

## Commission of Fine Arts

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### Subpart A—Introduction

#### § 2105.1 What should you know up front?

- (a) This part contains the rules that the Agency follows in processing records under the Freedom of Information Act (FOIA), 5 U.S.C. 552.
- (b) Definitions of terms used in this part are found at § 2105.67.
- (c) This part should be read in conjunction with the text of the FOIA and the OMB Fee Guidelines.
- (d) This part does not entitle any person to any service or to the disclosure of any record that is not required under the FOIA.
- (e) You are encouraged to review the Agency's FOIA libraries before filing a FOIA request. The material you seek may be immediately available electronically at no cost.

#### § 2105.2 What kinds of records are not covered by the regulations in this part?

In the event that the Agency identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the agency must confer with legal counsel and the Department of Justice, Office of Information Policy, to obtain approval to apply the exclusion.

### Subpart B—How To Make a Request

#### § 2105.3 Where should you send a FOIA request?

(a) To make a request for Agency records, you must contact the Agency directly.

(b) Address requests to the FOIA Officer found in the Agency contacts at <https://www.cfa.gov/foia>.

#### § 2105.4 How should you describe the records you seek?

(a) You must reasonably describe the records sought. A reasonable description contains sufficient detail to enable Agency personnel familiar with the subject matter of the request to locate the records with a reasonable amount of effort.

(b) You should include as much detail as possible about the specific records or types of records that you are seeking. This will assist the Agency in identifying the requested records (for example, time frames involved or specific personnel who may have the requested records). For example, whenever possible, identify:

- (1) The date, title or name, author, recipient, and subject of any particular records you seek;
- (2) The office that created the records you seek;
- (3) The timeframe for which you are seeking records; and
- (4) Any other information that will assist the Agency in locating the records.

(c) The Agency's FOIA Officer or Public Liaison can assist you in formulating or reformulating a request in an effort to better identify the records you seek.

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(d) If the Agency determines that your request does not reasonably describe the records sought, the Agency will inform you what additional information you need to provide in order to reasonably describe the records that you seek so the requested records can be located with a reasonable amount of effort. The Agency will also notify you that it will not be able to comply with your request unless the additional information it has requested is received from you in writing within 20 workdays after the Agency has requested it and that you may appeal its determination. If you receive this type of notification, you may wish to discuss it with the Agency's designated FOIA contact or the FOIA Public Liaison (*see* §2105.63). If the Agency does not receive your written response containing the additional information within 20 workdays after the Agency has requested it, the Agency will presume that you are no longer interested in the records and will close the file on the request.

### **§2105.5 How will fee information affect the processing of your request?**

(a) Your request should state that you will pay all fees associated with processing the request, that you will pay fees up to a specified amount, and/or that you are seeking a fee waiver.

(b) If the Agency anticipates that the fees for processing the request will exceed the amount you have agreed to pay, or if you did not agree in writing to pay processing fees or request a fee waiver and the Agency anticipates the processing costs will exceed \$50 (*see* §2105.35(g)) or will exceed your entitlements (*see* §2105.37), the Agency will notify you:

- (1) Of the estimated processing fees;
- (2) Of its need for either an advance payment (*see* §2105.48) or your written assurance that you will pay the anticipated fees (or fees up to a specified amount); and
- (3) That it will not be able to fully comply with your request unless you provide a fee waiver request and/or the requested written assurance or advance payment.

(c) If the Agency does not receive a written response from you within 20 workdays after requesting the information in paragraph (b) of this section, it

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will presume that you are no longer interested in the records and will close the file on the request.

(d) If you are seeking a fee waiver, your request must include a justification that addresses and meets the criteria in §§2105.43 and 2105.46. Failure to provide sufficient justification will result in a denial of the fee waiver request. If you are seeking a fee waiver, you may also indicate the amount you are willing to pay if the fee waiver is denied. This allows the Agency to process the request for records while it considers your fee waiver request.

(e) If you are required to pay a fee and it is later determined on appeal that you were entitled to a full or partial fee waiver, you will receive an appropriate refund.

### **§2105.6 What information should you include about your fee category?**

(a) A request should indicate your fee category (that is, whether you are a commercial-use requester, news media, educational or noncommercial scientific institution, or other requester as described in §§2105.36 and 2105.37).

(b) If you submit a FOIA request on behalf of another person or organization (for example, if you are an attorney submitting a request on behalf of a client), the Agency will determine the fee category by considering the underlying requester's identity and intended use of the information.

(c) If your fee category is unclear, the Agency may ask you for additional information (*see* §2105.49).

### **§2105.7 Can you ask for records to be disclosed in a particular form or format?**

(a) Generally, you may choose the form or format of disclosure for records requested. The Agency must provide the records in the requested form or format if the Agency can readily reproduce the record in that form or format.

(b) The Agency may charge you the direct costs involved in converting records to the requested format if the Agency does not normally maintain the records in that format (*see* §2105.42).

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### §2105.8 What if your request seeks records about another person?

(a) When a request seeks records about another person, you may receive greater access by submitting proof that the person either:

(1) Consents to the release of the records to you (for example, a notarized authorization signed by that person); or

(2) Is deceased (for example, a copy of a death certificate or an obituary).

(b) The Agency can require you to supply additional information if necessary to verify that a particular person has consented to disclosure or is deceased.

### §2105.9 May you ask for the processing of your request to be expedited?

You may ask for the processing of your request to be expedited. If you are seeking expedited processing, your request must include a justification that addresses and meets the criteria in §2105.18 and includes the certification required at §2105.18(b)(2).

### §2105.10 What contact information should your request include?

A request should include your name and a way (such as a mailing or email address) for the Agency to send responsive records to you and/or to request additional information or clarification of your request. You may also wish to include a daytime telephone number (or the name and telephone number of an appropriate contact).

## Subpart C—Processing Requests

### §2105.11 What should you know about how the Agency processes requests?

(a) Except as described in §2105.12, the Agency is responsible for responding to the request and for making a reasonable effort to search for responsive records.

(b) In determining which records are responsive to a request, the Agency will include only records in its possession and control on the date that it begins its search.

(c) The Agency will make reasonable efforts to search for the requested records. As part of its reasonable efforts, the Agency will search paper and/

or electronic records (for example, emails), as appropriate. The Agency will not search for records in an electronic form or format if these efforts would significantly interfere with the operation of the Agency's automated information system.

(d) If the Agency receives a request for records in its possession that it did not create or that another Federal agency is substantially concerned with, it may undertake consultations and/or referrals as described in §2105.12.

### §2105.12 How do consultations and referrals work?

(a) Consultations and referrals generally occur outside the Agency.

(1) Paragraphs (b) through (f) of this section address consultations and referrals that occur outside the Agency when the Agency has responsive records.

(2) Paragraph (g) of this section addresses what happens when the Agency has no responsive records but believes responsive records may be in the possession of a Federal agency outside the Agency.

(b) If, while responding to a request, the Agency locates records that originated with another Federal agency, it usually will refer the request and any responsive records to that other agency for a release determination and direct response.

(c) If the Agency refers records to another agency, it will document the referral and maintain a copy of the records that it refers and notify you of the referral in writing. When the Agency notifies you of the referral, it will tell you whether the referral was for part or all of your request and provide the name and contact information for the other agency. You may treat such a response as a denial of records and file an appeal, in accordance with the procedures in §2105.56.

(d) 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. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the