy of the original request;

(2) A copy of the adverse determination;

(3) A statement of facts and legal arguments supporting the appeal; and

(4) Any additional information the appellant wishes to include.

(d) *When appeal is required*. Before seeking a court review of HUD's adverse determination, a requester generally must have exhausted their administrative remedies.

[80 FR 49145, Aug. 17, 2015 as amended at 82 FR 21695, May 10, 2017]

§ 15.110 HUD response to appeals.

(a) *In general*. (1) The appellate official will conduct a de novo review of the entire record and applicable law when making a decision.

(2) The decision on the appeal will be made in writing and will be considered the final action of HUD.

(i) A decision affirming an adverse determination, in whole or in part, will contain a statement of the reason(s) for the affirmation, including any FOIA exemption(s) applied, and will inform the appellant of the FOIA provisions for potential court review of the decision.

(ii) If the adverse determination is modified on appeal, in whole or in part, a written decision will be sent to the appellant and the FOIA request will be reprocessed in accordance with the appeal decision.

(iii) Adverse decisions will include the name and contact information of dispute resolution services that offer mediation services to resolve disputes between FOIA requesters and Federal

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agencies as a nonexclusive alternative to litigation.

(b) *Appeal of a denial of record request*. Upon appeal of a denial of a record request, the appellate official will issue a decision that either:

(1) Overturns the adverse determination, in whole or in part, and remands the request to the appropriate office. The requester will be notified of the rationale for the determination in writing. The original office will then reprocess the request in accordance with the appeal determination and respond directly to the requester; or

(2) Affirms the adverse determination and declines to provide the requested records to the appellant.

(c) *Appeal of a fee determination*. Upon appeal of a fee determination, the appellate official will issue a decision that either:

(1) Waives the fee or charges the fee that the appellant requested;

(2) Modifies the original fee charged and explains why the modified fee is appropriate; or

(3) Advises the appellant that the original fee charged was appropriate and gives the reason behind this determination.

(d) *Appeal of a denial of expedited processing*. Upon appeal of a denial of an expedited processing request, the appellate official will issue a decision that either:

(1) Overturns the adverse determination and grants the expedited processing request; or

(2) Affirms the decision to deny expedited processing.

Subpart C—Production of Material or Provision of Testimony in Response to Demands in Legal Proceedings Among Private Litigants

SOURCE: 72 FR 8582, Feb. 26, 2007, unless otherwise noted.

§ 15.201 Purpose and scope.

(a) This subpart contains the regulations of the Department concerning the procedures to be followed and standards to be applied when demand is

issued in a legal proceeding among private litigants for the production or disclosure of any material, whether provided through production of material or provision of testimony.

(b) This subpart does not apply to demands, which are covered by part 2004 of this title, for production of material in the files of the Office of Inspector General or provision of testimony by employees within the Office of Inspector General.

(c) This subpart also provides guidance to persons engaged in private litigation, to which the United States is not a party, on the procedures to be followed when making a demand for documents or testimony on the Department of Housing and Urban Development. This subpart does not, and may not be relied upon to, create any affirmative right or benefit, substantive or procedural, enforceable against HUD.

[72 FR 8582, Feb. 26, 2007, as amended at 73 FR 72205, Nov. 26, 2008]

§ 15.202 Production of material or provision of testimony prohibited unless approved.

Neither the Department nor any employee of the Department shall comply with any demand for production of material or provision of testimony in a legal proceeding among private litigants, unless the prior approval of the Authorized Approving Official has been obtained in accordance with this subpart. This rule does not apply to any legal proceeding in which an employee may be called to participate, either through the production of documents or the provision of testimony, not on official time, as to facts or opinions that are in no way related to material described in § 15.201.

[73 FR 72205, Nov. 26, 2008]

§ 15.203 Making a demand for production of material or provision of testimony.

(a) Any demand made to the Department or an employee of the Department to produce any material or provide any testimony in a legal proceeding among private litigants must:

(1) Be submitted in writing to the Department or employee of the Department, with a copy to the Appropriate

Associate General Counsel or Appropriate Regional Counsel, no later than 30 days before the date the material or testimony is required;

(2) State, with particularity, the material or testimony sought;

(3) If testimony is requested, state:

(i) The intended use of the testimony, and

(ii) Whether expert or opinion testimony will be sought from the employee;

(4) State whether the production of such material or provision of such testimony could reveal classified, confidential, or privileged material;

(5) Summarize the need for and relevance of the material or testimony sought in the legal proceeding and include a copy of the complaint, if available;

(6) State whether the material or testimony is available from any other source and, if so, state all such other sources;

(7) State why no document[s], or declaration[s] or affidavit[s], could be used in lieu of oral testimony that is being sought;

(8) Estimate the amount of time the employee will need in order to prepare for, travel to, and attend the legal proceeding, as appropriate;

(9) State why the production of the material or provision of the testimony is appropriate under the rules of procedure governing the legal proceeding for which it is sought (e.g., not be unduly burdensome or otherwise inappropriate under the relevant rules governing discovery); and

(10) Describe how producing such material or providing such testimony would affect the interests of the United States.

