

§2105.13

Agency that received the request will coordinate with the originating agency and seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination will then be conveyed to the requester by the Agency that originally received the request.

(e) If the Agency locates records that originated with another Federal agency while responding to a request, the Agency will make the release determination itself (after consulting with the originating agency) when:

(1) The record is of primary interest to the Agency (for example, a record may be of primary interest to the Agency if it was developed or prepared according to the Agency's regulations or directives, or in response to an Agency request);

(2) The Agency is in a better position than the originating agency to assess whether the record is exempt from disclosure;

(3) The originating agency is not subject to the FOIA; or

(4) It is more efficient or practical depending on the circumstances.

(f) On receipt of any request involving classified information, the Agency will determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable Executive order concerning the classification of records, the receiving agency will refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever the Agency's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), the Agency will refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(g) If the Agency receives a request for records not in its possession, but that the Agency believes may be in the possession of a Federal agency outside the Agency, the Agency will return the

45 CFR Ch. XXI (10–1–24 Edition)

request to you, may advise you to submit it directly to the other agency, will notify you that the Agency cannot comply with the request, and will close the request. If you believe this response was in error, you may file an appeal in accordance with the procedures in §2105.56.

Subpart D—Timing of Responses to Requests

§2105.13 In what order are responses usually made?

The Agency ordinarily will respond to requests according to their order of receipt within their processing track.

§2105.14 What is multitrack processing and how does it affect your request?

(a) Processing tracks are used to distinguish simple requests from more complex ones on the basis of the estimated number of workdays needed to process the request.

(b) In determining the number of workdays needed to process the request, the Agency considers factors such as the number of pages involved in processing the request or the need for consultations.

(c) The basic processing tracks are designated as follows:

(1) Simple: Requests in this track will take between one to five workdays to process;

(2) Normal: Requests in this track will take between six to twenty workdays to process;

(3) Complex: Requests in this track will take between twenty-one workdays and sixty workdays to process; or

(4) Voluminous: Requests in this track involve very complex processing challenges, which may include a large number of potentially responsive records, and will take over sixty workdays to process.

(d) The Agency also has a specific processing track for requests that are granted expedited processing under the standards in §2105.18. These requests will be processed as soon as practicable.

(e) The Agency must advise you of the track into which your request falls and, when appropriate, will offer you an opportunity to narrow your request

Commission of Fine Arts

§2105.18

so that it can be placed in a different processing track. If you request placement in a particular processing track but the Agency places you in a different processing track, the Agency will provide you with an explanation of why you were not placed in the processing track you requested.

(f) The use of multitrack processing does not alter the statutory deadline for an Agency to determine whether to comply with your FOIA request (*see* §2105.15).

(g) You may inquire about the status of your request, including its estimated processing completion date, by contacting the FOIA Public Liaison, whose contact information may be found at <https://www.cfa.gov/foia>.

§2105.15 What is the basic time limit for responding to a request?

(a) Ordinarily, the Agency has 20 workdays (including the date of receipt) to determine whether to comply with a request, but unusual circumstances may allow the Agency to take longer than 20 workdays (*see* §2105.17).

(b) A consultation or referral under §2105.12 does not restart the statutory time limit for responding to a request.

§2105.16 When can the Agency suspend the basic time limit?

(a) The basic time limit in §2105.15 may be temporarily suspended for the time it takes you to respond to one written communication from the Agency reasonably asking for clarifying information.

(b) The basic time limit in §2105.15 may also repeatedly be temporarily suspended for the time it takes you to respond to written communications from the Agency that are necessary to clarify issues regarding fee assessment (*see* §2105.49).

§2105.17 When may the Agency extend the basic time limit?

(a) The Agency may extend the basic time limit, if unusual circumstances exist, by notifying you in writing of:

(1) The unusual circumstances involved; and

(2) The date by which it expects to complete processing the request.

