

## Commission of Fine Arts

## § 2105.24

records will be released or made available.

### **§ 2105.21 When will the Agency deny a request or procedural benefits?**

(a) The Agency denies a request when it makes a decision that:

(1) A requested record is exempt, in full or in part;

(2) The request does not reasonably describe the records sought;

(3) A requested record does not exist, cannot be located, or is not in the Agency's possession and/or control; or

(4) A requested record is not readily reproducible in the form or format you seek.

(b) The Agency denies a procedural benefit only, and not access to the underlying records, when it makes a decision that:

(1) A fee waiver, or another fee-related issue, will not be granted; or

(2) Expedited processing will not be provided.

(c) The Agency must consult with legal counsel before it denies a fee waiver request or withholds all or part of a requested record.

### **§ 2105.22 How will the Agency deny requests?**

(a) The Agency must notify you in writing of any denial of your request.

(b) The denial notification must include:

(1) The name and title or position of the person responsible for the denial, along with an office phone number or email address;

(2) A statement of the reasons for the denial;

(3) A reference to any FOIA exemption applied by the Agency to withhold records in full or in part, along with a statement that the Agency reasonably foresees that disclosure would harm an interest protected by the applied exemption(s) or disclosure is prohibited by law;

(4) An estimate of the volume of any records withheld in full or in part (for example, by providing the number of pages or some other reasonable form of estimation), unless including an estimate would harm an interest protected by an exemption used to withhold the records and the Agency explains this harm to you;

(5) The name and title of legal counsel consulted (if the Agency is denying a fee waiver request or withholding all or part of a requested record);

(6) Advisement of the right to seek dispute resolution services from the Agency's FOIA Public Liaison and the Office of Government Information Services (OIGS); and

(7) A statement that the denial may be appealed under subpart H of this part and a description of the procedures in subpart H of this part.

### **§ 2105.23 What if the requested records contain both exempt and non-exempt material?**

If responsive records contain both exempt and nonexempt material, the Agency will consult with legal counsel, as discussed in § 2105.21(c). After consultation, the Agency will partially grant and partially deny the request by:

(a) Segregating and releasing the nonexempt information, unless the nonexempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases;

(b) Indicating on the released portion of the record the amount of information deleted and the FOIA exemption under which the deletion was made, unless doing so would harm an interest protected by the FOIA exemption used to withhold the information; and

(c) If technically feasible, indicating the amount of information deleted and the FOIA exemption under which the deletion was made at the place in the record where the deletion was made.

## **Subpart F—Handling Confidential Information**

### **§ 2105.24 May submitters of possibly confidential information designate information as confidential when making submissions?**

(a) The Agency encourages, but does not require, submitters to designate confidential information in good faith (in other words, to identify specific information as information the submitter considers protected from disclosure under Exemption 4 of the FOIA, found at 5 U.S.C. 552(b)(4)), at the time

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of submission or reasonably soon thereafter.

(b) The designations discussed in paragraph (a) of this section assist the Agency in identifying what information obtained from the submitter is possibly confidential and triggers the requirement for Agency-provided notifications under § 2105.25(a)(1).

### **§ 2105.25 When will the Agency notify a submitter of a request for their possibly confidential information?**

(a) Except as outlined in § 2105.27, an Agency must promptly notify a submitter in writing when it receives a FOIA request if:

(1) The requested information has been designated by the submitter as confidential information under § 2105.24(a); or

(2) The requested information has not been designated as confidential information by the submitter under § 2105.24(a), but the Agency identifies it as possibly confidential information.

(b) If a voluminous number of submitters are involved, the Agency may publish a notice in a manner reasonably calculated to reach the attention of the submitters (for example, in newspapers or newsletters, the Agency's website, or the FEDERAL REGISTER) instead of providing a written notice to each submitter.

### **§ 2105.26 What information will the Agency include when it notifies a submitter of a request for their possibly confidential information?**

A notice to a submitter must include:

(a) Either a copy of the request, the exact language of the request, or (for notices published under § 2105.25(b)) a general description of the request;

(b) Either a description of the possibly confidential information located in response to the request or a copy of the responsive records, or portions of records, containing the information;

(c) A description of the procedures for objecting to the release of the possibly confidential information under §§ 2105.28 and 2105.29;

(d) A time limit for responding to the Agency—no less than 10 workdays from receipt or publication of the notice (as set forth in § 2105.25(b))—to object to the release and to explain the basis for the objection;

(e) Notice that information contained in the submitter's objections may itself be subject to disclosure under the FOIA;

(f) Notice that the Agency, not the submitter, is responsible for deciding whether the information will be released or withheld;

(g) A request for the submitter's views on whether they still consider the information to be confidential if the submitter designated the material as confidential commercial or financial information 10 or more years before the request; and

(h) Notice that failing to respond within the time frame specified under paragraph (d) of this section will create a presumption that the submitter has no objection to the disclosure of the information in question.

### **§ 2105.27 When will the Agency not notify a submitter of a request for their possibly confidential information?**

The notice requirements of § 2105.26 will not apply if:

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

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

### **§ 2105.28 How and when may a submitter object to the disclosure of confidential information?**

(a) If a submitter has any objections to the disclosure of confidential information, the submitter should provide a detailed written statement to the Agency that specifies all grounds for withholding the particular information under any FOIA exemption (*see* § 2105.29 for further discussion of Exemption 4 objection statements).

(b) A submitter who does not respond within the time period specified under § 2105.26(d) will be considered to have no objection to disclosure of the information. Responses received by the Agency after this time period will not be considered by the Agency unless the appropriate Agency FOIA contact determines, in his or her sole discretion, that good cause exists to accept the late response.