(b) If the Department determines that the requestor has failed to provide the information required by paragraph (a) of this section, or that the information provided is insufficient to consider the demand in accordance with § 15.204, the Department may require that additional information be provided by the requestor before the demand is considered.

(c) Whenever a demand is made upon the Department or an employee of the Department for the production of material or provision of testimony, the

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employee shall immediately notify the Appropriate Associate General Counsel or Appropriate Regional Counsel.

[73 FR 72205, Nov. 26, 2008]

§ 15.204 Consideration of demands for production of material or provision of testimony.

(a) The Authorized Approving Official shall determine what material is to be produced or what testimony is to be provided, based upon the following standards:

(1) *Expert or opinion material or testimony.* In any legal proceeding among private litigants, no employee of the Department may produce material or provide testimony as described in §15.201(a) that is of an expert or opinion nature, unless specifically authorized by the Authorized Approving Official for good cause shown.

(2) *Factual material or testimony.* In any legal proceeding among private litigants, no employee of the Department may produce material or provide testimony as described in §15.201(a) that is of a factual nature, unless specifically authorized by the Authorized Approving Official. The Authorized Approving Official shall determine whether any of the following factors are applicable. Such a demand may either be denied, or conditionally granted in accordance with §15.204(c), if any such factors are applicable:

(i) Producing such material or providing such testimony would violate a statute or regulation;

(ii) Producing such material or providing such testimony would reveal classified, confidential, or privileged material;

(iii) Such material or testimony would be irrelevant to the legal proceeding;

(iv) Such material or testimony could be obtained from any other source;

(v) One or more documents, or a declaration or affidavit, could reasonably be provided in lieu of oral testimony;

(vi) The amount of employees' time necessary to comply with the demand would be unreasonable;

(vii) Production of the material or provision of the testimony would not be required under the rules of procedure governing the legal proceeding for

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which it is sought (e.g., unduly burdensome or otherwise inappropriate under the relevant rules governing discovery);

(viii) Producing such material or providing such testimony would impede a significant interest of the United States; or

(ix) The Department has any other legally cognizable objection to the release of such information or testimony in response to a demand.

(b) Once a determination has been made, the requester will be notified of the determination. If the demand is denied, the requestor shall be notified of the reasons for the denial. If the demand is conditionally approved, the requestor shall be notified of the conditions that have been imposed upon the production of the material or provision of the testimony demanded, and the reasons for the conditional approval of the demand.

(c) The Authorized Approving Official may impose conditions or restrictions on the production of any material or provision of any testimony. Such conditions or restrictions may include the following:

(1) A requirement that the parties to the legal proceeding obtain a protective order or execute a confidentiality agreement to limit access to, and limit any further disclosure of, material or testimony;

(2) A requirement that the requester accept examination of documentary material on HUD premises in lieu of production of copies;

(3) A limitation on the subject areas of testimony permitted;

(4) A requirement that testimony of a HUD employee be provided by deposition at a location prescribed by HUD or by written declaration;

(5) A requirement that the parties to the legal proceeding agree that a transcript of the permitted testimony be kept under seal or will only be used or only made available in the particular legal proceeding for which testimony was demanded;

(6) A requirement that the requester purchase an extra copy of the transcript of the employee's testimony from the court reporter and provide the Department with a copy at the requester's expense; or

(7) Any other condition or restriction deemed to be in the best interests of the United States, including reimbursement of costs to the Department.

(d) The determination made with respect to the production of material or provision of testimony pursuant to this subpart is within the sole discretion of the Authorized Approving Official and shall constitute final agency action from which no administrative appeal is available.

[73 FR 72205, Nov. 26, 2008]

§ 15.205 Method of production of material or provision of testimony.

(a) Where the Authorized Approving Official has authorized the production of material or provision of testimony, the Department shall produce such material or provide such testimony in accordance with this section and any conditions imposed upon production of material or provision of testimony pursuant to § 15.204(c).

