

## Miscellaneous Agencies

## § 426.102

(v) That any prior recipients of this disputed record, who, the Commission believes, still retain a copy thereof, will be sent a copy of the statement of disagreement, after an accounting of disclosures has been kept pursuant to 5 U.S.C. 552a(c);

(vi) Of his or her right to seek judicial review of the refusal to amend the record, pursuant to 5 U.S.C. 552a(g)(1)(A).

[40 FR 59187, Dec. 22, 1975]

### § 425.5 Disclosure of records to agencies or persons other than the individual to whom the record pertains.

Records subject to the Privacy Act that are requested by any person other than the individual to whom they pertain will not be made available except under the following circumstances:

(a) Records may be circulated to appropriate officials incident to placing Fellows in work assignments for the Fellowship year.

(b) An accounting of the date, nature, and purpose of each disclosure of a record as well as the name and address of the person and agency to whom the disclosure was made will be indicated on the record. This accounting is available to the individual to whom the records pertain on written request to the Commission.

[40 FR 52416, Nov. 10, 1975; 40 FR 56651, Dec. 4, 1975, as amended at 40 FR 59187, Dec. 22, 1975]

## PART 426—NATIONAL COMMISSION ON MILITARY, NATIONAL, AND PUBLIC SERVICE

### Subpart A—Implementation of the Privacy Act of 1974

Sec.

426.101 Purpose and scope.

426.102 Definitions.

426.103 Inquiries about systems of records or implementation of the Privacy Act.

426.104 Procedures for accessing records pertaining to an individual.

426.105 Identification required when requesting access to records pertaining to an individual.

426.106 Procedures for amending or correcting an individual's record.

426.107 Procedures for appealing a refusal to amend or correct a record.

426.108 Fees charged to locate, review, or copy records.

426.109 Procedures for maintaining accounts of disclosures.

### Subpart B—Disclosure of Records and Information Under the Freedom of Information Act

426.201 General.

426.202 Proactive disclosures.

426.203 Requirements for making requests.

426.204 Responsibility for responding to requests.

426.205 Timing of responses to requests.

426.206 Response to requests.

426.207 Confidential commercial information.

426.208 Appeals.

426.209 Preservation of records.

426.210 Fees.

426.211 Other rights and services.

AUTHORITY: 5 U.S.C. 552a(f).

SOURCE: 83 FR 19409, May 2, 2018, unless otherwise noted.

### Subpart A—Implementation of the Privacy Act of 1974

#### § 426.101 Purpose and scope.

The regulations in this part set forth the Commission's procedures under the Privacy Act, as required by 5 U.S.C. 552a(f), with respect to systems of records maintained by the Commission. The rules in this part apply to all records maintained by the Commission that are retrieved by an individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. These regulations establish procedures by which an individual may exercise the rights granted by the Privacy Act to determine whether a Commission system of records contains a record pertaining to him or her; to gain access to such records; and to request correction or amendment of such records. These rules should be read together with the Privacy Act, which provides additional information about records maintained on individuals.

#### § 426.102 Definitions.

The definitions in subsection (a) of the Privacy Act (5 U.S.C. 552a(a)) apply to this part. In addition, as used in this part:

## § 426.103

*Business day* means a calendar day, excluding Saturdays, Sundays, and legal public holidays.

*Chair* means the Chair of the Commission, or his or her designee;

*Commission* means the National Commission on Military, National, and Public Service;

*Commission system* means a system of records maintained by the Commission;

*General Counsel* means the General Counsel of the Commission, or his or her designee.

*Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

*Privacy Act* or *Act* means the Privacy Act of 1974, as amended (5 U.S.C. 552a);

*You, your*, or other references to the reader of the regulations in this part are meant to apply to the individual to whom a record pertains.

### § 426.103 Inquiries about systems of records or implementation of the Privacy Act.

Inquiries about the Commission's systems of records or implementation of the Privacy Act should be sent to the following address: National Commission on Military, National, and Public Service, Office of the General Counsel, 2530 Crystal Drive, Suite 1000, Box No. 63, Arlington, VA 22202.

### § 426.104 Procedures for accessing records pertaining to an individual.

The following procedures apply to records that are contained in a Commission system:

(a) You may request to be notified if a system of records that you name contains records pertaining to you, and to review any such records, by writing to the Office of the General Counsel (see § 426.103). You also may call the Office of the General Counsel at 703-571-3742 on business days, between the hours of 9 a.m. and 5 p.m., to schedule an appointment to make such a request in person. A request for records should be presented in writing and should identify specifically the Commission system(s) involved. Your request to access records pertaining to you will be treated as a request under both the Privacy Act, as implemented by this part, and the Freedom of Information Act (5

## 1 CFR Ch. IV (1-1-23 Edition)

U.S.C. 552), as implemented by subpart B of this part.

