

(b) *Authority to issue final determinations.* The Administrator, Deputy Administrators, Assistant Administrators, Deputy Assistant Administrators, Regional Administrators, Deputy Regional Administrators, General Counsel, Deputy General Counsels, Regional Counsels, Deputy Regional Counsels, and Inspector General or those individuals' delegates, are authorized to make determinations required by 5 U.S.C. 552(a)(6)(A), including to issue final determinations whether to release or withhold a record or a portion of a record on the basis of responsiveness or under one or more exemptions under the FOIA, and to issue "no records" responses.

(c) *Authority to grant or deny fee waivers or requests for expedited processing.* EPA's Chief FOIA Officer or EPA's Chief FOIA Officer's delegates are authorized to grant or deny requests for fee waivers or requests for expedited processing.

(d) *Consultations and referrals.* When a request to EPA seeks records in its possession that originated with another Federal agency, the EPA office assigned to process the request shall either:

(1) In coordination with the National FOIA Office, consult with the Federal agency where the record or portion thereof originated and then respond to the request, or

(2) With the concurrence of the National FOIA Office, refer the request to the Federal agency where the record or portion thereof originated. The National FOIA Office will notify the requester whenever all or any part of the responsibility for responding to a request has been referred to another agency.

(e) *Law enforcement information.* Whenever a requester makes a request for a record containing information that relates to an investigation of a possible violation of law and the investigation originated with another agency, the assigned office, with the concurrence of the National FOIA Office, will refer the request to that other agency or consult with that other agency prior to making any release determination.

§ 2.104 Responses to requests and appeals.

(a) *Timing of response.* The EPA office assigned to process the FOIA request will initiate the search, collection, and review process, and respond to a request within 20 working days from the date the request was received by one of the methods identified in § 2.101(a), unless unusual or exceptional circumstances exist as provided in paragraph (e) of this section. If EPA fails to respond to the request within the statutory time-period, or any authorized extension of time, the requester may seek judicial review to obtain the records without first making an administrative appeal.

(b) On receipt of a request, the National FOIA Office ordinarily will send a written acknowledgment advising the requester of the date the Agency received the request and of the processing number assigned to the request for future reference.

(c) *Multitrack processing.* The Agency uses three or more processing tracks by distinguishing between simple and complex requests based on the amount of work, time needed to process the request, or both, including limits based on the number of pages involved. The Agency will advise the requester of the processing track in which the Agency placed the request and the limits of the different processing tracks. The Agency may place the request in a slower track while providing the requester with the opportunity to limit the scope of the request to qualify for faster processing within the specified limits of a faster track. If the Agency places the request in a slower track, the Agency will contact the requester.

(d) *Tolling the request.* Once the request is received, the Agency shall not toll the processing time-period except:

(1) The Agency may toll the processing time-period one time while seeking clarification from the requester; or

(2) The Agency may toll the processing time-period as many times as necessary to resolve fee issues.

(e) *Unusual circumstances.* When the Agency cannot meet statutory time limits for processing a request because of "unusual circumstances," as defined in the FOIA, and the time limits are extended on that basis, the Agency will

notify the requester in writing, as soon as practicable, of the unusual circumstances and of the date by which processing of the request should be completed. If the 20 working-day period is extended, EPA will give the requester an opportunity to limit the scope of the request, modify the request, or agree to an alternative time-period for processing, as described by the FOIA. EPA will also provide contact information for its FOIA Public Liaison to assist in the resolution of any disputes between the requester and the Agency, and the Agency will notify the requester of their right to seek dispute resolution services from the Office of Government Information Services within the National Archives and Records Administration.

(f) *Expedited processing.* (1) EPA will take requests or appeals out of order and give expedited treatment whenever EPA determines that such requests or appeals involve a compelling need, as follows:

(i) Circumstances in which the lack of expedited treatment 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 information is requested by a person primarily engaged in disseminating information to the public.

(2) Requesters must make a request for expedited processing at the time of the initial request for records or at the time of appeal.

(3) If the requester seeks expedited processing, the requester must submit a statement, certified to be true and correct to the best of the requester's knowledge and belief, explaining in detail the basis for the request. For example, if the requester fits within the category described in paragraph (f)(1)(ii) of this section and is not a full-time member of the news media, the requester must establish that they are a person whose primary professional activity or occupation is information dissemination, although it need not be the requester's sole occupation. If the requester fits within the category described in paragraph (f)(1)(ii) of this section, the requester must also

establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally.

(4) Within 10 calendar days from the date of the request for expedited processing, the Chief FOIA Officer, or the Chief FOIA Officer's delegates, will decide whether to grant the request and will notify the requester of the decision. If the Agency grants the request for expedited processing, the Agency will give the request priority and will process the request as soon as practicable. If the Agency denies the request for expedited processing, the Agency will act on any appeal of that decision expeditiously.

