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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2604

RIN 3209-AA22

Amendments to the Office of Government Ethics Freedom of Information Act Regulation

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule amendments.

SUMMARY: The Office of Government Ethics is amending its rules under the Freedom of Information Act (FOIA) primarily to effectuate various provisions under the 1996 Electronic FOIA Amendments. The revisions include the new response time for FOIA requests, procedures for requesting expedited processing, additional categories of documents available in OGE's FOIA reading room facility, the availability of certain public information on OGE's Web site, and express inclusion of electronic records and automated searches along with paper records and manual searches. In addition, OGE's amendments increase the general FOIA search fees somewhat. Finally, OGE is making some other changes, including updating revisions and corrections. This rulemaking only deals with such matters at OGE; it is not an executive branchwide regulation.

EFFECTIVE DATE: June 24, 1999.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917; telephone: 202-208-8000, ext. 1110; TDD: 202-208-8025; FAX: 202-208-8037.

SUPPLEMENTARY INFORMATION: In this rulemaking, the Office of Government Ethics is amending its regulation at 5 CFR part 2604 under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

On December 3, 1998, OGE published proposed rule amendments to its FOIA regulation at 63 FR 66769-66772. Comments from the public and the agencies were requested, to be submitted by February 1, 1999. No comments were received on the proposed amendments, and OGE is therefore adopting them as final with just a few clarifying changes noted below. A summary highlighting the most significant amendments follows. The amendments were explained in somewhat greater detail in the preamble to the proposed rule.

The primary focus of these amendments is to codify in OGE's FOIA regulation various requirements under the 1996 Electronic FOIA Amendments, Public Law No. 104-231. Thus, in a newly redesignated paragraph (a)(1) of § 2604.305, OGE would codify in its FOIA regulation the new statutorily prescribed general 20 working day response time for responding to FOIA requests. In addition, OGE is adding a new paragraph (a)(2) to § 2604.305 on response to requests for expedited processing within 10 calendar days where the requester shows and certifies "compelling need" as defined in the amended law and new paragraph (e) of § 2604.301 of OGE's FOIA regulation.

The Electronic FOIA Amendments require that deleted portions of copies of documents released in part be identified and that a volume estimation of materials withheld in whole be given, unless exempt information would thereby be revealed. The Office of Government Ethics is codifying this requirement in new paragraph (b)(3) of § 2604.303 of its FOIA regulation. In a separate revision to § 2604.303, paragraph (a) is being revised to provide expressly that OGE can, in addition to referral of a request (or portion thereof), alternatively consult with another Government agency in cases where responsive records originated at the other agency and then respond to a requester with respect thereto.

The general requirement to honor a form or format request, unless the record requested is not readily reproducible in the requested form or format, is set forth in revised paragraph (c) of § 2604.302. The definitions of the terms "records" and "search" in § 2604.103 now more explicitly include electronic records and automated

searches (along with paper records and manual searches).

The Office of Government Ethics is also clarifying in the revised headings and text of subpart B, § 2604.201 and now, in this final rule, § 2604.202 as well that, as a small agency with a limited FOIA practice, it has a FOIA public reading room *facility*, rather than a "room" per se. Reading room facility materials created by OGE since October 1, 1996 (and in certain cases before then, if feasible), are also available via computer telecommunications on OGE's Internet World Wide Web site at the following Uniform Resource Locator address: <http://www.usoge.gov>. The Web site is referenced in new paragraph (a)(2) of § 2604.201 of the OGE FOIA regulation. The Electronic FOIA Amendments also added a new category of such publicly available materials, copies of records created by OGE which are requested and released to individual FOIA requesters which OGE determines have become or are likely to become the subject of multiple requests, together with a general index thereof. The Office of Government Ethics is adding reference to such documents at new paragraph (b)(4) of § 2604.201 of its FOIA regulation. Further, OGE is adding a new paragraph (d) to § 2604.201 regarding permissible deletions from records covered in this section in order to prevent a clearly unwarranted invasion of personal privacy.

In § 2604.501(b)(1)(i), OGE is raising the hourly rate for manual searches for responsive records by a homogeneous class of OGE personnel by 10% to reflect increased salaries and overhead since the OGE FOIA regulations were initially issued in February 1995.

In addition, OGE notes that in revised subpart F on annual FOIA reports it is describing the items of information now required under the Electronic FOIA Amendments and Department of Justice guidance in the annual OGE reports, which are to be submitted to the Justice Department and posted on OGE's Web site. This final rule incorporates a couple of minor changes to § 2604.602(b)(11), (b)(15) and (b)(16) as previously proposed to clarify that administrative appeal information is to be provided under 5 U.S.C. 552(a)(6) and to specify that the staff time and costs of FOIA processing are estimates and include part-time/occasional staff (in estimated work years).