(b) Access to the records, or to any other information pertaining to you that is contained in the system, shall be provided if the identification requirements of § 426.105 are satisfied and the records are determined otherwise to be releasable under the Privacy Act and these regulations. The Commission shall provide you an opportunity to have a copy made of any such records about you. Only one copy of each requested record will be supplied, based on the fee schedule in § 426.108.

(c) The Commission will comply promptly with requests made in person at scheduled appointments, if the requirements of this section are met and the records sought are immediately available. The Commission will acknowledge, within 10 business days, mailed requests or personal requests for records that are not immediately available, and the information requested will be provided promptly thereafter.

(d) If you make your request in person at a scheduled appointment, you may, upon your request, be accompanied by a person of your choice to review your records. The Commission may require that you furnish a written statement authorizing discussion of your records in the accompanying person's presence. A record may be disclosed to a representative chosen by you upon your proper written consent.

(e) Medical or psychological records pertaining to you shall be disclosed to you unless, in the judgment of the Commission, access to such records might have an adverse effect upon you. When such a determination has been made, the Commission may refuse to disclose such information directly to you. The Commission will, however, disclose this information to you through a licensed physician designated by you in writing.

(f) If you are unsatisfied with an adverse determination on your request to access records pertaining to you, you may appeal that determination using the procedures set forth in § 426.107(a).

## Miscellaneous Agencies

## § 426.106

### **§ 426.105 Identification required when requesting access to records pertaining to an individual.**

The Commission will require reasonable identification of all individuals who request access to records in a Commission system to ensure that records are disclosed to the proper person.

(a) The amount of personal identification required will of necessity vary with the sensitivity of the record involved. In general, if you request disclosure in person, you will be required to show an identification card, such as a driver's license, containing your photograph and sample signature. However, with regard to records in Commission systems that contain particularly sensitive and/or detailed personal information, the Commission reserves the right to require additional means of identification as are appropriate under the circumstances. These means include, but are not limited to, requiring you to sign a statement under oath as to your identity, acknowledging that you are aware of the criminal penalties for requesting or obtaining records under false pretenses or falsifying information (see 5 U.S.C. 552a(i)(3); 18 U.S.C. 1001).

(b) If you request disclosure by mail, the Commission will request such information as may be necessary to ensure that you are properly identified and for a response to be sent. Authorized means to achieve this goal include, but are not limited to, requiring that a mail request include a signed, notarized statement asserting your identity or a statement signed under oath as described in subsection (a) of this section.

### **§ 426.106 Procedures for amending or correcting an individual's record.**

(a) You are entitled to request amendments to or corrections of records pertaining to you that you believe are not accurate, relevant, timely, or complete, pursuant to the provisions of the Privacy Act, including 5 U.S.C. 552a(d)(2). Such a request should be made in writing and addressed to the Office of the General Counsel (see § 426.103).

(b) Your request for amendments or corrections should specify the following:

(1) The particular record that you are seeking to amend or correct;

(2) The Commission system from which the record was retrieved;

(3) The precise correction or amendment you desire, preferably in the form of an edited copy of the record reflecting the desired modification; and

(4) Your reasons for requesting amendment or correction of the record.

(c) The Commission will acknowledge a request for amendment or correction of a record within 10 business days of its receipt, unless the request can be processed and the individual informed of the General Counsel's decision on the request within that 10-day period.

(d) If after receiving and investigating your request, the General Counsel agrees that the record is not accurate, timely, or complete, based on a preponderance of the evidence, then the record will be corrected or amended promptly. The record will be deleted without regard to its accuracy, if the record is not relevant or necessary to accomplish the Commission's function for which the record was provided or is maintained. In either case, you will be informed in writing of the amendment, correction, or deletion. In addition, if accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(e) If after receiving and investigating your request, the General Counsel does not agree that the record should be amended or corrected, you will be informed promptly in writing of the refusal to amend or correct the record and the reason for this decision. You also will be informed that you may appeal this refusal in accordance with § 426.107.

(f) Requests to amend or correct a record governed by the regulations of another agency will be forwarded to such agency for processing, and you will be informed in writing of this referral.

**§ 426.107 Procedures for appealing a refusal to amend or correct a record.**

(a) You may appeal a refusal to amend or correct a record to the Chair of the Commission. Such appeal must be made in writing within 30 business days of your receipt of the initial refusal to amend or correct your record. Your appeal should be sent to the Office of the General Counsel (see § 426.103), should indicate that it is an appeal, and should include the basis for the appeal.

(b) The Chair will review your request to amend or correct the record, the General Counsel's refusal, and any other pertinent material relating to the appeal. No hearing will be held.

(c) The Chair shall render his or her decision on your appeal within 30 business days of its receipt by the Commission, unless the Chair, for good cause shown, extends the 30-day period. Should the Chair extend the appeal period, you will be informed in writing of the extension and the circumstances of the delay.