(g) *Grants of requests.* Once the Agency determines to grant a request in whole or in part, it will release the records or parts of records to the requester and notify the requester of any applicable fee charged under § 2.107. The office will annotate records released in part, whenever technically feasible, with the applicable FOIA exemption or exemptions at that part of the record from which the exempt information was deleted.

(h) *Adverse determinations of requests.* When the Agency makes an adverse determination, the Agency will notify the requester of that determination in writing. Adverse determinations include:

(1) A decision that the requested record is exempt from disclosure, in whole or in part;

(2) A decision that the information requested is not a record subject to the FOIA;

(3) A decision that the requested record does not exist or cannot be located;

(4) A decision that the requested record is not readily reproducible in the form or format sought by the requester;

(5) A determination on any disputed fee matter, including a denial of a request for a fee waiver; or

(6) A denial of a request for expedited processing.

(i) *Content of final determination letter.* The appropriate official will issue the

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final determination letter in accordance with §2.103(b) of this subpart and will include:

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

(2) A brief statement of the reason or reasons for the denial, including an identification of records being withheld (either individually or, if a large number of similar records are being denied, described by category) and any FOIA exemption applied by the office in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through annotated deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;

(4) A statement that an adverse determination may be appealed under (j) of this section and description of the requirements for submitting an administrative appeal; and

(5) A statement that the requester has the right to seek dispute resolution services from an EPA FOIA Public Liaison or the Office of Government Information Service.

(j) *Appeals of adverse determinations.* If the requester is dissatisfied with any adverse determination of their request, the requester may appeal that determination by letter to the National FOIA Office, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW (2310A), Washington, DC 20460 or hq.foia@epa.gov. The requester must make their appeal in writing, and the Agency must receive the requester's appeal no later than 90 calendar days from the date of the letter that denied the request. The Agency will not consider appeals received after the 90-calendar day limit. Requesters submitting appeals electronically must do so before 5:00 p.m. Eastern Time for the Agency to consider the appeal as received on that date. The appeal letter may include as much or as little related information as the requester wishes, as long as it clearly identifies the determination being appealed (including the assigned FOIA request

number, if known). For quickest handling, the requester must mark their appeal letter and its envelope with "Freedom of Information Act Appeal." Unless the Administrator directs otherwise, the General Counsel or the General Counsel's delegate will act on behalf of the Administrator on all appeals under this Section, except that:

(1) The Counsel to the Inspector General will act on any appeal where the Inspector General or the Inspector General's delegate has made the final adverse determination; however, if the Counsel to the Inspector General has signed the final adverse determination, the General Counsel or the General Counsel's delegate will act on the appeal;

(2) An adverse determination by the Administrator on an initial request will serve as the final action of the Agency; and

(3) If a requester seeks judicial review because the Agency has not responded in a timely manner, any further action on an appeal will take place through the lawsuit.

(k) EPA will make the decision on the appeal in writing, normally within 20 working days of its receipt by the National FOIA Office. A decision affirming an adverse determination in whole or in part will contain a statement of the reason or reasons for the decision, including any FOIA exemption or exemptions applied, and inform the requester of the FOIA provisions for judicial review of the decision. If the Agency reverses or modifies the adverse determination on appeal, the Agency will notify the requester in a written decision. In the written decision, the Agency will attach the requested information that the Agency determined on appeal to be releasable, or the Agency will return the request to the appropriate office so that the office may reprocess the request in accordance with the appeal decision.

(l) If the requester wishes to seek judicial review of any adverse determination, the requester must first appeal that adverse determination under this Section, except when EPA has not responded to the request within the applicable time-period. In such cases, the requester may seek judicial review

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without making an administrative appeal.

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§ 2.106 Preservation of records.

The Agency shall preserve all correspondence pertaining to the FOIA requests that it receives until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Copies of all responsive records should be maintained by the appropriate program office. Records shall not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 2.107 Fees.

(a) *In general.* The Agency will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (1) of this section. Requesters will pay fees by check or money order made payable to the U.S. Environmental Protection Agency.

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

(1) Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's commercial, trade, or profit interests, which can include furthering those interests through litigation. The Agency will determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because the Agency has reasonable cause to doubt a requester's stated use, the Agency will provide the requester a reasonable opportunity to submit further clarification.

(2) Direct costs means those expenses that the Agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee

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performing the work and the cost of operating duplication equipment. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) Duplication means the making of 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, microform, audiovisual materials, or electronic records (for example, magnetic tape, disk, or compact disk), among others. The Agency will honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(5) Noncommercial scientific institution means an institution not operated on a "commercial" basis, as defined in paragraph (b)(1) of this section, and that is operated solely for conducting scientific research that is not intended to promote any particular product or industry. To be in this category, a requester must show that a qualifying institution authorizes the request, that the requester makes the request under the auspices of the qualifying institution, and that the requester does not seek the records for a commercial use but to further scientific research.

(6) Representative of the news media has the meaning provided at 5 U.S.C. 552(a)(4)(A)(ii).

(7) Review means the examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure (for example, doing all that