Finally, OGE is making various other minor changes, updates and corrections to its FOIA regulation. Moreover, as noted in the proposed rule, OGE is not adopting multitrack processing of its FOIA requests due to the limited number of requests received each year and the lack of any FOIA backlog.

Matters of Regulatory Procedure

Executive Order 12866

In issuing these amendments to its Freedom of Information Act regulation, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Office of Government Ethics Director, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these amendments will not have a significant economic impact on a substantial number of small entities because they only affect Freedom of Information Act matters at OGE.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these amendments do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2604

Confidential business information, Freedom of information.

Approved: February 16, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2604 as follows:

PART 2604—[AMENDED]

1. The authority citation for part 2604 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

§ 2604.103 [Amended]

2. In § 2604.103, the text of the definition of the term “Records” is amended by adding, in the second parenthetical, between the words “as” and “punchcards” the words “electronic documents, electronic mail,”, and the text of the definition of

the term “Search” is amended by adding between the words “material” and “that” the words “manually or by automated means”.

3. The heading of subpart B is revised to read as follows:

Subpart B—FOIA Public Reading Room Facility and Web Site; Index Identifying Information for the Public

- 4. Section 2604.201 is amended by:
 - a. Revising the heading;
 - b. Redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2);
 - c. Adding the word “facility” after the word “room” at each place it appears in newly redesignated paragraph (a)(1), including the paragraph heading, and in paragraphs (b) and (c);
 - d. Removing the telephone number “(202) 523-5757” and the FAX number “(202) 523-6325” in the last sentence of newly redesignated paragraph (a)(1) and adding in their place the new telephone number “202-208-8000” and FAX number “202-208-8037”, respectively;
 - e. Removing the word “and” at the end of paragraph (b)(3);
 - f. Redesignating paragraph (b)(4) as paragraph (b)(5); and
 - g. Adding new paragraphs (b)(4) and (d).

The revision and additions read as follows:

§ 2604.201 Public reading room facility and Web site.

- (a)(1) * * *
- (2) *Web site.* The records listed in paragraph (b) of this section, which are created on or after November 1, 1996, or which OGE is otherwise able to make electronically available (if feasible), along with the OGE FOIA and Public Records Guide and OGE’s annual FOIA reports, are also available via OGE’s Web site (Internet address: <http://www.usoge.gov>).
- (b) * * *
- (4) Copies of records created by OGE that have been released to any person under subpart C of this part which, because of the nature of their subject matter, OGE determines have become or are likely to become the subject of subsequent requests for substantially the same records, together with a general index of such records; and

* * * * *
(d) OGE may delete from the copies of materials made available under this section any identifying details necessary to prevent a clearly unwarranted invasion of personal privacy. Any such deletions will be explained in writing and the extent of such deletions will be indicated on the portion of the records

that are made available or published, unless the indication would harm an interest protected by the FOIA exemption pursuant to which the deletions are made. If technically feasible, the extent of any such deletions will be indicated at the place in the records where they are made.

§ 2604.202 [Amended]

5. Section 2604.202 is amended by adding between the words “room” and “which” in paragraph (a) the word “facility”.

6. Section 2604.301 is amended by removing the telephone number “(202) 523-5757” in the first sentence of paragraph (a) and adding in its place the following text (with the new telephone and FAX numbers) “ 202-208-8000, or FAX, 202-208-8037”, and by adding a new paragraph (e) to read as follows:

§ 2604.301 Requests for records.

* * * * *

(e) *Seeking expedited processing.* (1) A requester may seek expedited processing of a FOIA request if a compelling need for the requested records can be shown.

(2) “Compelling need” means:

- (i) Circumstances in which failure to obtain copies of the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
- (ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person primarily engaged in disseminating information.

(3) A requester seeking expedited processing should so indicate in the initial request, and should state all the facts supporting the need to obtain the requested records quickly. The requester must also certify in writing that these facts are true and correct to the best of the requester’s knowledge and belief.

7. Section 2604.302 is amended by revising the heading and first sentence of paragraph (b) and revising paragraph (c) to read as follows:

§ 2604.302 Response to requests.
* * * * *

§ 2604.302 Response to requests.

* * * * *

(b) *Referral to, or consultation with, another agency.* When a requester seeks access to records that originated in another Government agency, OGE will normally refer the request to the other agency for response; alternatively, OGE may consult with the other agency in the course of deciding itself whether to grant or deny a request for access to such records. * * *

(c) *Honoring form or format requests.* In making any record available to a

requester, OGE will provide the record in the form or format requested, if the record already exists or is readily reproducible by OGE in that form or format. If a form or format request cannot be honored, OGE will so inform the requester and provide a copy of a nonexempt record in its existing form or format or another convenient form or format which is readily reproducible. OGE will not, however, generally develop a completely new record (as opposed to providing a copy of an existing record in a readily reproducible new form or format, as requested) of information in order to satisfy a request.