(d) If the Chair determines that the record that is the subject of the appeal should be amended or corrected, the record will be so modified, and you will be informed in writing of the amendment or correction. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(e) If your appeal is denied, you will be informed in writing of the following:

(1) The denial and the reasons for the denial;

(2) That you may submit to the Commission a concise statement setting forth the reasons for your disagreement as to the disputed record. Under the procedures set forth in paragraph (f) of this section, your statement will be disclosed whenever the disputed record is disclosed; and

(3) That you may seek judicial review of the Chair's determination under 5 U.S.C. 552a(g)(1).

(f) Whenever you submit a statement of disagreement to the Commission in accordance with paragraph (e)(2) of this section, the record will be annotated to indicate that it is disputed. In any subsequent disclosure, a copy of your

statement of disagreement will be disclosed with the record. If the Commission deems it appropriate, a concise statement of the Chair's reasons for denying your appeal also may be disclosed with the record. While you will have access to this statement of the Chair's reasons for denying your appeal, such statement will not be subject to correction or amendment. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be provided a copy of your statement of disagreement, as well as any statement of the Chair's reasons for denying your appeal deemed appropriate.

**§ 426.108 Fees charged to locate, review, or copy records.**

(a) The Commission will charge no fees for search time or for any other time expended by the Commission to review a record. However, the Commission may charge fees where you request that a copy be made of a record to which you have been granted access. Where a copy of the record must be made in order to provide access to the record (*e.g.*, computer printout where no screen reading is available), the copy will be made available to you without cost.

(b) Copies of records made by photocopy or similar process will be charged to you at the rate of \$0.12 per page. Where records are not susceptible to photocopying (*e.g.*, punch cards, magnetic tapes, or oversize materials), you will be charged actual cost as determined on a case-by-case basis. Copying fees will not be charged if the cost of collecting a fee would be equal to or greater than the fee itself. Copying fees for contemporaneous requests by the same individual shall be aggregated to determine the total fee.

(c) Special and additional services provided at your request, such as certification or authentication, postal insurance, and special mailing arrangement costs, will be charged to you at the market rate.

(d) You may request that a copying fee not be charged or, alternatively, be reduced, by submitting a written petition to the Commission's General Counsel (see § 426.103) asserting that

## Miscellaneous Agencies

## § 426.202

you are indigent. If the General Counsel determines, based on the petition, that you are indigent and that the Commission's resources permit a waiver of all or part of the fee, the General Counsel may, in his or her discretion, waive or reduce the copying fee.

(e) All fees shall be paid before any copying request is undertaken.

### § 426.109 Procedures for maintaining accounts of disclosures.

(a) The Office of the General Counsel shall maintain a log containing the date, nature, and purpose of each disclosure of a record to any person or to another agency. Such accounting also shall contain the name and address of the person or agency to whom each disclosure was made. This log need not include disclosures made to the Commission's employees in the course of their official duties, or pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552).

(b) The Commission will retain the accounting of each disclosure for at least five years after the disclosure or for the life of the record that was disclosed.

(c) The Commission will make the accounting of disclosures of a record pertaining to you available to you at your request. Such a request should be made in accordance with the procedures set forth in § 426.104. This paragraph (c) does not apply to disclosures made for law enforcement purposes under 5 U.S.C. 552a(b)(7).

## Subpart B—Disclosure of Records and Information Under the Freedom of Information Act

SOURCE: 83 FR 19415, May 2, 2018, unless otherwise noted.

### § 426.201 General.

This subpart contains the regulations of the National Commission on Military, National, and Public Service (the "Commission") implementing the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, as amended. These regulations set forth procedures for requesting access to records maintained by the Commission. These regulations should be read together with the text of the FOIA, and the Uniform Freedom of In-

formation Fee Schedule and Guidelines published by the Office of Management and Budget ("OMB Guidelines"). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with the Commission's Privacy Act regulations as well as under this subpart.

### § 426.202 Proactive disclosures.

(a) Records that FOIA requires agencies to make available for public inspection in an electronic format may be accessed through the Commission's website at [www.inspire2serve.gov](http://www.inspire2serve.gov). The Commission will ensure that its website of posted records and indices is reviewed and updated on an ongoing basis. The Commission has a FOIA Public Liaison who can assist individuals in locating records particular to the Commission. A list of agency FOIA Public Liaisons is available at <http://www.foia.gov/report-makerequest.html>.

