

§ 2507.13

Submitter means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides information, either directly or indirectly, to the Federal Government.

Confidential commercial information means commercial or financial information obtained by an agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

§ 2507.13 Procedures for release of commercial information.

(a) *Notification to submitters of confidential commercial or financial information.* When AmeriCorps possesses confidential commercial or financial information, and receives a request for the records, the Agency will, before release of any information:

(1) Notify the submitter about the request and provide copies of the requested records;

(2) Tell the submitter what information it proposes to disclose and withhold in accordance with Exemption (b)(4) of the Act; and

(3) Require the submitter to inform the agency in writing, within 10 business days from the date the notice is sent, if they object to any proposed disclosure of commercial or financial information in the records.

(b) *When notice to submitter is not required.* AmeriCorps will not give notice to a submitter of confidential commercial or financial information if:

(1) The Agency determines that the information shall not be disclosed;

(2) The information has previously been published or otherwise lawfully been made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(c) *Analysis of objection.* AmeriCorps will consider a submitter's timely objections and specific grounds for non-disclosure in deciding whether to disclose the requested information. AmeriCorps will not consider any information not timely submitted. A submitter who fails to make a timely objection will be considered to have no objection to disclosure, unless the submitter requests an extension of time to

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reply and is granted that extension or a lesser one.

(d) *Disclosure over the objection of a submitter.* Whenever AmeriCorps determines to disclose information over the objection of a submitter of commercial or financial information, it will send the submitter written notice that includes:

(1) A description of the commercial or financial information to be released to the requester;

(2) The reasons why the submitter's objection to release was not sustained;

(3) The date when the records will be disclosed, which shall be not less than 5 business days after the notice is sent.

(e) *Notice of suit for release.* Whenever a requester brings suit to compel the disclosure of a submitter's commercial or financial information, AmeriCorps will promptly notify the submitter.

(f) *Notification to requestor.* AmeriCorps will notify the requester whenever:

(1) AmeriCorps provides the submitter with notice and the opportunity to object to disclosure;

(2) AmeriCorps notifies the submitter of its intent to disclose requested information; and

(3) The submitter files a lawsuit to prevent disclosure of the information.

Subpart F—Appeals and Alternative Dispute Resolution

§ 2507.14 Administrative appeals.

Whenever AmeriCorps denies a FOIA request, it will inform the requester of the reasons for the denial and of the requester's right to appeal the denial to the FOIA Appeals Officer.

(a) *What a requester may appeal.* A requester may appeal:

(1) The withholding of a document or part of a document;

(2) Denial of a fee waiver request;

(3) The type or amount of fees they were charged;

(4) Any other type of adverse determination under the FOIA; or

(5) A failure by AmeriCorps to conduct an adequate search for the requested records.

(b) *What a requester may not appeal.* A requester may not appeal the lack of a timely response.

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(c) *When appeal is required.* A requester must generally submit a timely administrative appeal before they seek court review of the Agency's adverse determination.

(d) *Requirements for making an appeal.* A requester must:

- (1) Make the appeal in writing;
- (2) Transmit or postmark the appeal within 90 calendar days after the date of adverse determination;
- (3) Clearly identify the assigned request number and the Agency determination they are appealing;
- (4) Mark the subject line of the appeal email, or letter and envelope, with "FOIA Appeal."

(e) *Where to file an appeal.* A requester may file an appeal by sending an email to foia@cns.gov to the attention of the FOIA Appeals Officer, or a letter to: FOIA Appeals Officer, AmeriCorps, 250 E Street SW, Washington, DC 20525. There is no charge for filing an administrative appeal.

(f) *Adjudication of appeals.* (1) The FOIA Appeals Officer will conduct *de novo* review and make the final determination on appeals.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(g) *Decisions on appeals.* The FOIA Appeals Officer will provide the decision on any appeal in writing within 20 days (excepting Saturdays, Sundays, and legal public holidays) from the date the FOIA Appeals Officer received the appeal. The FOIA Appeals Officer's determination of an appeal constitutes the Agency's final action.

(1) If the FOIA Appeals Officer's decision upholds the Agency's determination, the decision will:

- (i) State the reasons for the affirmation, including any FOIA exemptions applied;
- (ii) Notify the requester of their statutory right to file a lawsuit; and
- (iii) Inform the requester of the mediation services offered by OGIS as a non-exclusive alternative to litigation.

(2) If the FOIA Appeals Officer's decision remands or modifies the Agency determination, either in whole or in part, they will notify the requester of that determination in writing. Thereafter, AmeriCorps will re-process the FOIA request in accordance with that

determination and, if applicable, promptly send the releasable records to the requester, unless a reasonable delay is justified.

[87 FR 55309, Sept. 9, 2022; 87 FR 57643, Sept. 21, 2022]

§ 2507.15 Mediation and dispute resolution services.

If a requester receives an adverse determination on a FOIA request, they have the right to seek dispute resolution services from the FOIA Public Liaison or mediation services from OGIS. Congress has charged OGIS with resolving FOIA disputes between Federal agencies and requesters. OGIS's mediation services are an alternative to litigation, but do not preclude it.

Subpart G—Fees

§ 2507.16 Definitions for this subpart.

In addition to the definitions in § 2507.3, the following definitions apply to this subpart:

Commercial use request is a FOIA request for a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The Agency's decision to place a requester in the commercial use category will be made on a case-by-case basis, in consideration of the requester's intended use of the information.

Direct costs are the expenses AmeriCorps incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. Direct costs do not include overhead expenses such as the costs of space, or of heating or lighting a facility.

Duplication fees are the reasonable direct costs of making copies of records to respond to a FOIA request, including the cost of materials to produce paper copies and materials plus operator time to produce tapes, disks, or other media.

Educational institution is any school that operates a program of scholarly research. To qualify for this fee category, a requester must show that the request is authorized by, and made under the auspices of, an educational institution and that the records are not