

Office of Government Ethics

§ 2601.202

to the U.S. Office of Government Ethics.

[68 FR 60594, Oct. 22, 2003, as amended at 80 FR 57072, Sept. 22, 2015]

§ 2601.104 Relationship to other authorities.

(a) This part does not apply to gifts to the agency of:

(1) Travel and travel-related expenses made pursuant to the authority set forth in 31 U.S.C. 1353; or

(2) Volunteer services made pursuant to the authority set forth in 5 U.S.C. 3111.

(b) This part does not apply to gifts to an individual agency employee, including:

(1) Gifts of contributions, awards or other expenses for training made pursuant to the authority set forth in the Government Employees Training Act, 5 U.S.C. 4111;

(2) Gifts made by a foreign government or organization, or representative thereof, pursuant to the authority set forth in 5 U.S.C. 7342;

(3) Gifts made by a political organization that may be accepted by an agency employee who, in accordance with the terms of the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns; or

(4) Gifts made directly or indirectly that an employee may accept in a personal capacity pursuant to the authority set forth in 5 CFR part 2635, subpart B or subpart C.

§ 2601.105 Definitions.

As used in this part:

Agency means the U.S. Office of Government Ethics (OGE).

Authorized agency official means the Director of OGE or the Director's delegee.

Director means the Director of OGE.

Employee means an employee of OGE.

Gift means any gift, donation, bequest or devise of money, use of facilities, personal property, or services and may include travel reimbursements or payments for attendance at or participation in meetings or events.

Money means currency, checks, money orders or other forms of negotiable instruments.

Personal property means all property, tangible or intangible, not defined as real property, and includes stocks and bonds.

Prohibited source means any source described in 5 CFR 2635.203(d).

Services means all forms of voluntary and uncompensated personal services.

Use of facilities means use of space, equipment and all other facilities.

[68 FR 60594, Oct. 22, 2003, as amended at 80 FR 57072, Sept. 22, 2015]

Subpart B—Guidelines for Solicitation and Acceptance of Gifts

§ 2601.201 Delegation.

(a) The authority to solicit, accept, and utilize gifts in accordance with this part resides with the Director.

(b) The Director may delegate this authority.

(c) Authorities delegated in accordance with paragraph (b) of this section may be redelegated only through a written delegation authorizing an agency employee to solicit or accept specific types of gifts, or a gift for a specific purpose, function, or event.

§ 2601.202 Procedure.

(a) The authorized agency official will have the authority to solicit, accept, refuse, return, or negotiate the terms of acceptance of a gift.

(b) An employee, other than an authorized agency official, will immediately forward all offers of gifts covered by this part regardless of value to an authorized agency official for consideration and will provide a description of the gift offered. An employee will also inform an authorized agency official of all discussions of the possibility of a gift. An employee will not provide a donor with any commitment, privilege, concession or other present or future benefit (other than an appropriate acknowledgment) in return for a gift.

(c) Only an authorized agency official may solicit, accept or decline a gift after making the determination required under the conflict of interest standard in § 2601.203. An authorized

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agency official may find that, while acceptance of an offered gift is permissible, it is in the interest of the agency to qualify acceptance by, for example, limiting the gift in some way. Approval of acceptance of a gift in-kind after receipt of the gift may be granted as deemed appropriate by the authorized agency official.

(d) Gifts may be acknowledged in writing in the form of a letter of acceptance to the donor. The amount of a monetary gift will be specified. In the case of nonmonetary gifts, the letter will not make reference to the value of the gift. Valuation of nonmonetary gifts is the responsibility of the donor. Letters of acceptance will not include any statement regarding the tax implications of a gift, which remain the responsibility of the donor. No statement of endorsement should appear in a letter of acceptance to the donor.

(e) A gift may be declined by an authorized official orally or in writing. A donor may be advised of the reason why the gift has been declined. A gift may be declined solely as a matter of agency discretion, even though acceptance would not be precluded under the conflict of interest standard in § 2601.203.

(f) A gift of money or the proceeds of a gift will be deposited in an appropriately documented agency fund. A check or money order should be made payable to the “U.S. Office of Government Ethics.”

[68 FR 60594, Oct. 22, 2003, as amended at 80 FR 57073, Sept. 22, 2015]

§ 2601.203 Conflict of interest analysis.

