

(e) *Individual Board Members.* Any member delegated authority vested in the Chairman under paragraph (a) of this section may redelegate that authority to one or more Board employees.

(f) *Exercise of authority.* In carrying out any functions delegated under this part, members and staff are governed in the exercise of those functions by all applicable Federal statutes and regulations, and by the regulations, orders, and rules of the Board.

[78 FR 33689, June 5, 2013, as amended at 78 FR 38811, June 28, 2013; 84 FR 36456, July 29, 2019]

PART 1001—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Sec.

- 1001.1 Purpose and scope.
- 1001.2 Definitions.
- 1001.3 Availability of records.
- 1001.4 Categories of exemptions.
- 1001.5 Requests for records.
- 1001.6 Responsibility for responding to requests.
- 1001.7 Administrative appeals.
- 1001.8 Time frame for Board response.
- 1001.9 Business information.
- 1001.10 Fees.
- 1001.11 Other rights and services.

AUTHORITY: 5 U.S.C. 552, as amended; Executive Order 12600.

SOURCE: 78 FR 66997, Nov. 8, 2013, unless otherwise noted.

§ 1001.1 Purpose and scope.

The regulations in this part implement the provisions of the FOIA.

§ 1001.2 Definitions.

The following definitions apply to this part:

Board means the Privacy and Civil Liberties Oversight Board, established by the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53.

Chairman means the Chairman of the Board, as appointed by the President and confirmed by the Senate under section 801(a) of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53, or any person to whom the Board has dele-

gated authority for the matter concerned.

Chief FOIA Officer means the senior official to whom the Board delegated responsibility for efficient and appropriate compliance with the FOIA.

Commercial use request means a FOIA request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, including pursuit of those interests through litigation.

Confidential business information means trade secrets and confidential, privileged, or proprietary business or financial information submitted to the Board by a person.

Direct costs mean in the case of commercial use requesters those expenses the Board has actually incurred to search for, duplicate, and review documents in response to a FOIA request. Direct costs include, but are not limited to, the salary of the employee performing the work and costs associated with duplication.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

Fee waiver means the waiver or reduction of processing fees if a requester can demonstrate that OMB's Fee Guidelines' standards are satisfied, including that the information is in the public interest and is not a commercial interest.

FOIA means the Freedom of Information Act, 5 U.S.C. 552, as amended. The FOIA applies to third-party requests for documents concerning the general activities of the government and the Board in particular. A request by a U.S. citizen or an individual lawfully admitted for permanent residence for access to his or her own records is considered a Privacy Act request, under the Privacy Act of 1974, 5 U.S.C. 552a, as amended. See 6 CFR 1002.3.

FOIA Officer means the individual to whom the Board has delegated authority to carry out the Board's day-to-day FOIA administration.

§ 1001.3

FOIA Public Liaison means the individual designated by the Chairman to assist FOIA requesters with concerns about the Board's processing of their FOIA request, including assistance in resolving disputes.

Non-commercial scientific institution means an organization operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any product or research, and not operated on a commercial basis.

Person includes an individual, partnership, corporation, association, or public or private organization other than an agency.

Record means any writing, drawing, map, recording, diskette, DVD, CD-ROM, tape, film, photograph, or other documentary material, regardless of medium, by which information is preserved, including documentary material stored electronically.

Redact means delete or mark over.

Representative of the news media means any person or entity that gathers information of potential public interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

Requester category means one of the three categories in which requesters will be placed for the purpose of determining whether a requester will be charged fees for search, review, or duplication. They are:

(1) Commercial requestors,

(2) Non-commercial scientific or educational institutions or news media requestors, and

(3) All other requestors.

Submitter means any person or entity from whom the Board obtains confidential business information, directly or indirectly.

Unusual circumstances means, to the extent reasonably necessary for the proper processing of a FOIA request:

(1) The need to search for and collect the requested records from physically separate facilities;

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

6 CFR Ch. X (1–1–25 Edition)

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

[78 FR 66997, Nov. 8, 2013, as amended at 82 FR 34835, July 27, 2017]

§ 1001.3 Availability of records.

(a) In accordance with 5 U.S.C. 552(a)(1), the Board publishes the following records in the FEDERAL REGISTER and makes an index of the records publicly available:

(1) Descriptions of the Board's organization and the established places at which, the employees from whom, and the methods by which, the public may obtain information, submit documents, or obtain decisions;

(2) Statements of the general course and method by which the Board's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by the Board; and

(5) Each amendment, revision, or repeal of any material listed in paragraphs (a)(1) through (4) of this section.