(b) The following types of records shall be available routinely on the website, without resort to formal FOIA request procedures, unless such records fall within one of the exemptions listed at 5 U.S.C. 552(b) of the Act:

(1) Any formal report issued by the Commission;

(2) Testimonies and presentations submitted to the Commission;

(3) Schedules for public meetings and hearings of the Commission along with transcripts or notes of such public meetings and hearings;

(4) Press statements;

(5) Substantive rules of general applicability adopted by the Commission, procedural rules governing the Commission's general operations that may affect the public, and statements of general policy or interpretation of general applicability formulated and adopted by the Commission; and

(6) Copies of all records, regardless of form or format, that have been released previously to any person under 5 U.S.C. 552(a)(3), and that the Commission determines have become or are likely to become the subject of subsequent requests for substantially the same records. When the Commission receives three or more requests for substantially the same records, then the Commission shall make the released

records available in the Commission's reading room and on the Commission's website.

(c) The Commission shall also maintain a public reading room, at the Commission's offices, containing records available for public inspection that cannot be produced in electronic form. The reading room shall be available for use on workdays during the hours of 9 a.m. to 4 p.m. Requests for appointments to review the materials in the public reading room should be directed to the FOIA Public Liaison.

(d) Based upon applicable exemptions in 5 U.S.C. 552(b), the Commission may redact certain information contained in any matter described in this section before making such information available for inspection or publishing it. The justification for the redaction shall be explained in writing, and the extent of such redaction shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemptions under which the redaction is made. The location of the information deleted must also be indicated on the record, if technically feasible.

**§ 426.203 Requirements for making requests.**

(a) *In general.* Many documents are available on the Commission's website and the Commission encourages requesters to visit the website before making a request for records pursuant to this subpart. Except for records already available on the website or subject to the FOIA exemptions and exclusions, the Commission shall promptly provide records to any person in response to a request that conforms to the rules and procedures of this section. Requesters may contact the agency's FOIA Public Liaison to discuss the records they seek and to receive assistance in describing the records.

(b) *Form of request.* For records not available on the website, requesters wishing to obtain information from the Commission should submit a written request to the Commission. It may be submitted by mail or via the internet (website or email). A request by mail must be addressed to: FOIA Request, National Commission on Military, Na-

tional, and Public Service, 2530 Crystal Drive, Suite 1000, Box No. 63, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to send the request via email to [FOIA@inspire2serve.gov](mailto:FOIA@inspire2serve.gov). The Commission will communicate with the requester by email unless he or she specifies otherwise. Requesters may specify the preferred form or format for the records sought, and the Commission will accommodate the request if the record is readily reproducible in that form or format.

(c) *Contents of request.* Requests must include the following:

(1) The requester's full name, mailing address, a telephone number at which the requester can be reached during normal business hours, and an email address for the requester, if the requester has one;

(2) A description of the records sought in enough detail to allow the records to be located with a reasonable amount of effort. To the extent possible, requesters should include specific information, such as the date, title or name, author, recipient, and subject matter of the records sought. If known, the requester must include any file designations or descriptions for the records requested;

(3) If submitting the request as an educational institution, a non-commercial scientific institution, or a representative of the news media, information to support being placed in that category of requester as they are defined in § 426.210(b);

(4) A fee waiver request, if applicable (see § 426.210(f));

(5) A statement explaining why expedited processing is necessary, if it is being requested (see § 426.205(c)); and

(6) Where the request is making a request for records about himself or herself, verification of the individual's identity (please see the Commission's Privacy Act regulations at 1 CFR, chapter IV, part 426, subpart A).

(d) *Date received.* The Commission shall deem itself to have received a request on the date that it receives a request containing the information required by paragraph (c) of this section. If after receiving a request, the Commission determines that it does not reasonably describe the records sought,

## Miscellaneous Agencies

## § 426.205

the agency must inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the FOIA Public Liaison.

### § 426.204 Responsibility for responding to requests.

(a) *In general.* In determining which records are responsive to a request, an agency ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the agency must inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), is not considered responsive to a request.

(b) *Authority to grant or deny requests.* The Chief FOIA Officer or designee is authorized to grant or to deny any requests for records.

(c) *Consultation, referral, and coordination.* When reviewing records in response to a request, the Commission will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the Commission will proceed in one of the following ways:

(1) *Consultation.* When records originated within the Commission, but contain within them information of interest to another agency or other Federal Government office, the Commission will typically consult with that other entity prior to making a release determination.

(2) *Referral.* When the Commission believes that a different agency is best able to determine whether to disclose the record, the Commission typically should refer the responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. Whenever an agency refers any part of the responsibility for responding to a request to another agency, it must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, the name of

the agency, and the FOIA agency contact.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the agency that received the request should coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the agency that originally received the request.

(d) *Timing of response to consultations and referrals.* All consultations and referrals received by the Commission will be handled according to the date that the first agency received the perfected FOIA request.