(a) A gift will not be solicited or accepted if the authorized agency official determines that such solicitation or acceptance of the gift would reflect unfavorably upon the ability of the agency, or any employee of the agency, to carry out OGE responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

(b) In making the determination required under paragraph (a) of this section, an authorized agency official may be guided by all relevant consider-

ations, including, but not limited to the following:

- (1) The identity of the donor;
- (2) The monetary or estimated market value or the cost to the donor;
- (3) The purpose of the gift as described in any written statement or oral proposal by the donor;
- (4) The identity of any other expected recipients of the gift on the same occasion, if any;
- (5) The timing of the gift;
- (6) The nature and sensitivity of any matter pending at the agency affecting the interests of the donor;
- (7) The significance of an individual employee’s role in any matter affecting the donor, if benefits of the gift will accrue to the employee;
- (8) The nature of the gift offered;
- (9) The frequency of other gifts received from the same donor; and
- (10) The agency activity, purpose or need that the gift will aid or facilitate.

(c) An authorized agency official may ask the donor to provide in writing any additional information needed to assist in making the determination under this section. Such information may include a description of the donor’s business or organizational affiliation and any matters that are pending or are expected to be pending before the agency.

[68 FR 60594, Oct. 22, 2003, as amended at 80 FR 57073, Sept. 22, 2015]

§ 2601.204 Conditions for acceptance.

- (a) No gift may be accepted that:
 - (1) Attaches conditions inconsistent with applicable laws or regulations;
 - (2) Is conditioned upon or will require the expenditure of appropriated funds that are not available to the agency;
 - (3) Requires the agency to provide the donor with some privilege, concession or other present or future benefit in return for the gift;
 - (4) Requires the agency to adhere to particular requirements as to deposit, investment, or management of funds donated;
 - (5) Requires the agency to undertake or engage in activities that are not related to the agency’s mission, programs or statutory authorities; or
 - (6) Would reflect unfavorably upon the ability of the agency, or any of its

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employees, to carry out its responsibilities or official duties in a fair and objective manner, or would compromise or appear to compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

(b) [Reserved]

NOTE TO § 2601.204: Nothing in this part will prohibit the agency from offering or providing the donor an appropriate acknowledgment of its gift in a publication, speech or other medium.

[68 FR 60594, Oct. 22, 2003, as amended at 80 FR 57073, Sept. 22, 2015]

Subpart C—Accounting Requirements

§ 2601.301 Accounting of gifts.

(a) OGE's Designated Agency Ethics Official (DAEO) will ensure that gifts are properly accounted for by following appropriate internal controls and accounting procedures.

(b) The DAEO will maintain an inventory of donated personal property valued at over \$500. The inventory will be updated each time an item is sold, excessed, destroyed or otherwise disposed of or discarded.

(c) The DAEO will maintain a log of all gifts valued at over \$500 accepted pursuant to this part. The log will include, to the extent known:

- (1) The name and address of the donor;
- (2) A description of the gift; and
- (3) The date the gift is accepted.

[68 FR 60594, Oct. 22, 2003, as amended at 80 FR 57073, Sept. 22, 2015]

PART 2602—EMPLOYEE RESPONSIBILITIES AND CONDUCT, ADDENDUM [RESERVED]

PART 2604—FREEDOM OF INFORMATION ACT RULES AND SCHEDULE OF FEES FOR THE PRODUCTION OF PUBLIC FINANCIAL DISCLOSURE REPORTS

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- 2604.701 Policy
- 2604.702 Charges.

AUTHORITY: 5 U.S.C. 552; 5 U.S.C. App. 101–505; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216.

SOURCE: 80 FR 57073, Sept. 22, 2015, unless otherwise noted.

Subpart A—General Provisions

§ 2604.101 Purpose.

This part contains the regulations of the U.S. Office of Government Ethics (OGE) implementing the Freedom of Information Act (FOIA), as amended. It describes how any person may obtain records from OGE under the FOIA. It also implements section 105(b)(1) of the Ethics in Government Act of 1978 (Ethics Act), as amended, which authorizes an agency to charge reasonable fees to

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cover the cost of reproduction and mailing of public financial disclosure reports requested by any person.

§ 2604.102 Applicability.

(a) *General.* The FOIA and this rule apply to all OGE records. However, if another law sets forth procedures for the disclosure of specific types of records, such as section 105 of the Ethics in Government Act of 1978, 5 U.S.C. appendix, OGE will process a request for those records in accordance with the procedures that apply to those specific records. See 5 CFR 2634.603 and subpart G of this part. If there is any record which is not required to be released under those provisions, OGE will consider the request under the FOIA and this rule, provided that the special Ethics Act access procedures cited must be complied with as to any record within the scope thereof.

(b) *The relationship between the FOIA and the Privacy Act of 1974.* The Freedom of Information Act applies to third-party requests for documents concerning the general activities of the government and of OGE in particular. The Privacy Act of 1974, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records as defined in the Privacy Act. When an individual requests access to his or her own records that are contained in an OGE system of records, the individual is making a Privacy Act request, not a FOIA request. Although OGE determines whether a request is a FOIA or Privacy Act request, OGE processes requests in accordance with both laws and will not deny access by a first party to a record under the FOIA or the Privacy Act if the record is available to that individual under both statutes. This provides the greatest degree of lawful access while safeguarding individuals' personal privacy.