(b) In accordance with 5 U.S.C. 552(a)(2), the Board shall make the following materials available for public inspection and copying:

(1) Statements of policy and interpretation that have been adopted by the Board and not published in the FEDERAL REGISTER;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Copies of all records, regardless of the form or format, which have been released to any person under paragraph (c) of this section and that, because of their nature or subject matter, the Board determines have become or are

Privacy and Civil Liberties Oversight Board

§ 1001.5

likely to become the subject of subsequent requests for substantially the same records; and

(4) A general index of the records referred to in paragraph (b)(3) of this section.

(c) In accordance with 5 U.S.C. 552(a)(3), the Board shall make available, upon proper request, as described in section 5 of this part, all non-exempt Board records, or portions of records, not previously made public under paragraphs (a) and (b) of this section.

(d) The FOIA applies only to Board records in existence at the time of the request; the FOIA does not require that the Board create new records in order to respond to FOIA requests. When responsive records are located, the Board adopts a presumption of disclosure and openness.

§ 1001.4 Categories of exemptions.

(a) The FOIA does not require disclosure of matters that are:

(1) 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, properly classified under executive order;

(2) Related solely to the internal personnel rules and practices of the Board;

(3) Specifically exempted from disclosure by statute (other than the Government in the Sunshine Act, 5 U.S.C. 552b, as amended), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, establishes particular criteria for withholding, or refers to particular types of matters to be withheld; and

(ii) If enacted after October 28, 2009, specifically cites to Exemption 3 of the FOIA, 5 U.S.C. 552(b)(3);

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

(5) Inter-agency or intra-agency memoranda or letters, which would not be available at law to a party other than an agency in litigation with the Board;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

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

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

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related 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; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) [Reserved]

§ 1001.5 Requests for records.

(a) You may request copies of records under this part by email to FOIA@pclub.gov or in writing addressed to FOIA Officer, Privacy and Civil Liberties Oversight Board. Requestors should check the Board's Web site at <https://www.pclub.gov> for the Board's current mailing address. Please provide contact information, such as your phone number, email address, and/or

§ 1001.6

6 CFR Ch. X (1–1–25 Edition)

mailing address, to assist the Board in communicating with you and providing released records.

(b) Your request shall reasonably describe the records sought with sufficient specificity, and when possible, include names, dates, and subject matter, in order to permit the FOIA Officer to locate the records with a reasonable amount of effort. If the FOIA Officer cannot locate responsive records based on your written description, you will be notified and advised that further identifying information is necessary before the request can be fulfilled. Requesters who are attempting to reformulate or modify such a request may discuss their request with the Board's FOIA Officer or FOIA Public Liaison. If a request does not reasonably describe the records sought, the Board's response to the request is likely to be delayed.

(c) Although requests are considered either FOIA or Privacy Act requests, the Board processes requests for records in accordance with both laws so as to provide the greatest degree of lawful access while safeguarding an individual's personal privacy.

(d) Your request should specify your preferred form or format (including electronic formats) for the records you seek. We will accommodate your request if the record is readily available in that form or format. When you do not specify the form or format of the response, we will provide responsive records in the form or format most convenient to us.

[82 FR 34835, July 27, 2017]

§ 1001.6 Responsibility for responding to requests.

(a) *In general.* The Board delegates authority to grant or deny FOIA requests in whole or in part to the FOIA Officer. When conducting a search for responsive records, the FOIA Officer generally will search for records in existence on the date of the search. If another date is used, the FOIA Officer shall inform the requester of the date used.

(b) *Responses.* The FOIA Officer will notify you of his or her determination to grant or deny your FOIA request in the time frame stated in § 1001.8. The Board will release reasonably seg-

regable non-exempt information. For any adverse determination, including those regarding any disputed fee matter; a denial of a request for a fee waiver; or a determination to withhold a record, in whole or in part, that a record does not exist or cannot be located; or to deny a request for expedited processing; the notice shall include the following information:

(1) The name(s) of any person responsible for the determination to deny the request in whole or in part;

(2) A brief statement of the reason(s) for the denial, including any FOIA exemption applied in denying the request. The FOIA Officer will indicate, if technically feasible, the amount of information deleted and the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemption;

(3) An estimate of the volume of information withheld, if applicable. This estimate does not need to be provided if it is ascertainable based on redactions in partially disclosed records or if the disclosure of the estimate would harm an interest protected by an applicable FOIA exemption;

(4) A statement that the adverse determination may be appealed and a description of the requirements for an appeal under § 1001.7; and

(5) A statement notifying you of the assistance available from the Board's FOIA Public Liaison and the dispute resolution services offered by OGIS.

