

activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public’s understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area as well as his or her ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public’s understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, components shall not make value judgments about whether the information at issue is “important” enough to be made public.

(3) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, components will consider the following factors:

(i) Components shall identify any commercial interest of the requester, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide ex-

planatory information regarding this consideration.

(ii) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure. Components ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the date the fee waiver request was received.

(6) *Summary of fees.* The following table summarizes the chargeable fees (excluding direct fees identified in § 5.11) for each requester category.

Category	Search fees	Review fees	Duplication fees
Commercial-use	Yes	Yes	Yes.
Educational or Non-Commercial Scientific Institution.	No	No	Yes (100 pages free).
News Media	No	No	Yes (100 pages free).
Other requesters	Yes (2 hours free)	No	Yes (100 pages free).

§ 5.12 Confidential commercial information; CBP procedures.

(a) *In general.* For purposes of this section, “commercial information” is defined as trade secret, commercial, or financial information obtained from a person. Commercial information provided to CBP by a business submitter and that CBP determines is privileged

or confidential commercial or financial information will be treated as privileged or confidential and will not be disclosed pursuant to a Freedom of Information Act request or otherwise made known in any manner except as provided in this section.

(b) *Notice to business submitters of FOIA requests for disclosure.* Except as

provided in paragraph (b)(2) of this section, CBP will provide business submitters with prompt written notice of receipt of FOIA requests or appeals that encompass their commercial information. The written notice will describe either the exact nature of the commercial information requested, or enclose copies of the records or those portions of the records that contain the commercial information. The written notice also will advise the business submitter of its right to file a disclosure objection statement as provided under paragraph (c)(1) of this section. CBP will provide notice to business submitters of FOIA requests for the business submitter's commercial information for a period of not more than 10 years after the date the business submitter provides CBP with the information, unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(1) *When notice is required.* CBP will provide business submitters with notice of receipt of a FOIA request or appeal whenever:

(i) The business submitter has in good faith designated the information as commercially- or financially-sensitive information. The business submitter's claim of confidentiality should be supported by a statement by an authorized representative of the business entity providing specific justification that the information in question is considered confidential commercial or financial information and that the information has not been disclosed to the public; or

(ii) CBP has reason to believe that disclosure of the commercial information could reasonably be expected to cause substantial competitive harm.

(2) *When notice is not required.* The notice requirements of this section will not apply if:

(i) CBP determines that the commercial information will not be disclosed;

(ii) The commercial information has been lawfully published or otherwise made available to the public; or

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

(c) *Procedure when notice given—(1) Opportunity for business submitter to ob-*

ject to disclosure. A business submitter receiving written notice from CBP of receipt of a FOIA request or appeal encompassing its commercial information may object to any disclosure of the commercial information by providing CBP with a detailed statement of reasons within 10 days of the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays). The statement should specify all the grounds for withholding any of the commercial information under any exemption of the FOIA and, in the case of Exemption 4, should demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. The disclosure objection information provided by a person pursuant to this paragraph may be subject to disclosure under the FOIA.

(2) *Notice to FOIA requester.* When notice is given to a business submitter under paragraph (b)(1) of this section, notice will also be given to the FOIA requester that the business submitter has been given an opportunity to object to any disclosure of the requested commercial information.

(d) *Notice of intent to disclose.* CBP will consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose commercial information. Whenever CBP decides to disclose the requested commercial information over the objection of the business submitter, CBP will provide written notice to the business submitter of CBP's intent to disclose, which will include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

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

(3) A specified disclosure date which will not be less than 10 days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of intent to disclose the requested information has been issued to the business submitter. Except as otherwise prohibited by law, CBP will also provide a copy of the notice of intent to disclose to the FOIA requester at the same time.

(e) *Notice of FOIA lawsuit.* Whenever a FOIA requester brings suit seeking to

compel the disclosure of commercial information covered by paragraph (b)(1) of this section, CBP will promptly notify the business submitter in writing.

§ 5.13 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.

Subpart B—Privacy Act

SOURCE: 87 FR 68601, Nov. 16, 2022, unless otherwise noted.

§ 5.20 General provisions.

(a) *Purpose and scope.* (1) This subpart contains the rules that the Department of Homeland Security (Department or DHS) follows in processing records under the Privacy Act of 1974 (Privacy Act) (5 U.S.C. 552a) and under the Judicial Redress Act of 2015 (JRA) (5 U.S.C. 552a note).

(2) The rules in this subpart should be read in conjunction with the text of the Privacy Act and the JRA, 5 U.S.C. 552a and 5 U.S.C. 552a note, respectively (which provide additional information about records maintained on individuals and covered persons), and JRA designations issued in the FEDERAL REGISTER. The rules in this subpart apply to all records in systems of records maintained by the Department. These rules also apply to all records containing Social Security Numbers regardless of whether such records are covered by an applicable system of records maintained by the Department. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures by Department personnel and contractors. In addition, the Department processes all Privacy Act and JRA requests for access to records under the Freedom of Information Act (FOIA) (5 U.S.C. 552), following the rules contained in subpart A of this part, which gives requesters the benefit of both statutes.

(3) The provisions established by this subpart apply to all Department Com-

ponents, as defined in paragraph (b)(1) of this section.

(4) DHS has a decentralized system for processing requests, with each component handling requests for its records.

(b) *Definitions.* As used in this subpart:

(1) *Component* means the office that processes Privacy Act and JRA requests for each separate organizational entity within DHS that reports directly to the Office of the Secretary.

(2) *Request for access to a record* means a request made under Privacy Act subsection (d)(1).

(3) *Request for amendment or correction of a record* means a request made under Privacy Act subsection (d)(2).

(4) *Request for an accounting* means a request made under Privacy Act subsection (c)(3).

(5) *Requester* means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act.

(6) *Individual* means, as defined by the Privacy Act, 5 U.S.C. 552a(a)(2), a citizen of the United States or an alien lawfully admitted for permanent residence. Also, an individual, for purposes of this subpart, but limited to the exclusive rights and civil remedies provided in the JRA, includes covered persons, as defined by the JRA, as a natural person (other than an individual) who is a citizen of a covered country, as designated by the Attorney General, with the concurrence of the Secretary of State, the Secretary of the Treasury, and the Secretary of Homeland Security.

(7) *Record* has the same meaning as contained in the Privacy Act, 5 U.S.C. 552a(a)(4), except that in cases covered by the JRA, the term “record” has the same meaning as “covered record” in the JRA, 5 U.S.C. 552a note.

(c) *Authority to request records for a law enforcement purpose.* The head of a component or designee thereof is authorized to make written requests under subsection 552a(b)(7) of the Privacy Act for records maintained by other agencies that are necessary to carry out an authorized law enforcement activity.