(c) *Records available through routine distribution procedures.* When the record requested includes material published and offered for sale (e.g., by the Government Publishing Office) or which is available to the public through an established distribution system (such as that of the National Technical Information Service of the Department of Commerce), OGE will explain how the

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record may be obtained through those channels. If the requester, after having been advised of such alternative access, asks for regular FOIA processing instead, OGE will provide the record in accordance with its usual FOIA procedures under this part.

§ 2604.103 Definitions.

As used in this part:

Agency has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

Business information means trade secrets or other commercial or financial information, provided to OGE by a submitter, which arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act.

Business submitter means any person who provides business information, directly or indirectly, to OGE and who has a proprietary interest in the information.

Chief FOIA Officer means the OGE official designated in 5 U.S.C. 552(j)(1) to provide oversight of all of OGE's FOIA program operations.

Commercial use means, when referring to a request, that the request is from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put. When a request is from a representative of the news media, a purpose or use supporting the requester's news dissemination function is not a commercial use.

Direct costs means those expenditures actually incurred in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include the salary of the employee performing the work and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

Duplication means the process of making a copy of a record. Such copies include photocopies, flash drives, and optical discs.

Educational institution means a pre-school, elementary or secondary school, institution of undergraduate or graduate higher education, or institute of professional or vocational education, which operates a program of scholarly research.

Fee waiver means waiving or reducing processing fees if a requester can demonstrate that certain statutory standards are satisfied, including that the information is in the public interest and is not requested for a commercial interest.

FOIA Officer means the OGE employee designated to handle various initial FOIA matters, including requests and related matters such as fees.

FOIA Public Liaison means the OGE official designated in 5 U.S.C. 552(a)(6)(B)(ii) and 552(l) to review upon request any concerns of FOIA requesters about the service received from OGE's FOIA Requester Service Center and to address any other FOIA-related inquiries.

FOIA Requester Service Center means the OGE unit designated under E.O. 13392 and referenced in 5 U.S.C. 552(l) to answer any questions requesters have about the status of OGE's processing of their FOIA requests.

Freedom of Information Act or *FOIA* means 5 U.S.C. 552.

Noncommercial scientific institution means an institution that is not operated solely for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research the results of which are not intended to promote any particular product or industry.

Office or OGE means the United States Office of Government Ethics.

Person has the meaning given in 5 U.S.C. 551(2), including "an individual, partnership, corporation, association, or public or private organization other than an agency."

Records means any handwritten, typed, or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as electronic documents, electronic mail, magnetic tapes, cards or discs, paper tapes, audio

or video recordings, maps, photographs, slides, microfilm and motion pictures) that are either created or obtained by OGE and are under its control. It does not include objects or articles such as exhibits, models, equipment, and duplication machines or audiovisual processing materials.

Representative of the news media means a person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who distribute their products to the general public or who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media, such as electronic dissemination of text. Freelance journalists will be considered as representatives of a news media entity if they can show a solid basis for expecting publication through such an entity. A publication contract is such a basis, and the requester's past publication record may show such a basis.

Request means any request for records made pursuant to 5 U.S.C. 552(a)(3).

Requester means any person who makes a request for records to OGE.

Requester category means one of three classifications that OGE assigns to requesters to determine whether OGE will charge fees for search, review and duplication. These categories are: Commercial requesters; noncommercial scientific or educational institutions or representatives of the news media; and all other requesters.

Review means the process of initially, or upon appeal (see § 2604.501(b)(3)), examining documents located in a response to a request to determine whether any portion of any document is permitted to be withheld. It also includes processing documents for disclosure, such as redacting portions which

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may be withheld. Review does not include time spent resolving general legal and policy issues regarding the application of exemptions.

Search means the time spent looking for material manually or by automated means that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

Working days means calendar days, excepting Saturdays, Sundays, and legal public holidays.

[80 FR 57073, Sept. 22, 2015, as amended at 81 FR 94216, Dec. 23, 2016]

§ 2604.104 Preservation of records.

OGE will preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all responsive records, 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. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit.

§ 2604.105 Other rights and services.

Nothing in this part will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Subpart B—FOIA Public Reading Room Facility and Web Site; Index Identifying Information for the Public

§ 2604.201 Public reading room facility and Web site.

