

## **§ 2105.56**

days from the date of the final response.

(b) Appeals covered by § 2105.54(a)(6) must be received by the FOIA Appeals Officer no later than 90 days from the date of the letter denying the fee waiver.

(c) Appeals covered by § 2105.54(a)(7) may be filed any time after the time limit for responding to the request has passed.

(d) Appeals covered by § 2105.54(a)(8) should be filed as soon as possible.

(e) Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

### **§ 2105.56 How do you file an appeal?**

(a) You must submit the appeal in writing by mail, fax or email to the FOIA Appeals Officer (using the address available at <https://www.cfa.gov/foia/>). Your failure to send an appeal directly to the FOIA Appeals Officer may delay processing.

(b) The appeal must include:

(1) Copies of all correspondence between you and the Agency concerning the FOIA request, including the request and the Agency's response (if there is one); and

(2) An explanation of why you believe the Agency's response was in error.

(c) The appeal should include your name, mailing address, daytime telephone number (or the name and telephone number of an appropriate contact), email address, and fax number (if available) in case the Agency needs additional information or clarification.

(d) An appeal concerning a denial of expedited processing or a fee waiver denial should also demonstrate fully how the criteria in § 2105.18 or §§ 2105.43 and 2105.46 are met.

(e) All communications concerning an appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL."

(f) The Agency will reject an appeal that does not attach all correspondence required by paragraph (b)(1) of this section, unless the FOIA Appeals Officer determines, in his or her sole discretion, that good cause exists to accept the defective appeal. The time limits for responding to an appeal will not

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begin to run until the correspondence is received.

### **§ 2105.57 Who makes decisions on appeals?**

(a) The FOIA Appeals Officer is the deciding official for FOIA appeals.

(b) When necessary, the appropriate deciding official for FOIA appeals will consult other appropriate offices, including legal counsel, for denials of records and fee waivers.

(c) The deciding official for FOIA appeals normally will not make a decision on an appeal if the request becomes a matter of FOIA litigation.

### **§ 2105.58 How are decisions on appeals issued?**

(a) A decision on an appeal must be made in writing.

(b) A decision that upholds the Agency's determination in whole or in part must contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision must provide you with notification of the statutory right to file a lawsuit and will inform you of the dispute resolution services offered by the Office of Government Information Services (OGIS) of the National Archives and Records Administration as a non-exclusive alternative to litigation. If the Agency's decision is remanded or modified on appeal, the Agency will notify you of that determination in writing. The Agency will then further process the request in accordance with that appeal determination and will respond directly to you.

(c) Dispute resolution is a voluntary process. If the Agency agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

### **§ 2105.59 When can you expect a decision on your appeal?**

(a) The basic time limit for responding to an appeal is 20 workdays after receipt of an appeal meeting the requirements of § 2105.56.

(b) If the Agency is unable to reach a decision on your appeal within the given time limit for response, the appropriate deciding official for FOIA appeals will notify you of your statutory