(b) In any legal proceeding where the Authorized Approving Official has authorized the production of documents, the Department shall respond by producing authenticated copies of the documents, to which the seal of the Department has been affixed, in accordance with its authentication procedures. The authentication shall be evidence that the documents are true copies of documents in the Department's files and shall be sufficient for the purposes of Rules 803(8) and 902 of the Federal Rules of Evidence and Rule 44(a)(1) of the Federal Rules of Civil Procedure.

(c) If response to a demand is required before the determination from the Authorized Approving Official is received, the U.S. Attorney, Department of Justice Attorney, or such other attorney as may be designated for the purpose will appear or make such filings as are necessary to furnish the court or other authority with a copy of the regulations contained in this subpart and will inform the court or other authority that the demand has been, or is being, as the case may be, referred for prompt consideration. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested determination

from the Authorized Approving Official.

[73 FR 72206, Nov. 26, 2008]

§ 15.206 Procedure in the event of an adverse ruling regarding production of material or provision of testimony.

If the court or other authority declines to stay the demand made in accordance with § 15.205(c) pending receipt of the determination from the Authorized Approving Official, or if the court or other authority rules that the demand must be complied with irrespective of the determination by the Authorized Approving Official not to produce the material or provide the testimony demanded or to produce subject to conditions or restrictions, the employee upon whom the demand has been made shall, if so directed by an attorney representing the Department, respectfully decline to comply with the demand. (*United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951)).

[73 FR 72206, Nov. 26, 2008]

Subpart D—Production of Material or Provision of Testimony in Response to Demands in Legal Proceedings in Which the United States Is a Party

SOURCE: 72 FR 8583, Feb. 26, 2007, unless otherwise noted.

§ 15.301 Purpose and scope.

(a) This subpart contains the regulations of the Department concerning the procedures to be followed and standards to be applied when demand is issued in a legal proceeding in which the United States is a party for the production or disclosure of any material, whether provided through production of material or provision of testimony.

(b) This subpart does not apply to demands, which are covered by part 2004 of this title, for production of material in the files of the Office of Inspector General or provision of testimony by employees within the Office of Inspector General.

§ 15.302

§ 15.302 Production of material or provision of testimony prohibited unless approved.

Neither the Department nor any employee of the Department shall comply with any demand for production of material or provision of testimony in a legal proceeding in which the United States is a party, unless the prior approval of the attorney representing the United States has been obtained in accordance with this subpart. This rule does not apply to any legal proceeding in which an employee may be called to participate, either through the production of documents or the provision of testimony, not on official time, as to facts or opinions that are in no way related to material described in § 15.301.

[73 FR 72206, Nov. 26, 2008]

§ 15.303 Procedure for review of demands for production of material or provision of testimony in any legal proceeding in which the United States is a party.

Whenever a demand is made upon the Department or an employee of the Department for the production of material or provision of testimony, the employee shall immediately notify the Appropriate Associate General Counsel or Appropriate Regional Counsel.

[73 FR 72207, Nov. 26, 2008]

§ 15.304 Consideration of demands for production of material or provision of testimony.

Consideration of demands shall be within the province of the attorney representing the United States, who may raise any valid objection to the production of material or provision of testimony in response to the demand.

[73 FR 72207, Nov. 26, 2008]

§ 15.305 Method of production of material or provision of testimony.

If the production of material or provision of testimony has been authorized, the Department may respond by producing authenticated copies of the documents, to which the seal of the Department has been affixed in accordance with its authentication procedures. The authentication shall be evidence that the documents are true copies of documents in the Department's

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files and shall be sufficient for the purposes of Rules 803(8) and 902 of the Federal Rules of Evidence and Rule 44(a)(1) of the Federal Rules of Civil Procedure.

[73 FR 72207, Nov. 26, 2008]

APPENDIX A TO PART 15—LOCATION INFORMATION FOR HUD FOIA READING ROOMS AND CONTACT INFORMATION FOR REGIONAL COUNSEL

The Department maintains a reading room in Headquarters and in each of the Secretary's Representative's Offices. In addition, each of the Secretary's Representative's Offices has a Regional Counsel. The location and contact information for HUD's FOIA Reading Rooms and for the Regional Counsel can be found in HUD's Local Office Directory, on HUD's Internet site at <http://www.hud.gov>.

[73 FR 72207, Nov. 26, 2008]

PART 16—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

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AUTHORITY: 5 U.S.C. 552(a); 42 U.S.C. 3535(d).

SOURCE: 40 FR 39729, Aug. 28, 1975, unless otherwise noted.

§ 16.1 Purpose and statement of policy.

(a) The purpose of this part is to establish policies and procedures for implementing the Privacy Act of 1974 (Pub. L. 93-579), 5 U.S.C. 552(a). The main objectives are to facilitate full