(a)(1) *Location of public reading room facility.* OGE maintains a public reading room facility at its offices located at 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917. Persons desiring to utilize the reading room facility should contact OGE, in writing or by telephone: 202-482-9300, TDD: 202-482-9293, or FAX: 202-482-9237, to arrange a time to inspect the materials available there.

(2) *Web site.* The records listed in paragraph (b) of this section that were created on or after November 1, 1996, or which OGE is otherwise able to make

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electronically available, along with the OGE FOIA and Public Records Guide and OGE's annual FOIA reports, are also available via OGE's Web site (www.oge.gov). OGE will proactively identify additional records of interest to the public and will post such records on its Web site when practicable.

(b) *Records available.* The OGE Web site contains OGE records which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection in an electronic format, including:

(1) Any final opinions, as well as orders, made in the adjudication of cases;

(2) Any statements of policy and interpretation which have been adopted by OGE and are not published in the FEDERAL REGISTER;

(3) Any administrative staff manuals and instructions to staff that affect a member of the public, and which are not exempt from disclosure under section (b) of the FOIA;

(4) Copies of records created by OGE that have been released to any person under subpart C of this part and that, because of the nature of their subject matter, OGE determines have become or are likely to become the subject of subsequent requests for substantially the same records or that have been requested three or more times; and

(5) A general index of the records referred to under § 2604.201(b)(4).

(c) OGE may delete from the copies of materials made available under this section any identifying details necessary to prevent a clearly unwarranted invasion of personal privacy. Any such deletions will be explained in writing and the extent of such deletions will be indicated on the portion of the records that are made available or published, unless the indication would harm an interest protected by the FOIA exemption pursuant to which the deletions are made. If technically feasible, the extent of any such deletions will be indicated at the place in the records where they are made.

[80 FR 57073, Sept. 22, 2015, as amended at 81 FR 94216, Dec. 23, 2016]

§ 2604.202 Index identifying information for the public.

(a) OGE will maintain and make available for public inspection in an electronic format a current index of

the materials available on its Web site that are required to be indexed under 5 U.S.C. 552(a)(2).

(b) The Director of the Office of Government Ethics has determined that it is unnecessary and impracticable to publish quarterly or more frequently and distribute (by sale or otherwise) copies of each index and supplements thereto, as provided in 5 U.S.C. 552(a)(2). The Office will provide copies of such indexes upon request, at a cost not to exceed the direct cost of duplication and mailing, if sending records by other than ordinary mail.

[80 FR 57073, Sept. 22, 2015, as amended at 81 FR 94216, Dec. 23, 2016]

Subpart C—Production and Disclosure of Records Under FOIA

§ 2604.301 Requests for records.

(a) *Addressing requests.* Requests for copies of records may be made by mail or email. Requests sent by mail should be addressed to the FOIA Officer, U.S. Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917. The envelope containing the request and the letter itself should both clearly indicate that the subject is a Freedom of Information Act request. Email requests should be sent to usoge@oge.gov and should indicate in the subject line that the message contains a Freedom of Information Act request.

(b) *Description of records.* Each request must reasonably describe the desired records in sufficient detail to enable OGE personnel to locate the records with a reasonable amount of effort. A request for a specific category of records will be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of OGE operations.

(1) Wherever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record.

(2) If the FOIA Officer determines that a request does not reasonably describe the records sought, the FOIA Officer will either advise the requester

what additional information is needed to locate the record, or otherwise state why the request is insufficient. The FOIA Officer will also extend to the requester an opportunity to confer with OGE personnel with the objective of reformulating the request in a manner which will meet the requirements of this section.

(c) *Agreement to pay fees.* The filing of a request under this subpart will be deemed to constitute an agreement by the requester to pay all applicable fees charged under subpart E of this part, up to \$25.00, unless a waiver of fees is sought. The request may also specify a limit on the amount the requester is willing to spend, or may indicate a willingness to pay an amount greater than \$25.00, if applicable. In cases where a requester has been notified that actual or estimated fees may amount to more than \$25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. If, in the course of negotiating fees, the requester does not respond to correspondence from OGE, OGE will administratively close the FOIA request after 30 calendar days have passed from the date of its last correspondence to the requester.

(d) *Requests for records relating to corrective actions.* No record developed pursuant to the authority of 5 U.S.C. app. 402(f)(2) concerning the investigation of an employee for a possible violation of any provision relating to a conflict of interest will be made available pursuant to this part unless the request for such information identifies the employee to whom the records relate and the subject matter of any alleged violation to which the records relate. Nothing in this subsection will affect the application of subpart D of this part to any record so identified.

(e) *Seeking expedited processing.* (1) A requester may seek expedited processing of a FOIA request if a compelling need for the requested records can be shown.