(c) *Consultations and referrals.* (1) Upon receipt of a FOIA request for a record within the Board's possession, the FOIA Officer should determine if the Board or another federal agency is best able to determine eligibility for disclosure under the FOIA. If the FOIA Officer determines that another agency is better able to evaluate the releasability of the record, the FOIA Officer shall:

(1) Upon receipt of a FOIA request for a record within the Board's possession, the FOIA Officer should determine if the Board or another federal agency is best able to determine eligibility for disclosure under the FOIA. As to any such record, the FOIA Officer must proceed in one of the following ways:

(i) *Consultation.* When records originated with the Board, but contain within them information of interest to or originated by another agency or Federal Government office, the FOIA Officer must consult with that other entity prior to making a release determination.

(ii) *Referral.* When the FOIA Officer believes that a different agency is best able to determine whether to disclose the record the FOIA Officer will refer the responsibility for responding to the request regarding that record to that agency (but only if that other department or agency is subject to FOIA). Ordinarily, the department or agency that originated the record will be presumed best able to determine whether to disclose it. However, if the FOIA Officer and the originating agency jointly agree that the Board is in the best position to respond regarding the record, then the record may be handled as a consultation.

(2) Whenever a request is made for information that is classified, the FOIA Officer shall refer the responsibility for responding to that portion of the request to the agency that originated the information, or has the primary interest in it, as appropriate. Whenever a record contains information that the Board has derivatively classified because it contains information classified by another agency, the FOIA Officer shall refer the responsibility for responding to the request regarding that information to the agency that classified the underlying information or originated the record.

(3) If responsibility for responding to a request is referred to another department or agency, the FOIA Officer shall notify you of the referral. This notice shall identify the part of the request that has been referred and the name of each department or agency to which the request, or part of the request, has been referred, when appropriate and available, the notice will include a point of contact for the referral agency or department.

(d) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made is classified for national security reasons or otherwise could harm an interest

protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For instance, if the Board locates within its files materials originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such an instance, in order to avoid harm to an interest protected by an applicable exemption, the Board will coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination will then be conveyed to the requester by the Board.

[78 FR 66997, Nov. 8, 2013, as amended at 82 FR 34836, July 27, 2017]

§ 1001.7 Administrative appeals.

(a) You may appeal an adverse determination related to your FOIA request, or the Board's failure to respond to your FOIA request within the prescribed time limits, to the Chief FOIA Officer, Privacy and Civil Liberties Oversight Board. Requestors should check the Board's Web site at <https://www.pclob.gov> for the Board's current mailing address.

(b) Your appeal must be in writing, sent to the address posted on the Board's Web site in accordance with paragraph (a) of this section, and it must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the letter denying your request, in whole or in part. The appeal should clearly identify the agency determination that is being appealed and the assigned case request number. In case of the Board's failure to respond within the statutory time frame, you may submit an administrative appeal at any time until an agency response has been provided. For the most expeditious handling, your appeal letter and envelope, or subject line of the electronic transmission, should be marked "Freedom of Information Act appeal."

§ 1001.8

6 CFR Ch. X (1–1–25 Edition)

(c) Your appeal letter should state facts and may cite legal or other authorities in support of your request.

(d) On receipt of any appeal involving classified information, the Chief FOIA Officer must take appropriate action to ensure compliance with applicable classification rules.

(e) The Chief FOIA Officer shall respond to all administrative appeals in writing and within the time frame stated in §1001.8(d). If the decision affirms, in whole or in part, the FOIA Officer's determination, the letter shall contain a statement of the reasons for the affirmation, including any FOIA exemption(s) applied, and will inform you of the FOIA's provisions for court review. If the Chief FOIA Officer reverses or modifies the FOIA Officer's determination, in whole or in part, you will be notified in writing and your request will be reprocessed in accordance with that decision. The Board may work with Office of Government Information Services (OGIS) to resolve disputes between FOIA requestors and the Board. A requester may also contact OGIS in the following ways: Via mail to OGIS, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, MD 20740 (*ogis.archives.gov*), via email at *ogis@nara.gov*, or via the telephone at 202-741-5770 or 877-684-6448. Facsimile is also available at 202-741-5769.

