

§ 1515.19 What happens if CEQ denies my request in full or in part?

(a) CEQ may deny your request in full or in part for these reasons, among others:

(1) CEQ determines to withhold all or a portion of the records you requested under § 1515.16;

(2) Your request does not reasonably describe the records you seek;

(3) The information you requested is not a record subject to the FOIA;

(4) CEQ has already published the records you are requesting;

(5) The records you requested do not exist, cannot be located, or have been destroyed;

(6) The records you requested are not readily reproducible in the form or format you seek; or

(7) Your request does not comport with the procedures set forth in this part.

(b) If CEQ denies your request regarding expedited processing or fee-related matters, we will also treat that as a denial of your request in part and follow the procedures in this section.

(c) If CEQ determines to deny your request in full or in part, we will notify you of the basis for the denial. The notification will include the following information:

(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 CEQ applied in determining to withhold records (or portions thereof) under § 1515.16;

(3) An estimate of the volume of the records CEQ is withholding, unless the volume is indicated by markings we have made on the records we are providing;

(4) A statement that you may appeal the denial to CEQ, under subpart C of this part, and an explanation of what you must do to appeal; and

(5) A reminder that you can obtain assistance from CEQ's FOIA Public Liaison and dispute resolution services from the National Archives and Records Administration's Office of Government Information Services.

(d) For each record CEQ discloses in part, we will mark the record clearly to show which portions we are withholding and the FOIA exemptions we

applied in determining to withhold those portions, unless doing so would harm an interest protected by an applicable FOIA exemption. If technically feasible, we will mark the record to indicate the location of the portions we are withholding.

Subpart C—Appealing a FOIA Request

§ 1515.21 Can I appeal CEQ's response to my request?

(a) Yes. You may appeal CEQ's response if you disagree with any determination that CEQ made in responding to your request, including CEQ's determination to deny your request in whole or in part, CEQ's determination to deny you expedited processing, CEQ's determination of how to conduct the search for records, and fee-related determinations.

(b) CEQ must receive your appeal within 90 calendar days of the date on which CEQ notified you of the relevant determination in writing.

(c) You must make your appeal by email to efoia@ceq.eop.gov. If you are not able to make your appeal by email, please contact CEQ's FOIA Public Liaison for assistance.

(1) Clearly indicate that you are making an appeal, such as by including "Freedom of Information Act Appeal" in the subject line. If your email includes attachments, you also must explain your request in the body of the email, in addition to the attachment.

(2) If you are not able to make your appeal by email, please contact CEQ's FOIA Public Liaison for assistance.

(d) Your appeal must include your request's individualized tracking number and must identify the specific CEQ determinations you are appealing.

(e) If you fail to properly appeal a determination that CEQ made in processing your request, you may lose your right to challenge that determination in Federal court.

§ 1515.22 How will CEQ process my appeal?

(a) CEQ will review the determinations you have appealed and determine if they are consistent with applicable law and policy. CEQ will conduct this review *de novo*, which means that CEQ

will not presume that its prior determinations were correct. Whenever reasonably possible, CEQ will assign your appeal to a different official than the one who was responsible for processing your original request.

(b) CEQ will respond to your appeal within 20 working days from the date that CEQ received your appeal.

(c) If CEQ determines to uphold a determination that you have appealed, CEQ's response will:

(1) Include a statement that identifies our reasons for affirming the decision, including any FOIA exemption CEQ applied in determining to affirm our determination to withhold a record or a portion of a record; and

(2) Explain how to challenge our determination by filing a lawsuit in Federal court and how to seek dispute resolution services from the National Archives and Records Administration's Office of Government Information Services.

(d) If CEQ determines to reverse or modify a determination that you have appealed, we will reprocess your request in accordance with the reversed or modified determination, using the procedures set forth at § 1515.15.

(e) CEQ ordinarily will not adjudicate an appeal if the appealed request becomes the subject of litigation.

Subpart D—Fees for FOIA Requests and Appeals

§ 1515.31 Can CEQ charge fees for processing FOIA requests and appeals?

(a) Yes. CEQ may charge fees for processing your FOIA request.

(b) CEQ will determine whether to charge a fee and the amount of the fee by using the rules in this subpart and the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedule and Guidelines, as amended.¹

(c) CEQ will not charge fees for deciding whether to grant or deny your appeal. If CEQ grants your appeal, we will charge fees for any additional searching, reviewing, or duplication that we carry out as a result of your appeal. For instance, if you appeal our deter-

mination of how to conduct the search for records, and we grant your appeal, we will conduct a new search in the manner you requested and will charge you fees accordingly.

§ 1515.32 What is the amount of the fee for processing a request?

(a) CEQ will charge fees equal to:

(1) The basic hourly rate of pay for each employee who participates in searching for records, reviewing records, or duplicating records (including contract employees), multiplied by the total number of hours that the employee worked on your request (rounded to the nearest quarter of an hour), plus 16 percent (to account for employee benefits); plus

(2) The total direct costs that CEQ incurs in searching for, reviewing, or duplicating records, such as the cost of operating computers and other electronic equipment, but excluding overhead expenses such as the cost of office space, heating, and lighting; plus

(3) An additional fee equal to the total direct costs of any additional services that you and CEQ agree upon, such as providing multiple copies of a record.

(b) In determining the fee under paragraph (a) of this section, CEQ will use the following guidelines:

(1) "Searching for records" is the process of looking for and retrieving the records you requested (including by electronic search) and determining whether individual records contain the information that you seek. CEQ will charge fees for searching for records even if we do not locate any records that respond to your request, or even if we determine not to disclose any of the records that we locate.

(2) "Reviewing records" is the process of examining records to determine whether to withhold them, in accordance with § 1515.16, and preparing records for disclosure (for instance, by marking records to indicate which portions CEQ is withholding).

(i) "Reviewing records" also includes the time CEQ spends obtaining and considering the views of other government agencies under § 1515.17 and the time CEQ spends obtaining and considering formal objections to disclosure under § 1515.41.

¹ 52 FR 10016 (Mar. 27, 1987).