(2) “Compelling need” means:

(i) Circumstances in which failure to obtain copies of the requested records on an expedited basis could reasonably be expected to pose an imminent threat

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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 request is made by a person primarily engaged in disseminating information.

(3) A requester seeking expedited processing should so indicate in the initial request, and should state all the facts supporting the need to obtain the requested records quickly. The requester must also certify in writing that these facts are true and correct to the best of the requester's knowledge and belief.

§ 2604.302 Response to requests.

(a) *Acknowledgement of requests.* If the FOIA Officer determines that a request will take longer than 10 working days to process, OGE will send a written acknowledgment that includes the request's individualized tracking number.

(b) *Response to initial request.* The FOIA Officer is authorized to grant or deny any request for a record and to determine appropriate fees.

(c) *Referral to, or consultation with, another agency.* When a requester seeks access to records that originated in another Government agency subject to the FOIA, OGE will normally refer the request to the other agency for response; alternatively, OGE may consult with the other agency in the course of deciding itself whether to grant or deny a request for access to such records. If OGE refers the request to another agency, it will notify the requester of the referral and provide a point of contact within the receiving agency. If release of certain records may adversely affect United States relations with foreign governments, OGE will usually consult with the Department of State. A request for any records classified by some other agency will be referred to that agency for response.

(d) *Honoring form or format requests.* In making any record available to a requester, OGE will provide the record in the form or format requested, if the record already exists or is readily reproducible by OGE in that form or format. If a form or format request cannot be honored, OGE will so inform the

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requester and provide a copy of a non-exempt record in its existing form or format or another convenient form or format which is readily reproducible. OGE will not, however, generally develop a completely new record (as opposed to providing a copy of an existing record in a readily reproducible new form or format, as requested) of information in order to satisfy a request.

(e) *Record cannot be located.* If a requested record cannot be located from the information supplied, the FOIA Officer will so notify the requester in writing.

§ 2604.303 Form and content of responses.

(a) *Form of notice granting a request.* After the FOIA Officer has made a determination to grant a request in whole or in part, the requester will be notified in writing. The notice will describe the manner in which the record will be disclosed, whether by providing a copy of the record with the response or at a later date, or by making a copy of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection may not unreasonably disrupt OGE operations. The response letter will inform the requester of the right of the requester to seek assistance from the FOIA Public Liaison. The response letter will also inform the requester in the response of any fees to be charged in accordance with the provisions of subpart E of this part.

(b) *Form of notice denying a request.* When the FOIA Officer denies a request in whole or in part, the FOIA Officer will so notify the requester in writing. The response will be signed by the FOIA Officer and will include:

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

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions which the FOIA Officer has relied upon in denying the request;

(3) When only a portion of a document is being withheld, the amount of information deleted and the FOIA exemption(s) justifying the deletion will generally be indicated on the copy of the released portion of the document. If technically feasible, such indications

will appear at the place in the copy of the document where any deletion is made. If a document is withheld in its entirety, an estimate of the volume of the withheld material will generally be given. However, neither an indication of the amount of information deleted nor an estimation of the volume of material withheld will be included in a response if doing so would harm an interest protected by any of the FOIA exemptions pursuant to which the deletion or withholding is made; and

(4) A statement that the denial may be appealed under § 2604.304, and a description of the requirements of that section; and

(5) A statement of the right of the requester to seek dispute resolution services from the FOIA Public Liaison or the Office of Government Information Services (OGIS).

[80 FR 57073, Sept. 22, 2015, as amended at 81 FR 94216, Dec. 23, 2016]

§ 2604.304 Appeal of denials.

(a) *Right of appeal.* If a request has been denied in whole or in part, the requester may appeal the denial by mail or email to the Program Counsel of the U.S. Office of Government Ethics. Requests sent by mail should be addressed to 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917. The envelope containing the request and the letter itself should both clearly indicate that the subject is a Freedom of Information Act appeal. Email requests should be sent to *usoge@oge.gov* and should indicate in the subject line that the message contains a Freedom of Information Act appeal.

(b) *Letter of appeal.* The appeal must be in writing and must be sent within 90 calendar days of receipt of the denial letter. An appeal should include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons or arguments advanced in support of disclosure of the record.

(c) *Action on appeal.* The disposition of an appeal will be in writing and will constitute the final action of OGE on a request. A decision affirming in whole or in part the denial of a request will include a brief statement of the reason or reasons for affirmance, including

each FOIA exemption relied on. If the denial of a request is reversed in whole or in part on appeal, the request will be processed promptly in accordance with the decision on appeal.

(d) *Judicial review.* If the denial of the request for records is upheld in whole or in part, OGE will notify the person making the request of the right to seek judicial review under 5 U.S.C. 552(a)(4).

