

## § 10001.5

(c) *Denials of requests in whole or in part.* The Privacy Act Officer shall notify you in writing of his or her determination to deny, in whole or in part, your request. This writing shall include the following information:

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

(2) A brief statement of the reason for the denial(s), including any applicable Privacy Act exemption;

(3) A statement that you may appeal the denial and a brief description of the requirements for appeal under §10001.5.

(d) *Request for records not covered by the Privacy Act or subject to Privacy Act exemption.* If the Privacy Act Officer determines that a requested record is not subject to the Privacy Act or the records are subject to Privacy Act exemption, your request will be processed in accordance with the Council's Freedom of Information Act procedures at 5 CFR part 10000.

### § 10001.5 Administrative appeals.

(a) *Appeal procedures.* (1) You may appeal any decision by the Council to deny, in whole or in part, your request under §10001.3 no later than 60 days after the decision is rendered.

(2) Your appeal must be in writing, sent to the General Counsel at the address specified in §10001.3(b) and contain the following information:

(i) Your name;

(ii) Description of the record(s) at issue;

(iii) The system of records in which the record(s) is contained;

(iv) A statement of why your request should be granted.

(3) The General Counsel shall determine whether to uphold or reverse the initial determination within 30 working days of our receipt of your appeal. The General Counsel shall notify you of his or her decision, including a brief statement of the reasons for the decision, in writing. The General Counsel's decision will be the final action of the Council.

(b) *Statement of disagreement.* If your appeal of our determination related to your request for amendment or correction is denied in whole or in part, you may file a Statement of Disagreement that states the basis for your disagreement with the denial. Statements of

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Disagreement must be concise and must clearly identify each part of any record that is disputed. The Privacy Act Officer will place your Statement of Disagreement in the system of records in which the disputed record is maintained and shall mark the disputed record to indicate that a Statement of Disagreement has been filed and where it may be found.

(c) *Notification of amendment, correction, or disagreement.* Within 30 working days of the amendment or correction of a record, the Privacy Act Officer shall notify all persons, organizations, or agencies to which the Council previously disclosed the record, if an accounting of that disclosure was made, that the record has been corrected or amended. If you filed a Statement of Disagreement, the Privacy Act Officer shall append a copy of it to the disputed record whenever it is disclosed and also may append a concise statement of its reason(s) for denying the request to amend or correct the record.

### § 10001.6 Fees.

We will not charge a fee for search or review of records requested under this part, or for the correction of records. If you request copies of records, we may charge a fee of \$.10 per page.

### § 10001.7 Penalties.

Any person who makes a false statement in connection with any request for a record or an amendment or correction thereto under this part is subject to the penalties prescribed in 18 U.S.C. 494 and 495 and 5 U.S.C. 552a(i)(3).

## PART 10002—IMPLEMENTATION OF THE GOVERNMENT IN THE SUNSHINE ACT

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AUTHORITY: 5 U.S.C. 552b.

SOURCE: 80 FR 49118, Aug. 17, 2015, unless otherwise noted.

### § 10002.1 Purpose and scope.

(a) The regulations in this part implement the provisions of the Sunshine Act.

(b) Requests for all records other than those described in §10002.9, shall be governed by the Council's Freedom of Information Act procedures at 5 CFR part 10001.

### § 10002.2 Definitions.

The following definitions apply in this part:

*Chairperson* means the Chairperson of the Council, as appointed by the President, or any person to whom the Council has delegated authority for the matter concerned.

*Council* means the National Council on Disability, established by the Rehabilitation Act of 1973 (29 U.S.C. 780 *et seq.*), as amended, and amended by the Workforce Innovation and Opportunity Act (Pub. L. 113-128) in 2014.

*General Counsel* means the Council's principal legal advisor, or his or her designee.

*Meeting* means the deliberations of five or more Council members that determine or result in the joint conduct or disposition of official Council business. A meeting does not include:

(1) Notational voting or similar consideration of business for the purpose of recording votes, whether by circulation of material to members' individually in writing or by a polling of the members individually by phone or email.

(2) Action by five or more members to:

(i) Open or close a meeting or to release or withhold information pursuant to §10002.6;

(ii) Set an agenda for a proposed meeting;

(iii) Call a meeting on less than seven days' notice, as permitted by §10002.4; or

(iv) Change the subject matter or the determination to open or to close a publicly announced meeting under §10002.7.

(3) A session attended by five or more members for the purpose of having the Council's staff or expert consultants, another federal agency, or other persons or organizations brief or otherwise provide information to the Council concerning any matters within the purview of the Council, provided that the members do not engage in deliberations that determine or result in the joint conduct or disposition of official business on such matters.

(4) A gathering of members for the purpose of holding informal, preliminary discussions or exchanges of views which do not effectively predetermine official action.

*Member* means an individual duly appointed and confirmed to the Council.

*Public observation* means attendance by the public at a meeting of the Council, but does not include public participation.

*Public participation* means the presentation or discussion of information, raising of questions, or other manner of involvement in a meeting of the Council by the public in a manner that contributes to the disposition of official Council business.

*Sunshine Act* means the Government in the Sunshine Act, 5 U.S.C. 552b.

### § 10002.3 Open meetings.

(a) Except as otherwise provided in this part, every portion of a Council meeting shall be open to public observation.