[82 FR 34836, July 27, 2017]

§ 1001.8 Time frame for Board response.

(a) *In general.* The Board ordinarily shall respond to requests according to their order of receipt.

(b) *Multi-track processing.* The Board may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work or time needed to process the request.

(c) *Initial decisions.* The Board shall determine whether to comply with a FOIA request within 20 working days after our receipt of the request, unless the time frame for response is extended due to unusual circumstances as further described in paragraph (f) of this section. A request is received by the Board, for purposes of commencing the 20-day timeframe for its response, on

the day it is received by the FOIA Officer or, in any event, not later than ten days after the request is first received by any Board office.

(d) *Administrative appeals.* The Chief FOIA Officer shall determine whether to affirm or overturn a decision subject to administrative appeal within 20 working days after receipt of the appeal, unless the time frame for response is extended in accordance with subsection (e) of this section.

(e) *Tolling timelines.* We may toll the 20-day timeframe set forth in paragraphs (c) or (d) of this section:

(1) One time to await information that we reasonably requested from you, as permitted by 5 U.S.C. 552(a)(6)(A)(iii)(I);

(2) As necessary to clarify with you issues regarding the fee assessment.

(3) If we toll the time frame for response under paragraphs (e)(1) or (2) of this section, the tolling period ends upon our receipt of your response.

(f) *Unusual circumstances.* In the event of unusual circumstances, we may extend the time frame for response provided in paragraphs (c) or (d) of this section by providing you with written notice of the unusual circumstances and the date on which a determination is expected to be made. Where the extension is for more than ten working days, we will provide you with an opportunity either to modify your request so that it may be processed within the statutorily-prescribed time limits or to arrange an alternative time period for processing your request or modified request.

(g) *Aggregating requests.* When we reasonably believe that multiple requests submitted by a requester, or by a group of requesters acting in concert, involving clearly related matters, can be viewed as a single request that involves unusual circumstances, we may aggregate the requests for the purposes of fees and processing activities, which may result in an extension of the processing time.

(h) *Expedited processing.* You may request that the Board expedite processing of your FOIA request. To receive expedited processing, you must demonstrate a compelling need for such processing.

(1) For requests for expedited processing, a “compelling need” involves:

(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) A request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged federal government activity.

(2) Your request for expedited processing must be in writing and may be made at the time of the initial FOIA request or at any later time.

(3) Your request for expedited processing must include a statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail the basis for requesting expedited processing. If you are a person primarily engaged in disseminating information, you must establish a particular urgency to inform the public about the federal government activity involved in the request.

(4) The FOIA Officer will decide whether to grant or deny your request for expedited processing within ten calendar days of receipt. You will be notified in writing of the determination. Appeals of adverse decisions regarding expedited processing shall be processed expeditiously.

§ 1001.9 Business information.

(a) *Designation of confidential business information.* In the event a FOIA request is made for confidential business information previously submitted to the Government by a commercial entity or on behalf of it (hereinafter ‘submitter’), the regulations in this section apply. When submitting confidential business information, you must use a good-faith effort to designate, by use of appropriate markings, at the time of submission or at a reasonable time thereafter, any portions of your submission that you consider to be exempt from disclosure under FOIA Exemption 4, 5 U.S.C. 552(b)(4). Your designation will expire ten years after the date of submission unless you request, and provide justification for, a longer designation period.

(b) *Notice to submitters.* Whenever you designate confidential business infor-

mation as provided in paragraph (a) of this section, or the Board has reason to believe that your submission may contain confidential business information, we will provide you with prompt written notice of a FOIA request that seeks your business information. The notice shall:

(1) Give you an opportunity to object to disclosure of your information, in whole or in part;

(2) Describe the business information requested or include copies of the requested records or record portions containing the information; and

(3) Inform you of the time frame in which you must respond to the notice.