(e) *Dispute Resolution Services.* If the denial of the request for records is upheld in whole or in part, OGE will notify the requester about the dispute resolution services offered by the Office of Government Information Services (OGIS) and provide contact information for that office.

[80 FR 57073, Sept. 22, 2015, as amended at 81 FR 94216, Dec. 23, 2016]

§ 2604.305 Time limits.

(a)(1) *Initial request.* Following receipt of a request for records, the FOIA Officer will determine whether to comply with the request and will notify the requester in writing of the determination within 20 working days.

(2) *Tolling.* OGE may toll the 20-working day period once while awaiting a response to information reasonably requested from the requester. OGE may also toll the 20-working day period while awaiting a response to a request for clarification regarding fees. There is no limit on the number of times OGE may toll the statutory time period to request clarification regarding fees. In either case, the tolling period ends upon receipt of the requester's response to the request for information or clarification. If OGE does not receive a response to a request for clarification regarding fees within 30 calendar days, it will consider the request "closed."

(3) *Request for expedited processing.* When a request for expedited processing under § 2604.301(e) is received, the FOIA Officer will respond within 10 calendar days from the date of receipt of the request, stating whether or not the request for expedited processing has been granted. If the request for expedited processing is denied, any appeal of that decision will be acted upon expeditiously.

(b) *Appeal.* A written determination on an appeal submitted in accordance with § 2604.304 will be issued within 20

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working days after receipt of the appeal.

(c) *Extension of time limits.* When additional time is required for one of the reasons stated in paragraph (d) of this section, OGE will, within the statutory 20-working day period, issue written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be made. If more than 10 additional working days are needed, the requester will be notified and provided an opportunity to limit the scope of the request or to arrange for an alternative time frame for processing the request or a modified request. To aid the requester, OGE will make available its FOIA Public Liaison to assist in the resolution of any disputes. Additionally, OGE will notify the requester of the right of the requester to seek dispute resolution services from OGIS.

(d) For the purposes of paragraph (c) of this section, *unusual circumstances* means that there is a need to:

(1) Search for and collect records from archives;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult with another agency having a substantial interest in the determination of the request, or consult with various OGE components that have substantial subject matter interest in the records requested.

[80 FR 57073, Sept. 22, 2015, as amended at 81 FR 94216, Dec. 23, 2016]

Subpart D—Exemptions Under FOIA

§ 2604.401 Policy.

(a) *Foreseeable harm standard.* A requested record will not be withheld from inspection or copying unless it comes within one of the classes of records exempted by 5 U.S.C. 552 and OGE reasonably foresees that disclosure would harm an interest protected by an exemption described in 5 U.S.C. 552(b) or is prohibited by law. Nothing in this paragraph requires disclosure of information that is otherwise prohibited from disclosure by law, or other-

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wise exempted from disclosure under 5 U.S.C. 552(b)(3).

(b) *Pledge of confidentiality.* Information obtained from any individual or organization, furnished in reliance on a provision for confidentiality authorized by applicable statute, Executive Order or regulation, will not be disclosed to the extent it can be withheld under one of the exemptions. However, this paragraph (b) does not itself authorize the giving of any pledge of confidentiality by any officer or employee of OGE.

(c) *Exception for law enforcement information.* OGE may treat records compiled for law enforcement purposes as not subject to the requirements of the Freedom of Information Act when:

(1) The investigation or proceeding involves a possible violation of criminal law;

(2) There is reason to believe that the subject of the investigation or proceeding is unaware of its pendency; and

(3) The disclosure of the existence of the records could reasonably be expected to interfere with the enforcement proceedings.

(d) *Partial application of exemptions.* Any reasonably segregable portion of a record will be provided to any person requesting the record after deletion of the portions which are exempt under this subpart.

[80 FR 57073, Sept. 22, 2015, as amended at 81 FR 94216, Dec. 23, 2016]

§ 2604.402 Business information.

(a) *In general.* Business information provided to OGE by a submitter will not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Designation of business information.* Submitters of business information should use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected under Exemption 4 of the FOIA (5 U.S.C. 552(b)(4)). Any such designation will expire 10 years after the records were submitted to the Government, unless the submitter requests, and provides reasonable justification for, a designation period of longer duration.

(c) *Predisclosure notification.* The FOIA Officer will provide a submitter with prompt written notice of a FOIA request regarding its business information if:

(1) The information has been designated by the submitter as information deemed protected from disclosure under Exemption 4 of the FOIA; or

(2) The FOIA Officer has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA. Such written notice will either describe the exact nature of the business information requested or provide copies of the records containing the business information. The requester also will be notified that notice and an opportunity to object are being provided to a submitter.