### § 426.205 Timing of responses to requests.

(a) *In general.* The Commission ordinarily will respond to requests according to their order of receipt. The following timing and steps are the normal process:

(1) *Acknowledgment.* The Commission will provide an acknowledgment notice with an individualized tracking number, the date of receipt of the request, a confirmation of a waiver or reduction of fees (if requested), and a summary of the records requested to each requester within 10 working days after receiving a request that has all of the requisite information.

(2) *Response time.* Ordinarily, the Commission shall have 20 work days from when a request is received to determine whether to grant or deny a request for records. The 20-day time period shall not be tolled by the Commission except that the Commission may:

(i) Make one reasonable demand to the requester for clarifying information about the request and toll the 20-day time period while awaiting the clarifying information; or

(ii) Notify the requester of the fee assessment for the request and toll the

20-day time period while awaiting the requester's response.

(3) *Appeal.* The Commission will make a decision with respect to an appeal of a full or partial denial of a request for records within 20 work days after receipt of the appeal.

(b) *Multi-Track processing.* The Commission uses a multi-track system to process FOIA requests, so that a FOIA request is processed based on its complexity. Each request will be assigned to the Standard, Complex, or Expedited track.

(1) *Standard Track.* Requests that are routine and require little search time, review, or analysis are assigned to the Standard Track. The Commission will respond to these requests in the order in which they are received and make every effort to respond no later than 20 working days after receipt of the request.

(2) *Complex Track.* Requests that are non-routine are assigned to the Complex Track if the response may be voluminous; requires an unusually high level of effort for search, review, or duplication; or causes an undue disruption to the day-to-day activities of the Commission in carrying out its statutory responsibilities. The requester will be notified if the request is assigned to the Complex Track and will be given an estimate of the time for response. The Commission will respond to Complex Track requests as soon as practicable, and may discuss with the requester the possibility of reformulating the request to reduce processing time.

(3) *Expedited Track.* Requests for expedited processing that meet the standards set forth in paragraph (c) of this section, will be assigned to the Expedited track. In such cases, the process described in paragraph (c) will be followed.

(c) *Expedited processing.* A request for expedited processing must accompany the initial request for records, and the request should be clearly marked "Expedited Processing Requested." It must be a certified, written statement of compelling need for expedited processing, stating that the facts are true and correct. The Commission shall decide whether to grant the request within 10 calendar days of its receipt, and

shall notify the requester in writing. If the Commission grants this request, then the Commission will give the expedited request priority over non-expedited requests and shall process it as soon as practicable. Denials of expedited processing requests can be appealed using the same procedures as denials of other FOIA requests. In determining whether processing should be expedited, the Chief FOIA Officer may consider whether:

(1) Failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to a person's life or physical safety;

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

(3) A reasonable expectation of an imminent loss of a substantial due process right.

(d) *Unusual circumstances.* If the Commission determines that "unusual circumstances" exist, as that term is defined in the FOIA, the time limits for responding to requests and appeals may be extended by no more than 10 work days by providing written notice of the extension to the requester. The requester will be given an opportunity to limit the scope of the request or to arrange with the Commission an alternative time frame for processing the request. A FOIA Officer shall include with the notice of extension a brief statement of the reason for the extension, the date the FOIA Officer expects to make a determination, and the availability of the FOIA Public Liaison to assist the requester, and the requester's right to seek dispute resolution services from the Office of Government Information Services (OGIS) of the National Archives and Records Administration.

#### § 426.206 Response to requests.

(a) *Acknowledgements of requests.* The Commission will send an acknowledgment of the request in writing and assign it an individualized tracking number if it will take longer than 10 working days to process. Upon request, the Commission will provide an estimated



## Miscellaneous Agencies

## § 426.207

date by which the Commission expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the agency may provide interim responses, releasing the records on a rolling basis.

(b) *Grant of request.* If a FOIA Officer grants a request, in full or in part, the Commission shall promptly provide the requester written notice of the decision, what fees apply under section 10 of this subpart, and the availability of its FOIA Public Liaison to offer assistance. The requester will be notified whether the request has been assigned to the Standard, Complex, or Expedited track, pursuant to § 426.205(b).

(c) *Request denial.* If the Chief FOIA Officer denies a request in any respect, the Commission will notify the requester of that determination in writing. A denial of request includes decisions that: Fees will not be waived, no expedited processing will be done, there are no responsive records subject to FOIA, the requested record does not exist or has been destroyed, the requested record is exempt in whole or in part, or the request does not reasonably describe the records sought. The written notice will include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the agency in denying the request;

(3) A description of the material withheld, such as the approximate number of pages or some other reasonable form of estimation;

(4) A statement that the denial may be appealed under section 8(a) of this subpart, and a description of the appeal requirements; and

(5) A statement notifying the requester of the assistance available from the agency's FOIA Public Liaison and the dispute resolution services offered by OGIS.

(d) *Redactions.* When a portion of a record is withheld, the amount of information redacted and the claimed exemption will be noted at the place in the record where the redaction was made.