(c) *Opportunity to object to disclosure.* The Board shall allow you a reasonable time to respond to the notice described in paragraph (b) of this section. If you object to the disclosure of your information, in whole or in part, you must provide us with a detailed written statement of your objection. The statement must specify all grounds for withholding any portion of the information under any FOIA exemption and, when relying on FOIA Exemption 4, it must explain why the information is a trade secret or commercial or financial information that is privileged and confidential. If you fail to respond within the time frame specified in the notice, the Board will conclude that you have no objection to disclosure of your information. The Board will only consider information that we receive within the time frame specified in the notice. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(d) *Notice of intent to disclose.* The Board will consider your objection and specific grounds for non-disclosure in deciding whether to disclose business information. Whenever the Board decides to disclose business information over your objection, we will provide you with written notice that includes:

(1) A statement of the reasons why each of your bases for withholding were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time after the notice.

§ 1001.10

(e) *Exceptions to the notice requirement.* The notice requirements of paragraphs (c) and (d) of this section shall not apply if:

(1) The Board determines that the information shall not be disclosed;

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

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600;

(4) The designation made by the submitter under paragraph (a) of this section appears obviously frivolous, except that, in such a case, the Board shall, within a reasonable time prior to the date the disclosure will be made, give the submitter written notice of the final decision to disclose the information.

(f) *Notice to requesters.* Whenever we provide a submitter with the notice described in paragraph (b) of this section, we also will provide notice to the requester that notice and opportunity to object to the disclosure are being provided to the submitter. The Board also must notify the requester when it notifies the submitter of its intent to disclose the requested information, and whenever a submitter files a lawsuit to prevent the disclosure of the information.

[78 FR 66997, Nov. 8, 2013, as amended at 82 FR 34836, July 27, 2017]

§ 1001.10 Fees.

(a) We will charge fees that recoup the full allowable direct costs we incur in processing your FOIA request. Fees may be charged for search, review or duplication. As a matter of administrative discretion, the Board may release records without charge or at a reduced rate whenever the Board determines that the interest of the United States government would be served. We will use the most efficient and least costly methods to comply with your request. The Board may charge for search time even if no records are located or the records located are exempt from disclosure. If the Board fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, unless the circumstances

6 CFR Ch. X (1–1–25 Edition)

outlined in paragraph (o) of this section are met.

(b) With regard to manual searches for records, we will charge the salary rate(s) (calculated as the basic rate of pay plus 16 percent of that basic rate to cover benefits) of the employee(s) performing the search.

(c) In calculating charges for computer searches for records, we will charge at the actual direct cost of providing the service, including the cost of operating computers and other electronic equipment, such as photocopiers and scanners, directly attributable to searching for records potentially responsive to your FOIA request and the portion of the salary of the operators/programmers performing the search.

(d) We may only charge requesters seeking documents for commercial use for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review—that is, the review undertaken the first time we analyze the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. We may assess the costs for such subsequent review. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage.

(e) Records will be duplicated at a rate of \$.10 per page, except that the Board may adjust this rate from time to time by rule published in the FEDERAL REGISTER. For copies prepared by computer, such as tapes, CDs, DVDs, or printouts, we will charge the actual cost, including operator time, of production. For other methods of reproduction or duplication, we will charge the actual direct costs of producing the document(s). If we estimate that duplication charges are likely to exceed \$25, we will notify you of the estimated amount of fees, unless you indicated in advance your willingness to pay fees as high as those anticipated. Our notice will offer you an opportunity to confer with Board personnel to reformulate

the request to meet your needs at a lower cost. If the Board notifies you that the actual or estimated fees are in excess of \$25.00, your request will not be considered received and further work will not be completed until you commit in writing to pay the actual or estimated total fee, or designate some amount of fees you are willing to pay, or in the case of a noncommercial use requester who has not yet been provided with your statutory entitlements, you designate that you seek only that which can be provided by the statutory entitlements. The Board's FOIA Officer or Public Liaison are available to assist you in reformulating your request to meet your needs at a lower cost.

(f) We will charge you the full costs of providing you with the following services:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express mail.

(g) We may assess interest charges on an unpaid bill starting on the 31st calendar day following the day on which the billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the Board.

(h) We will not charge a search fee for requests by educational institutions, non-commercial scientific institutions, or representatives of the news media. A search fee will be charged for a commercial use request.

(i) The Board will not charge duplication fees for requests by educational institutions, non-commercial scientific institutions, or representatives of the news media for a non-commercial use request if the agency fails to comply with the FOIA's time limits in which to respond to a request.