(d) *Opportunity to object to disclosure.* OGE will give a submitter a reasonable time, up to 10 working days, from receipt of the predisclosure notification to provide a written statement of any objection to disclosure. Such statement will specify all the grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, will demonstrate why the information is deemed to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a submitter pursuant to this paragraph (d) may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The FOIA Officer will consider all objections raised by a submitter and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the FOIA Officer decides to disclose business information over the objection of a submitter, the FOIA Officer will send the submitter a written notice at least 10 working days before the date of disclosure containing:

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

(2) A copy of the records which will be disclosed or a written description of the records; and

(3) A specified disclosure date. The requester will also be notified of the FOIA Officer's determination to dis-

close records over a submitter's objections.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the FOIA Officer will promptly notify the submitter.

(g) *Exceptions to predisclosure notification.* The notice requirements in paragraph (c) of this section do not apply if:

(1) The FOIA Officer determines that the information should not be disclosed;

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

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (b) of this section appears obviously frivolous; except that, in such a case, the FOIA Officer will provide the submitter with written notice of any final decision to disclose business information within a reasonable number of days prior to a specified disclosure date.

Subpart E—Schedule of Fees

§ 2604.501 Fees to be charged—general.

(a) *Policy.* Fees will be assessed according to the schedule contained in paragraph (b) of this section and the category of requesters described in § 2604.502 for services rendered in responding to and processing requests for records under subpart C of this part. All fees will be charged to the requester, except where the charging of fees is limited under § 2604.503(a) and (b) or where a waiver or reduction of fees is granted under § 2604.503(c). Requesters will pay fees by check or money order made payable to the Treasury of the United States.

(b) *Types of charges.* The types of charges that may be assessed in connection with the production of records in response to a FOIA request are as follows:

(1) *Searches*—(i) *Manual searches for records.* Whenever feasible, OGE will charge at the salary rate (*i.e.*, basic pay plus 16%) of the employee making the search. However, where a homogeneous

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class of personnel is used exclusively in a search (e.g., all clerical time or all professional time) OGE will charge \$16.00 per hour for clerical time and \$28.00 per hour for professional time. Charges for search time will be billed by 15-minute segments.

(ii) *Computer searches for records.* Requesters will be charged the actual direct cost of conducting a search using existing programming. These direct costs will include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the cost of operator/programmer salary apportionable to the search. OGE will not alter or develop programming to conduct a search.

(iii) *Unproductive searches.* OGE will charge search fees even if no records are found which are responsive to the request, or if the records found are exempt from disclosure.

(2) *Duplication.* The standard copying charge for documents in paper copy is \$0.15 per page. When responsive information is provided in a format other than paper copy, such as in the form of computer tapes, flash drives, and discs, the requester may be charged the direct costs of the medium used to produce the information, as well as any related reproduction costs.

(3) *Review.* Costs associated with the review of documents, as defined in § 2604.103, will be charged at the salary rate (*i.e.*, basic pay plus 16%) of the employee conducting the review. Except as noted below, charges may be assessed only for review at the initial level, *i.e.*, the review undertaken the first time the documents are analyzed to determine the applicability of specific exemptions to a particular record or portion of the records. A requester will not be charged for review at the administrative appeal level concerning the applicability of an exemption already applied at the initial level. However, when a record has been withheld pursuant to an exemption which is subsequently determined not to apply and the record is reviewed again at the appeal level to determine the potential applicability of other exemptions, the costs of such additional review may be assessed.

(4) *Other services and materials.* Where OGE elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending records by special methods, the actual direct costs of providing the service or materials will be charged.

§ 2604.502 Fees to be charged—categories of requesters.

(a) *Fees for various requester categories.* The paragraphs below state, for each category of requester, the type of fees generally charged by OGE. However, for each of these categories, the fees may be limited, waived or reduced in accordance with the provisions set forth in § 2604.503. In determining whether a requester belongs in any of the following categories, OGE will determine the use to which the requester will put the documents requested. If OGE has reasonable cause to doubt the use to which the requester will put the records sought, or where the use is not clear from the request itself, OGE will seek clarification before assigning the request to a specific category.

(b) *Commercial use requester.* OGE will charge the full costs of search, review, and duplication. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction as described in § 2604.503(a); however, the minimum fees provision of § 2604.503(b) does apply to such requesters.

(c) *Educational and noncommercial scientific institutions and news media.* If the request is from an educational institution or a noncommercial scientific institution, operated for scholarly or scientific research, or a representative of the news media, and the request is not for a commercial use, OGE will charge only for duplication of documents, excluding charges for the first 100 pages.

(d) *All other requesters.* If the request is not one described in paragraph (b) or (c) of this section, OGE will charge the full and direct costs of searching for and reproducing records that are responsive to the request, excluding the first 100 pages of duplication and the first two hours of search time.

