

## § 16.44

records to the requester promptly on payment of any applicable fee. If a request is made in person, the component may disclose records to the requester directly, in a manner not unreasonably disruptive of its operations, on payment of any applicable fee and with a written record made of the grant of the request. If a requester is accompanied by another person, the requester shall be required to authorize in writing any discussion of the records in the presence of the other person.

(c) *Adverse determinations of requests for access.* A component making an adverse determination denying a request for access in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; a determination on any disputed fee matter; and a denial of a request for expedited treatment. The notification letter shall be signed by the head of the component, or the component head's designee, and shall include:

- (1) The name and title or position of the person responsible for the denial;
- (2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied by the component in denying the request; and
- (3) A statement that the denial may be appealed under §16.45(a) and a description of the requirements of §16.45(a).

### § 16.44 Classified information.

In processing a request for access to a record containing information that is classified under Executive Order 12958 or any other executive order, the originating component shall review the information to determine whether it should remain classified. Information determined to no longer require classification shall not be withheld from a requester on the basis of Exemption (k)(1) of the Privacy Act. On receipt of any appeal involving classified information, the Office of Information and Privacy shall take appropriate action

## 28 CFR Ch. I (7-1-23 Edition)

to ensure compliance with part 17 of this title.

### § 16.45 Appeals from denials of requests for access to records.

(a) *Appeals.* If you are dissatisfied with a component's response to your request for access to records, you may appeal an adverse determination denying your request in any respect to the Office of Information and Privacy, U.S. Department of Justice, Flag Building, Suite 570, Washington, DC 20530-0001. You must make your appeal in writing and it must be received by the Office of Information and Privacy within 60 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the component determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling, you should mark both your appeal letter and the envelope "Privacy Act Appeal." Unless the Attorney General directs otherwise, a Director of the Office of Information and Privacy will act on behalf of the Attorney General on all appeals under this section, except that:

- (1) In the case of an adverse determination by the Deputy Attorney General or the Associate Attorney General, the Attorney General or the Attorney General's designee will act on the appeal;
- (2) An adverse determination by the Attorney General will be the final action of the Department; and
- (3) An appeal ordinarily will not be acted on if the request becomes a matter of litigation.

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the affirmance, including any Privacy Act exemption applied, and will inform you of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed or modified on appeal in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.