(b) Council meetings, or portions thereof, shall be open to public participation when an announcement to that effect is published under §10002.4. Public participation shall be conducted in an orderly, non-disruptive manner and in accordance with any procedures the Chairperson may establish. Public participation may be terminated for good cause as determined by the Council upon the advice of the General Counsel based on unanticipated developments.

### § 10002.4 Procedures for public announcement of meetings.

(a) Except as otherwise provided in this section, the Council shall make a

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public announcement at least seven days prior to a meeting. The public announcement shall include:

- (1) The time and place of the meeting;
- (2) The subject matter of the meeting;
- (3) Whether the meeting is to be open, closed, or portions of a meeting will be closed;
- (4) Whether public participation will be allowed;
- (5) The name and telephone number of the person who will respond to requests for information about the meeting;

(b) The seven-day prior notice required by paragraph (a) of this section may be reduced only if:

- (1) A majority of all members determine by recorded vote that Council business requires that such meeting be scheduled in less than seven days; and
- (2) The public announcement required by this section is made at the earliest practicable time.

(c) If public notice is provided by means other than publication in the FEDERAL REGISTER, notice will be promptly submitted to the FEDERAL REGISTER for publication.

**§ 10002.5 Grounds on which meetings may be closed or information withheld.**

A meeting, or portion thereof, may be closed and information pertinent to such meeting withheld if the Council determines that the meeting or release of information is likely to disclose matters that are:

(a) Specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy; and, in fact, are properly classified pursuant to such executive order. In making the determination that this exemption applies, the Council shall rely on the classification assigned to the document or assigned to the information from the federal agency from which the document was received.

(b) Related solely to the internal personnel rules and practices of the Council;

(c) Specifically exempt from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involved with accusing any person of a crime or formally censuring any person;

(f) Of a personal nature, if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Either investigatory records compiled for law enforcement purposes or information which, if written, would be contained in such records, but only to the extent that the production of records or information would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to either a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source or sources and, in the case of a record compiled either by a criminal law enforcement authority or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source(s);

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Contained in or relating to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) If prematurely disclosed, likely to significantly frustrate implementation of a proposed action of the Council, except that this subsection shall not apply in any instance where the Council has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; and

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(j) Specifically concerned with the Council's issuance of a subpoena, or its participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Council of a particular case or formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

### **§ 10002.6 Procedures for closing meetings or withholding information, and requests by affected persons to close a meeting.**

(a) A meeting or portion of a meeting may be closed and information pertaining to a meeting withheld under § 10002.5 only by vote of a majority of members.

(b) A separate vote of the members shall be taken with respect to each meeting or portion of a meeting proposed to be closed and with respect to information which is proposed to be withheld. A single vote may be taken with respect to a series of meetings or portions of a meeting that are proposed to be closed, so long as each meeting or portion thereof in the series involves the same particular matter and is scheduled to be held no more than 30 days after the initial meeting in the series. The vote of each member shall be recorded and no proxies shall be allowed.

(c) A person whose interests may be directly affected by a portion of a meeting may request in writing that the Council close that portion for any of the reasons referred to in § 10002.5(e) through (g). Upon the request of a member, a recorded vote shall be taken whether to close such meeting or portion thereof.

(d) For every meeting closed, the General Counsel shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant basis for closing the meeting. If the General Counsel invokes the bases set forth in § 10002.5(a) or (c), he or she shall rely upon the classification or designation assigned to the information by the originating agency. A copy of such certification, together with a statement by the pre-

siding officer setting forth the time and place of the meeting and the persons present, shall be retained by the Council as part of the transcript, recording, or minutes required by § 10002.8.

### **§ 10002.7 Changes following public announcement.**

(a) The time or place of a meeting may be changed following the public announcement described in § 10002.4. The Council must publicly announce such change at the earliest practicable time.

(b) The subject matter of a meeting or the determination of the Council to open or close a meeting, or a portion thereof, to the public may be changed following public announcement only if:

(1) A majority of all members determine by recorded vote that Council business so requires and that no earlier announcement of the change was possible; and

(2) The Council publicly announces such change and the vote of each member thereon at the earliest practicable time.

### **§ 10002.8 Transcripts, recordings, or minutes of closed meetings.**

Along with the General Counsel's certification and presiding officer's statement referred to in § 10002.6(d), the Council shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or a portion thereof, closed to the public. Alternatively, for any meeting closed pursuant to § 10002.5(h) or (j), the Council may maintain a set of minutes adequate to record fully the proceedings, including a description of each of the views expressed on any item and the record of any roll call vote.

### **§ 10002.9 Public availability and retention of transcripts, recordings, and minutes, and applicable fees.**

(a) The Council shall make available, in a place easily accessible, such as *www.ncd.gov*, to the public the transcript, electronic recording, or minutes of a meeting, except for items of discussion or testimony related to matters the Council determines may be withheld under § 10002.6.

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(b) Copies of the nonexempt portions of the transcripts or minutes shall be provided upon receipt of the actual costs of the transcription or duplication.

(c) The Council shall maintain meeting transcripts, recordings, or minutes of each meeting closed to the public for

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a period ending at the later of two years following the date of the meeting, or one year after the conclusion of any Council proceeding with respect to the closed meeting.

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