§ 2604.503 Limitations on charging fees.

(a) *In general.* Except for requesters seeking records for a commercial use as described in § 2604.502(b), OGE will provide, without charge, the first 100 pages of duplication and the first two hours of search time, or their cost equivalent.

(b) *Minimum fees.* OGE will not assess fees for individual requests if the total charge would be \$10.00 or less.

(c) *Waiver or reduction of fees.* Records responsive to a request under 5 U.S.C. 552 will be furnished without charge or at a reduced charge if a requester can demonstrate that certain statutory standards are satisfied, including that the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees will be considered on a case-by-case basis.

(1) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, OGE will consider the following factors:

(i) *The subject of the request: Whether the subject of the requested records concerns the operations or activities of the Government.* The subject matter of the requested records, in the context of the request, must specifically and directly concern identifiable operations or activities of the Federal Government. Furthermore, the records must be sought for their informative value with respect to those Government operations or activities;

(ii) *The informative value of the information to be disclosed: Whether the information is likely to contribute to an understanding of Government operations or activities.* The disclosable portions of the requested records must be meaningfully informative on specific Government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information which is already in the public domain, in either a duplicative or substantially identical form,

would not be likely to contribute to such understanding, as nothing new would be added to the public record;

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding.* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications—e.g., expertise in the subject area and ability and intention to convey information to the general public—will be considered; and

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of Government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be significantly enhanced by the disclosure.

(2) In determining whether disclosure of the requested information is not primarily in the commercial interest of the requester, OGE will consider the following factors:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* OGE will consider all commercial interests of the requester, or any person on whose behalf the requester may be acting, which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration will be given to the effect that the information disclosed would have on those commercial interests; and

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.* A fee waiver or reduction is warranted only where the public interest can fairly be regarded as greater in magnitude than the requester's commercial interest in disclosure. OGE will ordinarily presume

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that, where a news media requester has satisfied the public interest standard, the public interest will be served primarily by disclosure to that requester. Disclosure to data brokers and others who compile and market Government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only a portion of the requested record satisfies the requirements for a waiver or reduction of fees under this paragraph (c), a waiver or reduction will be granted only as to that portion.

(4) A request for a waiver or reduction of fees must accompany the request for disclosure of records, and should include:

(i) A clear statement of the requester's interest in the documents;

(ii) The proposed use of the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from release of the requested documents; and

(iv) If specialized use of the documents is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(5) A requester may appeal the denial of a request for a waiver or reduction of fees in accordance with the provisions of § 2604.304.

(d) If OGE does not comply with one of the time limits under § 2604.305, it will not assess search fees (or in the case of a requester described under § 2604.502(c), duplication fees), except as provided in paragraphs (d)(1) through (d)(3) of this section.

(1) If OGE has determined that unusual circumstances apply, as defined in 5 U.S.C. 552(a)(6)(B), and OGE provided timely written notice to the requester in accordance with 5 U.S.C. 552(a)(6)(B), a failure to comply with the time limit is excused for an additional 10 days.

(2) If OGE has determined that unusual circumstances apply, as defined in 5 U.S.C. 552(a)(6)(B), and more than 5,000 pages are necessary to respond to the request, OGE may charge search fees (or in the case of requesters described under § 2604.502(c), duplication fees) if OGE has provided timely writ-

ten notice to the requester in accordance with 5 U.S.C. 552(a)(6)(B) and OGE has discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii).

(3) If a court has determined that exceptional circumstances exist, as defined in 5 U.S.C. 552(a)(6)(B), a failure to comply with the time limits shall be excused for the length of time provided by the court order.

[80 FR 57073, Sept. 22, 2015, as amended at 81 FR 94216, Dec. 23, 2016]

§ 2604.504 Miscellaneous fee provisions.

(a) *Notice of anticipated fees in excess of \$25.00.* Where OGE determines or estimates that the fees to be assessed under this section may amount to more than \$25.00, it will notify the requester as soon as practicable of the actual or estimated amount of fees, unless the requester has indicated in advance the willingness to pay fees as high as those anticipated. Where a requester has been notified that the actual or estimated fees may exceed \$25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph (a) will include the opportunity to confer with OGE personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(b) *Aggregating requests.* A requester may not file multiple requests, each seeking portions of a document or documents in order to avoid the payment of fees. Where there is reason to believe that a requester, or group of requesters acting in concert, is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, OGE may aggregate the requests and charge accordingly. OGE will presume that multiple requests of this type made within a 30-calendar day period have been made in order to evade fees. Multiple requests regarding unrelated matters will not be aggregated.