### § 426.207 Confidential commercial information.

#### (a) *Definitions.*

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

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

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, at the time of submission, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to submitters is required.* (1) The Commission must promptly provide written notice to the submitter of confidential commercial information whenever records containing such information are requested under the FOIA if the agency determines that it may be required to disclose the records, provided the requested information has been designated in good faith by the submitter or the Commission has a reason to believe that the requested information may be protected from disclosure under Exemption 4.

(2) The notice must either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, the Commission may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

(d) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

## § 426.208

## 1 CFR Ch. IV (1–1–23 Edition)

(1) The Commission determines that the information is exempt under the FOIA, and therefore will not be disclosed;

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

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12,600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such case, the Commission must give the submitter written notice of any final decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.*

(1) The Commission must specify a reasonable time period within which the submitter must respond to the notice referenced above.

(2) If a submitter has any objections to disclosure, it should provide the Commission a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is confidential.

(3) A submitter who fails to respond within the time period specified in the notice will be considered to have no objection to disclosure of the information. The Commission is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(4) The Commission must consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(f) *Notice of intent to disclose.* Whenever the Commission decides to disclose information over the objection of a submitter, the agency must provide

the submitter written notice, which must include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed or copies of the records as the Commission intends to release them; and

(3) A specified disclosure date, which must be a reasonable time after the notice.

(g) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the Commission must promptly notify the submitter.

(h) *Requester notification.* The Commission must notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

### § 426.208 Appeals.

(a) *Grounds for administrative appeals.* A requester may appeal an initial determination of the Commission, including but not limited to a determination:

(1) To deny access to records in whole or in part (as provided in § 426.206(c));

(2) To assign a particular fee category to the requester (as provided in § 426.209(d));

(3) To deny a request for a reduction or waiver of fees (as provided in § 426.209(f));

(4) That no records could be located that are responsive to the request (as provided in § 426.206(c)); or

(5) To deny a request for expedited processing (as provided in § 426.205(c)).

(b) *Initiating appeals.* Requesters not satisfied with the FOIA Officer's decision may make a written request appealing the decision within 90 days of the date of the FOIA Officer's decision. Any appeal requests should be clearly marked with the words "Freedom of Information Act Appeal." Appeals may be made through the Commission's email, [FOIA@inspire2serve.gov](mailto:FOIA@inspire2serve.gov); website, [www.inspire2serve.gov](http://www.inspire2serve.gov), or through the mail, and may be addressed to: FOIA

## Miscellaneous Agencies

## § 426.210

Appeals, National Commission on Military, National, and Public Service, 2530 Crystal Drive, Suite 1000, Box No. 63, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to send the request via email. The request should set out the name and contact information of the requester, specify the date of the initial request and the initial determination, and set forth why the appeal should be granted.

(c) *Adjudication of appeals.* Appeals will be processed in the order of their receipt. An appeal ordinarily will not be adjudicated if the request become a matter of FOIA litigation. Before seeking review by a court of an agency's adverse determination, a requester generally must first submit a timely administrative appeal.

(d) *Appeal decisions.* The Commission's Chair or his designee shall decide whether to affirm or reverse the initial determination (in whole or in part), and shall notify the requester of this decision in writing within 20 work days, pursuant to § 426.205(c). If the appeal is denied (in whole or in part), the Commission will notify the requester in writing of the decision, the reasons for the denial (including the FOIA exemptions relied upon), the name and title of the official responsible for the determination on appeal, and the provisions for judicial review and dispute resolution services offered by the OGIS. If the appeal is granted in full or in part, the Chief FOIA Officer will notify the requester in writing and promptly process the request.

(e) *Dispute resolution.* Dispute resolution is a voluntary process. If the Commission 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. Requesters may seek dispute resolution by contacting the FOIA Public Liaison or OGIS at: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, OGIS, College Park, MD 20740; email: [ogis@nara.gov](mailto:ogis@nara.gov); telephone: (202) 741-5770; facsimile: (202) 741-5769; toll free telephone: (877) 684-6448.

### § 426.209 Preservation of records.

The Commission will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration. The Commission will not dispose of or destroy records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

### § 426.210 Fees.

(a) *In general.* The Commission shall charge the requester for processing a request under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. For purposes of assessing fees, the FOIA establishes three categories of requesters: Commercial use requesters, non-commercial scientific or educational institutions or news media requesters, and all other requesters. Different fees are assessed depending on the category. Requesters may seek a fee waiver, and the Commission will consider fee waiver requests in accordance with the requirements in paragraph (f) of this section. To resolve any fee issues that arise under this section, the Commission will contact a requester for additional information. No fees shall be charged if the amount of fees incurred in processing the request is below \$25. The Commission ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States, or by another method as determined by the Commission.