(j) Except for a commercial use request, we will not charge you for the first 100 pages of duplication and the first two hours of search.

(k) You may not file multiple requests, each seeking portions of a document or documents, solely for the purpose of avoiding payment of fees. When the Board reasonably believes that a requester, or a group of requesters acting in concert, has submitted requests

that constitute a single request involving clearly related matters, we may aggregate those requests and charge accordingly.

(1) We may not require you to make payment before we begin work to satisfy the request or to continue work on a request, unless:

(1) We estimate or determine that the allowable charges that you may be required to pay are likely to exceed \$250; or

(2) You have previously failed to pay a fee charged within 30 calendar days of the date of billing.

(m) In cases in which the Board requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If you do not pay the advance payment within 30 calendar days after the date of the Board's fee determination, the request will be closed.

(n) Upon written request, we may waive or reduce fees that are otherwise chargeable under this part. If you request a waiver or reduction in fees, you must demonstrate that a waiver or reduction in fees is in the public interest because disclosure of the requested records is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in your commercial interest. After processing, actual fees must exceed \$25, for the Board to require payment of fees.

(o) If the Board has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, the Board may charge search fees, or, in the case of requesters described in paragraph (h) of this section, may charge duplication fees, if the following steps are taken. The Board must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the agency must have 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). If this exception is satisfied, the Board

§ 1001.11

may charge all applicable fees incurred in the processing of the request.

[82 FR 34847, July 27, 2017]

§ 1001.11 Other rights and services.

Nothing in this subpart shall 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.

[82 FR 34837, July 27, 2017]

PART 1002—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

- 1002.1 Purpose and scope.
- 1002.2 Definitions.
- 1002.3 Privacy Act requests.
- 1002.4 Responses to Privacy Act requests.
- 1002.5 Administrative appeals.
- 1002.6 Fees.
- 1002.7 Penalties.

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

SOURCE: 78 FR 66997, Nov. 8, 2013, unless otherwise noted.

§ 1002.1 Purpose and scope.

The regulations in this part implement the provisions of the Privacy Act.

§ 1002.2 Definitions.

The following terms used in this part are defined in the Privacy Act: *Individual*, *maintain*, *record*, *system of records*, *statistical record*, and *routine use*. The following definitions also apply in this part:

Board means the Privacy and Civil Liberties Oversight Board, established by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. 110–53.

Chairman means the Chairman of the Board, as appointed by the President and confirmed by the Senate under section 801(a) of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. 110–53, or any person to whom the Board has delegated authority in the matter concerned.

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

Privacy Act means the Privacy Act of 1974, 5 U.S.C. 552a, as amended.

Privacy Act Officer means the person designated by the Board to be respon-

6 CFR Ch. X (1–1–25 Edition)

sible for the day-to-day administration of the Privacy Act.

§ 1002.3 Privacy Act requests.

(a) *Requests to determine if you are the subject of a record.* You may request that the Board inform you if we maintain a system of records that contains records about you. Your request must follow the procedures described in paragraph (b) of this section.

(b) *Requests for access.* You may request access to a Board record about you in writing or by appearing in person. You should direct your request to the Privacy Act Officer. Written requests may be sent to: Privacy Act Officer, Privacy and Civil Liberties Oversight Board, 2100 K Street NW., Suite 500, Washington, DC 20427. Your request should include the following information:

(1) Your name, address, and telephone number;

(2) The system(s) of records in which the requested information is contained; and

(3) At your option, authorization for copying expenses.

(4) *Written requests.* In addition to the information described in paragraphs (b)(1) through (3) of this section, written requests must include a statement affirming your identity, signed by you and witnessed by two persons (including witnesses' addresses) or notarized.

(i) *Witnessed.* If your statement is witnessed, it must include a sentence above the witnesses' signatures attesting that they personally know you or that you have provided satisfactory proof of your identity.

(ii) *Notarized.* If your statement is notarized, you must provide the notary with adequate proof of your identity in the form of a drivers' license, passport, or other identification acceptable to the notary.

(iii) The Board, in its discretion, may require additional proof of identification depending on the nature and sensitivity of the records in the system of records.

(iv) For the quickest possible handling, your letter and envelope should be marked "Privacy Act Request".

(5) *In person requests.* In addition to the information described in paragraphs (b)(1) through (3) of this section,