8. Section 2604.303 is amended by removing the word "and" following paragraph (b)(2), redesignating paragraph (b)(3) as paragraph (b)(4), and adding a new paragraph (b)(3) to read as follows:

§ 2604.303 Form and content of responses.

* * * * *

(b) * * *

(3) When only a portion of a document is being withheld, the amount of information deleted and the FOIA exemption(s) justifying the deletion will generally be indicated on the copy of the released portion of the document. If technically feasible, such indications will appear at the place in the copy of the document where any deletion is made. If a document is withheld in its entirety, an estimate of the volume of the withheld material will generally be given. However, neither an indication of the amount of information deleted nor an estimation of the volume of material withheld will be included in a response if doing so would harm an interest protected by any of the FOIA exemptions pursuant to which the deletion or withholding is made; and

* * * * *

9. Section 2604.305 is amended by redesignating paragraph (a) as paragraph (a)(1), by removing the number "10" in newly redesignated paragraph (a)(1) and adding in its place the number "20", and by adding a new paragraph (a)(2) to read as follows:

§ 2604.305 Time limits.

(a)(1) * * *

(2) *Request for expedited processing.*

When a request for expedited processing under § 2604.301(e) is received, the General Counsel will respond within ten calendar days from the date of receipt of the request, stating whether or not the request for expedited processing has been granted. If the request for expedited processing is denied, any

appeal of that decision will be acted upon expeditiously.

* * * * *

§ 2604.402 [Amended]

10. Section 2604.402 is amended by removing the word "exemption" in the first sentence of paragraph (b) and adding in its place the word "Exemption".

§ 2604.501 [Amended]

11. Section 2604.501 is amended by removing the dollar amounts "\$10.00" and "\$20.00" from the second sentence of paragraph (b)(1)(i) and adding in their place the dollar amounts "\$11.00" and "\$22.00", respectively, and by removing the citation to "§ 2604.104(q)" in the first sentence of paragraph (b)(3) and adding in its place the citation "§ 2604.103".

12. Subpart F is revised to read as follows:

Subpart F—Annual OGE FOIA Report

§ 2604.601 Electronic posting and submission of annual OGE FOIA report.

On or before February 1 of each year, OGE shall electronically post on its Web site and submit to the Office of Information and Privacy at the United States Department of Justice a report of its activities relating to the Freedom of Information Act (FOIA) during the preceding fiscal year.

§ 2604.602 Contents of annual OGE FOIA report.

(a) The Office of Government Ethics will include in its annual FOIA report the following information for the preceding fiscal year:

(1) The number of FOIA requests for records pending before OGE as of the end of the fiscal year;

(2) The median number of calendar days that such requests had been pending before OGE as of that date;

(3) The number of FOIA requests for records received by OGE;

(4) The number of FOIA requests that OGE processed;

(5) The median number of calendar days taken by OGE to process different types of requests;

(6) The number of determinations made by OGE not to comply with FOIA requests in full or in part;

(7) The reasons for each such determination;

(8) A complete list of all statutes upon which OGE relies to authorize withholding of information under FOIA Exemption 3, 5 U.S.C. 552(b)(3);

(9) A description of whether a court has upheld the decision of the agency to withhold information under each such statute;

(10) A concise description of the scope of any information withheld under each such statute;

(11) The number of administrative appeals made by persons under 5 U.S.C. 552(a)(6);

(12) The result of such appeals;

(13) The reason for the action upon each appeal that results in a denial of information;

(14) The total amount of fees collected by OGE for processing requests;

(15) The number of full-time staff and part-time/occasional staff (in estimated work years) of OGE devoted to processing requests for records under the FOIA; and

(16) The estimated total amount expended by OGE for processing such requests.

(b) In addition, OGE will include in the report such additional information about its FOIA activities as is appropriate and useful in accordance with Justice Department guidance and as otherwise determined by OGE.

[FR Doc. 99-13145 Filed 5-24-99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-12]

Modification of Class D Airspace and Class E Airspace; Minot, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace and Class E airspace at Minot, ND. This action corrects technical errors in the legal descriptions of the Class D airspace and the Class E airspace extension to the Class D airspace for Minot International Airport, and amends the Class E surface area for the airport to include the Class E airspace extension. The purpose of these actions is to make technical corrections to the airspace legal descriptions in order to make the Class D airspace and Class E airspace for the airport consistent with each other, and to provide adequate controlled airspace for instrument approach procedures when the airport traffic control tower (ATCT) is closed.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East