(b) *Definitions.* For purposes of this section:

*Commercial use request* means a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The Commission's decision to place a requester in the commercial use category will be made

on a case-by-case basis based on the requester's intended use of the information. The Commission will notify requesters of their placement in this category.

*Direct costs* means those expenses that the Commission incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.*, the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

*Duplication* means reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

*Educational institution* means any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. The Commission may seek verification from the requester that the request is in furtherance of scholarly research and the Commission will advise requesters of their placement in this category.

*Example 1.* A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

*Example 2.* A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

*Example 3.* A student who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

*Noncommercial scientific institution* means an institution that is not oper-

ated on a “commercial” basis, as defined in this paragraph (b) and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use. The Commission will advise requesters of their placement in this category.

*Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. “Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Commission can also consider a requester's past publication record in making this determination. The Commission will advise requesters of their placement in this category.

*Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record

## Miscellaneous Agencies

## §426.210

ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under §426.207 of this subpart, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

*Search* means the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(c) *Fees chargeable for specific services.* In responding to FOIA requests, the Commission will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (f) of this section. No additional costs will be added to charges calculated under this section.

(1) *Duplicating records.* The Commission shall assess requester fees for the cost of copying records. The charge will be \$0.12 per page, up to 8½ x 14, made by photocopy or similar process. The charge will be the actual cost for duplicating photographs, films, and other materials. Where paper documents must be scanned so they can be sent electronically, the requester must pay the direct costs associated with scanning those materials. The Commission will honor a requester's preference for receiving a record in a particular form or format where the agency can readily reproduce it in the form or format requested.

(2) *Search services.* The Commission shall charge a requester for all time spent by its employees searching for records that are responsive to a request, even if no responsive records are found or the records are exempt from disclosure. For non-electronic searches, the Commission shall charge

for search time at the salary rate (basic pay plus 16 percent) of the employee who conducts the search. For electronic records, the Commission shall charge the requester for the actual direct cost of the search, including computer search time, runs, and the operator's salary.

(3) *Review of records.* The Commission shall only charge review fees to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, but no charge will be made for review at the administrative appeal stage. However, if a particular exemption is deemed to no longer apply, any costs associated with an agency's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. The Commission shall charge a requester for time spent reviewing records at the salary rate(s) (i.e., basic pay plus 16 percent) of the employees who conduct the review.

(4) *Inspection of records in the reading room.* Fees for all services provided shall be charged whether or not copies are made available to the requester for inspection. However, no fee shall be charged for monitoring a requester's inspection of records in the physical reading room.

(5) *Other services.* Although not required to provide special services, if the Commission chooses to do so as a matter of administrative discretion, the requested services are charged at the actual cost to the Commission. Examples of such services include certifying that records are true copies or sending records by express mail.

(d) *Fees applicable to each category of requester.* The Commission shall apply the fees set forth in this paragraph, for each category described in paragraph (c) of this section, to FOIA requests processed by the Commission.

(1) *Commercial use.* A requester seeking records for commercial use shall be charged the full direct cost of searching for, reviewing, and duplicating the records they request as set forth in paragraph (c) of this section. The Commission is not required to consider a waiver request based upon the assertion that disclosure would be in the public interest from a commercial use requester.

(2) *Educational and non-commercial scientific uses.* A requester seeking records for educational or non-commercial scientific use shall be charged only for the cost of duplicating the records they request, except that the Commission shall provide the first 100 pages of duplication (or cost equivalent for other

media) free of charge. To be eligible, the requester must show that the records are not sought for a commercial use, but rather in furtherance of scholarly or scientific research.

(3) *News media uses.* A requester seeking records under the news media use category shall be charged only the cost of duplicating the records they request, except that the Commission shall provide the requester with the first 100 pages of duplication (or cost equivalent for the other media) free of charge.

(4) *Other requests.* A requester seeking records for any other use shall be charged the full direct cost of searching for and duplicating records that are responsive to the request, as set out in paragraph (b) of this section, except that the Commission shall provide the first 100 pages of duplication and the first two hours of search time free of charge.

(e) *Other circumstances when fees are not charged.* Notwithstanding paragraphs (c) and (d) of this section, the Commission may not charge a requester a fee for processing a FOIA request if the total fee is equal to or less than \$25. Additionally, the Commission may not charge a requester a search or duplication fee if the Commission fails to comply with any time limit under § 426.205 or § 426.208, unless:

(1) A court has determined that exceptional circumstances exist, as defined by the FOIA, then a failure to comply with such time limit shall be excused for the length of time provided by the court order;

(2) The Commission has determined that unusual circumstances, as defined by the FOIA, apply and the Commission provides timely written notice to the requester in accordance with § 426.205(d), then the time limit shall be excused for an additional 10 days; or

(3) The Commission has determined that unusual circumstances apply; more than 5,000 pages are necessary to respond to the request; the Commission has provided a timely written notice to the requester in accordance with § 426.205(d), and the Commission has discussed with the requester via written mail, electronic mail, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the

request. Then the Commission may charge a requester all applicable fees.

