

## Dept. of Health and Human Services

## § 5.29

expedited processing when you first request records or at any time during our processing of your request or appeal.

(b) We process requests on an expedited basis whenever we determine that one or more of the following criteria exist:

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) There is an urgent need to inform the public about an actual or alleged Federal Government activity (this criterion applies only to those requests made by a person primarily engaged in disseminating information to the public).

(c) We will respond to your request for expedited processing within 10 calendar days of our receipt of your request to expedite. If we grant your request, the OpDiv or StaffDiv responsible for the review of the requested records will process your request as a priority, and it will be processed as soon as practicable. We will inform you if we deny your request for expedited processing and provide you with appeal rights. If you decide to appeal that denial, we will expedite our review of your appeal.

(d) If we must refer records to another agency, we will inform you and suggest that you seek expedited review from that agency.

### § 5.28 How does HHS respond to my request?

(a) The appropriate FOIA Officer will send you a response informing you of our release determination, including whether any responsive records were located, how much responsive material was located, whether the records are being released in full or withheld in full or in part, any fees you must pay for processing of the request, and your right to seek assistance from the appropriate FOIA Public Liaison.

(b) If we deny any part of your request, our response will explain the reasons for the denial, which FOIA exemptions apply to the withheld records, your right to appeal that determination, and your right to seek dispute resolution services from the appropriate FOIA Public Liaison or the

Office of Government Information Services (OGIS). We will advise you of the number of pages withheld or the estimated volume of withheld records, unless providing such information would harm an interest protected by an applicable FOIA exemption.

(c) Records may be withheld in full or in part if any of the nine FOIA exemptions apply. If we determine to withhold part of a record pursuant to an exemption, we will provide access to reasonably segregable non-exempt information contained in the record. On the released portion of the record, we indicate where the information has been redacted and the exemption(s) we applied, unless including that indication would harm an interest the exemption protects. In Subpart C of this part, we list the exemptions to disclosure that may apply to agency records.

(d) We also may deny your request for other reasons, including that a request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested records do not exist, cannot be located, or have been destroyed; or that the requested records are not readily reproducible in the form or format requested.

(e) If a request involves a voluminous amount of material or searches in multiple locations, we may provide you with interim responses if feasible and reasonably possible, releasing the records on a rolling basis.

(f) Copies of records in the format you request will be provided if the records already exist in that format or if they are reasonably and readily reproducible in the format you request.

### § 5.29 How may I request assistance with the FOIA process?

(a) If you have questions concerning the processing of your FOIA request, you should first contact the FOIA Requester Service Center processing your request. Additionally, for assistance at any point in the FOIA process, you may contact the FOIA Public Liaison at the FOIA Requester Service Center processing your request. The FOIA Public Liaison is responsible for assisting you to reduce delays, increasing transparency and understanding of the

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status of requests, and assisting to resolve any FOIA disputes. Some FOIA Requester Service Centers allow you to check the status of your request online. You can find a list of our FOIA Requester Service Centers and Public Liaisons at <http://www.hhs.gov/foia/contacts/index.html>.

(b) The Office of Government Information Services (OGIS), which is part of the National Archives and Records Administration, serves as the Federal FOIA ombudsman and assists requesters and agencies to prevent and resolve FOIA disputes through mediation. Mediation is a voluntary process. If we participate in the dispute resolution services provided by OGIS, we will actively engage as a partner to the process in an attempt to resolve the dispute and will follow the principles of confidentiality in accordance with the Administrative Dispute Resolution Act, 5 U.S.C. 571–8. You may contact OGIS at the following address: National Archives and Records Administration, Office of Government Information Services, 8601 Adelphi Road—OGIS, College Park, MD 20740–6001, or by email at [ogis@nara.gov](mailto:ogis@nara.gov), or by telephone at 202–741–5770 or 1–877–684–6448 (toll free).

### Subpart C—Exemptions to Disclosure

#### § 5.31 What are the reasons records may be withheld?

While we are committed to providing public access to as many of our records as possible, there are instances in which information falls within one or more of the FOIA's nine exemptions and disclosure would either foreseeably harm an interest protected by a FOIA exemption or disclosure is prohibited by law. We review all records and weigh and assess all legal and policy requirements prior to making a final disclosure determination. A description of the nine FOIA exemptions is provided in paragraphs (a) through (i) of this section.

(a) *Exemption 1.* Exemption 1 protects from disclosure information specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact

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properly classified pursuant to such Executive order.

(b) *Exemption 2.* Exemption 2 authorizes our agency to withhold records that are related solely to the internal personnel rules and practices of an agency.

(c) *Exemption 3.* Exemption 3 authorizes our agency to withhold records which are specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)) provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or establishes particular criteria for withholding or refers to particular types of matters to be withheld; and if enacted after the date of enactment of the OPEN FOIA Act of 2009, October 28, 2009, specifically cites to 5 U.S.C. 552(b)(3).

(d) *Exemption 4.* Exemption 4 authorizes our agency to withhold trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(e) *Exemption 5.* Exemption 5 authorizes our agency to withhold inter-agency or intra agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

(f) *Exemption 6.* Exemption 6 authorizes our agency to protect information in personnel and medical files and similar files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

(g) *Exemption 7.* Exemption 7 authorizes our agency to withhold records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information would cause the following harm(s):

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;