(b) If the processing time will extend beyond a total of 30 workdays, the Agency will:

(1) Give you an opportunity to limit the scope of the request or agree to an alternative time period for processing; and

(2) Make available its FOIA Public Liaison (*see* §2105.63) to assist in resolving any disputes between you and the Agency, and notify you of your right to seek dispute resolution from the Office of Government Information Services (OGIS).

(c) If the Agency extends the time limit under this section and you do not receive a response in accordance with §2105.15(a) in that time period, you may consider the request denied and file an appeal in accordance with the procedures in §2105.56.

(d) Your refusal to reasonably modify the scope of a request or arrange an alternative time frame for processing a request after being given the opportunity to do so may be considered for litigation purposes as a factor when determining whether exceptional circumstances exist.

§2105.18 When will expedited processing be provided and how will it affect your request?

(a) The Agency will provide expedited processing upon request if you demonstrate to the satisfaction of the Agency that there is a compelling need for the records. The following circumstances demonstrate a compelling need:

(1) Where failure to expedite the request could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) Where there is an urgency to inform the public about an actual or alleged Federal Government activity and the request is made by a person primarily engaged in disseminating information.

(i) In most situations, a person primarily engaged in disseminating information will be a representative of the news media.

§ 2105.19

(ii) If you are not a full time member of the news media, to qualify for expedited processing here, you must establish that your main professional activity or occupation is information dissemination, although it need not be your sole occupation.

(iii) The requested information must be the type of information which has particular value that will be lost if not disseminated quickly; this ordinarily refers to a breaking news story of general public interest.

(iv) Information of historical interest only or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news.

(b) If you seek expedited processing, you must submit a statement that:

(1) Explains in detail how your request meets one or both of the criteria in paragraph (a) of this section; and

(2) Certifies that your explanation is true and correct to the best of your knowledge and belief.

(c) You may ask for expedited processing of your request by writing to the appropriate FOIA contact in the Agency that maintains the records requested any time before the Agency issues its final response to your request. When making a request for expedited processing of an administrative appeal, submit the request to the appropriate deciding official for FOIA appeals.

(d) The Agency must notify you of its decision to grant or deny expedited processing within 10 calendar days of receiving an expedited processing request.

(e) If expedited processing is granted, the request will be given priority, placed in the processing track for expedited requests, and be processed as soon as practicable.

(f) If expedited processing is denied, the Agency will:

(1) Inform you of the basis for the denial, including an explanation of why the expedited processing request does not meet the Agency's expedited processing criteria under this section; and

(2) Notify you of the right to appeal the decision on expedited processing in accordance with the procedures in subpart H of this part.

45 CFR Ch. XXI (10–1–24 Edition)

(g) If you appeal the Agency's expedited processing decision, that portion of your appeal (if it is properly formatted under § 2105.56) will be processed before appeals that do not challenge expedited processing decisions.

(h) If the Agency has not responded to the request for expedited processing within 10 calendar days, you may file an appeal (for nonresponse in accordance with § 2105.54(a)(8)).

Subpart E—Responses to Requests

§ 2105.19 How will the Agency respond to requests?

(a) When the Agency informs you of its decision to comply with a request by granting, partially granting, or denying the request, it will do so in writing and in accordance with the deadlines in subpart D of this part. The Agency's written response will include a statement about the services offered by its FOIA Public Liaison. The Agency's written response will also include a statement about the services offered by the Office of Government Information Services (OGIS).

(b) If the Agency determines that your request will take longer than 10 workdays to process, the Agency immediately will send you a written acknowledgment that includes the request's individualized tracking number and processing track (*see* § 2105.14(e)). The acknowledgement may also include a brief description of the subject of your request.

§ 2105.20 How will the Agency grant requests?

(a) Once the Agency makes a determination to grant a request in full or in part, it must notify you in writing.

(b) The notification will inform you of the availability of its FOIA Public Liaison to offer assistance, and of any fees charged under subpart G of this part.

(c) The Agency will release records (or portions of records) to you promptly upon payment of any applicable fees (or before then, at its discretion).

(d) If the records (or portions of records) are not included with the Agency's notification, the Agency will advise you how, when, and where the