

processing track for expedited requests, and shall be processed as soon as practicable. If a component denies expedited processing, any appeal of that decision that complies with the procedures set forth in §1.6 of this subpart shall be acted on expeditiously.

(f) *Acknowledgments of requests.* Upon receipt of a request that will take longer than ten business days to process, a component shall send the requester an acknowledgment letter that assigns the request an individualized tracking number. The component shall also include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(g) *Grants of requests.* Once a component makes a determination to grant a request in full or in part, it shall notify the requester in writing. The component also shall inform the requester of any fees charged under §1.7 of this subpart and shall disclose the requested records to the requester promptly upon payment of any applicable fees. The component must also inform the requester of the availability of the FOIA Public Liaison to offer assistance.

(h) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: The requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters, and denials of requests for expedited processing.

(i) *Content of denial letter.* The denial letter shall be signed by the head of the component, or FOIA designee, and shall include, when applicable:

- (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 ex-

emption applied by the component in denying the request; and

(3) An estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation. This estimation is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part, or if the estimate would cause a harm protected by one of the exemptions.

(4) A statement that the denial may be appealed under §1.6(a) of this subpart, and a description of the requirements set forth therein.

(5) A statement notifying the requester of the assistance available from the component's FOIA Public Liaison and the dispute resolution services offered by the Office of Government Information Services.

(j) *Markings on released documents.* Records disclosed in part must be marked clearly to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if technically feasible.

(k) *Use of record exclusions.* (1) In the event a component identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the component shall consult with the Department of Justice, Office of Information Policy (OIP), before applying the exclusion.

(2) A component invoking an exclusion must maintain an administrative record of the process of invocation and of the consultation with OIP.

### § 1.5 Confidential commercial information.

(a) *Definitions*—(1) *Confidential commercial information* means trade secrets and commercial or financial information obtained by the Department from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* means any person or entity from whom the Department obtains confidential commercial information, directly or indirectly.

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

(b) *When notice to submitters is required.* (1) A component shall promptly provide written notice to a submitter whenever:

(i) The requested confidential commercial information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The component has a reason to believe that the requested confidential commercial information may be protected from disclosure under Exemption 4 of the FOIA.

(2) The notice shall either describe the confidential 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, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

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

(1) The component determines that the confidential commercial information is exempt from disclosure under the FOIA;

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

(3) Disclosure of the confidential commercial information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987;

(d) *Opportunity to object to disclosure.* (1) A component will specify a reasonable time period as determined within its administrative discretion within

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

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. An objection to disclosure received by the component after the time period specified in the notice will not be considered by the component. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA and/or protected from disclosure by applicable exemptions or by a statute other than the FOIA.

(e) *Analysis of objections.* A component shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested confidential commercial information.

(f) *Notice of intent to disclose.* Whenever a component decides to disclose confidential commercial information over the objection of a submitter, the component shall provide the submitter written notice, which shall include:

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

(2) Copies of the records that the component intends to disclose or, in the alternative, a description of the confidential commercial information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

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

(h) *Requester notification.* The component shall notify a 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 confidential commercial information; and whenever a submitter files a lawsuit to prevent the disclosure of the confidential commercial information.

#### § 1.6 Administrative appeals.

(a) *Requirements for making an appeal.* Before seeking review by a court of a component's adverse determination, a requester generally must first submit a timely administrative appeal. A requester may appeal any adverse determinations denying his or her request to the official specified in the appropriate appendix to this subpart. Examples of adverse determinations are provided in § 1.4(h) of this subpart. The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the component's final response. The appeal letter should clearly identify the component's determination that is being appealed and the assigned request number. The requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Freedom of Information Act Appeal."

(b) *Adjudication of appeals.* (1) The FOIA appeal official or designee specified in the appropriate appendix will act on all appeals under this section.

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

(3) On receipt of any appeal involving classified information, the FOIA appeal official or designee must take appropriate action to ensure compliance with applicable classification rules.

(c) *Decision on appeals.* A decision on an appeal must be made in writing by the component within 20 business days after receipt of the appeal. A decision that upholds a component's determination must contain a statement that identifies the reasons for the affirmation, including any FOIA exemptions applied. The decision must provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation

services offered by the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation. If a component's decision is remanded or modified on appeal the requester will be notified of that determination in writing. The component will then further process the request in accordance with that appeal determination and respond directly to the requester. Appeals that have not been postmarked or transmitted within the specified time frame will be considered untimely and will be administratively closed with written notice to the requester.

(d) *Engaging in dispute resolution services provided by Office of Government Information Services (OGIS).* Mediation is a voluntary process. If a component agrees to participate in the mediation services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

#### § 1.7 Fees.

(a) *In general.* Components may charge for processing requests under the FOIA in accordance with the provisions of this section or may issue their own fee schedules as long as they are consistent with the OMB Guidelines. In order to resolve any fee issues that arise under this section, a component may contact a requester for additional information. A component 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 other means specified at <https://home.treasury.gov/footer/freedom-of-information-act>.

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

(1) *Commercial-use request* is a request for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation.

(2) *Direct costs* are those expenses that a component expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records in order to respond to a FOIA