(f) *Waiver or reduction of fees.* (1) A requester may request a waiver or reduction of fees otherwise applicable to a FOIA request in writing during the initial FOIA request. The waiver must demonstrate that the fee reduction or waiver is in the public interest because it furnishes information that is likely to contribute significantly to public understanding of the operations or activities of the government, and the information is not primarily in the commercial interest of the requester.

(2) To determine whether the requester has satisfied the waiver request requirements, the Commission shall consider whether the subject of the requested records has a direct connection to government operations or activities; the disclosable portion of the requested records is meaningfully informative, and is not already in the public domain; the disclosure would contribute to the understanding of a reasonably broad audience, as opposed to the individual requester; and the public's understanding would be significantly enhanced by the disclosure. The Commission shall also consider whether the requester, or any person on whose behalf the requester may be acting, has a commercial interest that would be furthered by the disclosure, and whether the public interest is greater in magnitude than that of any identified commercial interest in disclosure.

(3) Where only some of the records to be released satisfy the requirements for a waiver or reduction of fees, a waiver or reduction shall be granted for those records.

(4) The Commission shall notify the requester in writing regarding its determination to reduce or waive fees.

(5) If the Commission denies a request to reduce or waive fees, then the Commission shall advise the requester, in the denial notification letter, that the requester may incur fees as a result of processing the request. In the denial notification letter, the Commission shall advise the requester that the Commission will not proceed to process the request further unless the requester, in writing, directs the Commission to do so and either agrees to

## Miscellaneous Agencies

## § 426.210

pay any fees that may apply to processing the request or specifies an upper limit (of not less than \$25) that the requester is willing to pay to process the request. If the Commission does not receive this written direction and agreement within 30 days of the date of the denial notification letter, then the Commission shall deem the FOIA request to be withdrawn.

(6) If the Commission denies a request to reduce or waive fees, then the requester shall have the right to submit an appeal in accordance with § 426.208. The Commission shall communicate this appeal right as part of its denial notification to the requester.

(g) *Notice of estimated fees.* (1) When an agency determines or estimates that the fees to be assessed in accordance with this section will exceed \$25, the agency must notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily the Commission will advise the requester accordingly. The notice will specify what duplication and search time the requester is entitled to and how they have been accounted for in the estimate.

(2) If the agency notifies the requester that the actual or estimated fees are in excess of \$25, the request will not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable designate an exact dollar amount the requester is willing to pay. Agencies are not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the Commission estimates that the total fee will exceed

that amount, the Commission will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The Commission will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The FOIA Public Liaison will be available to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(h) *Advance payment.* (1) For requests other than those described in paragraphs (h)(2) and (3) of this section, the Commission will not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.*, payment before copies are sent to a requester) is not an advance payment.

(2) When the Commission determines or estimates that a total fee to be charged under this section will exceed \$250, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. An agency may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) If a requester previously has failed to pay a fee within 30 calendar days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Commission begins to process a new request.

(4) In cases in which an agency requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the agency's fee determination, the request will be closed.

(i) *Charging interest.* The Commission may charge interest on any unpaid bill starting on the 31st day following the

## § 426.211

date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the Commission. The Commission will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures.

(j) *Aggregating requests.* If the Commission reasonably determines that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the Commission may aggregate those requests and charge accordingly. The Commission may presume that multiple requests involving related matters submitted within a 30 calendar day period have been made in order to avoid fees. For requests separated by a longer period, the Commission will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. The Commission shall not aggregate multiple requests involving unrelated matters.

(k) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the Commission must inform the requester of the contact information for that program.

### § 426.211 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

## PART 457—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL CAPITAL PLANNING COMMISSION

Sec.

457.101 Purpose.

457.102 Application.

## 1 CFR Ch. IV (1-1-23 Edition)

457.103 Definitions.

457.104-457.109 [Reserved]

457.110 Self-evaluation.

457.111 Notice.

457.112-457.129 [Reserved]

457.130 General prohibitions against discrimination.

457.131-457.139 [Reserved]

457.140 Employment.

457.141-457.148 [Reserved]

457.149 Program accessibility: Discrimination prohibited.

457.150 Program accessibility: Existing facilities.

457.151 Program accessibility: New construction and alterations.

457.152-457.159 [Reserved]

457.160 Communications.

457.161-457.169 [Reserved]

457.170 Compliance procedures.

457.171-457.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22887, 22896, June 23, 1986, unless otherwise noted.

### § 457.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

### § 457.102 Application.

This part applies to all programs or activities conducted by the agency.

### § 457.103 Definitions.

For purposes of this part, the term—  
*Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

*Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include