

(d) *Notice on Departmental use of (b)(1) exception.* As a general matter, when applying the Privacy Act (b)(1) exception for authorized disclosures within an agency on a need to know basis, the Department will consider itself a single entity, meaning that information may be disclosed between components of the Department under the (b)(1) exception.

§ 5.21 Requests for access to records.

(a) *How made and addressed.* (1) DHS has a decentralized system for responding to Privacy Act and JRA requests, with each component designating an office to process records from that component.

(2) An individual may make a request for access to a Department of Homeland Security record about that individual covered by a DHS or Component system of records notice (SORN) by writing directly to the Department component that maintains the record at the address listed in appendix A to this part or via the internet at <http://www.dhs.gov/dhs-foia-request-submission-form>. A description of all DHS-wide and component SORNs may be found here: <https://www.dhs.gov/system-records-notices-sorn>.

(3) In most cases, a component's central FOIA office, as indicated in appendix A to this part, is the place to send a Privacy Act request. For records held by a field office of U.S. Customs and Border Protection, the U.S. Coast Guard, or other Department components with field offices other than the U.S. Secret Service and Transportation Security Administration, the requester must write directly to that U.S. Customs and Border Protection, Coast Guard, or other field office address, which can be found by calling the component's central FOIA office. Requests for U.S. Secret Service records should be sent only to the U.S. Secret Service central FOIA office, and requests for Transportation Security Administration records should be sent only to the Transportation Security Administration central FOIA office.

(4) Requests for records held by the Cybersecurity and Infrastructure Security Agency (CISA) should be sent to the DHS Privacy Office.

(5) DHS's FOIA website refers the reader to descriptions of the functions

of each component and provides other information that is helpful in determining where to make a request. Each component's FOIA office and any additional requirements for submitting a request to a given component are listed in appendix A to this part. These references can all be used by requesters to determine where to send their requests within DHS.

(6) An individual may also send a request to the Privacy Office, Mail Stop 0655, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington DC 20528-0655, or via the internet at <http://www.dhs.gov/dhs-foia-request-submission-form>, or via fax to (202) 343-4011. The Privacy Office will forward the request to the component(s) that it determines to be most likely to maintain the records that are sought. For the quickest possible handling, the requester should mark both the request letter and the envelope "Privacy Act Request" or "Judicial Redress Act Request."

(b) *Government-wide SORNs.* A government-wide system of records is a system of records where one agency has regulatory authority over records in the custody of multiple agencies, and the agency with regulatory authority publishes a SORN that applies to all of the records regardless of their custodial location. If records are sought that are covered by a Government-wide SORN and requested of DHS, DHS will consult or refer such request, only as applicable and necessary, to the corresponding agency having authority over such records for further processing. DHS will acknowledge to the requester that it is referring the request to another agency or consulting with that agency when processing the request.

(c) *Description of records sought.* A requester must describe the records sought in sufficient detail to enable Department personnel to locate the system of records covering them with a reasonable amount of effort. Whenever possible, the request should describe the records sought, the time periods in which the requester believes they were compiled, the office or location in which the requester believes the records are kept, and the name or identifying number of each system of

records in which the requester believes they are kept. The Department publishes notices in the FEDERAL REGISTER that describe its components' systems of records. These notices can be found on the Department's website here: <https://www.dhs.gov/system-records-notices-sorns>. If a request does not adequately describe the records sought, DHS may at its discretion either administratively close the request or seek additional information from the requester. Requests for clarification or more information will be made in writing (either via U.S. mail or electronic mail whenever possible). Requesters may respond by U.S. Mail or by electronic mail regardless of the method used by DHS to transmit the request for additional information. To be considered timely, responses to requests for additional information must be postmarked or received by electronic mail within 30 working days of the postmark date or date of the electronic mail request for additional information. If the requester does not respond timely, the request may be administratively closed at DHS's discretion. This administrative closure does not prejudice the requester's ability to submit a new request for further consideration with additional information.

(d) *Agreement to pay fees.* DHS and components shall charge for processing requests under the Privacy Act or JRA. DHS and components will ordinarily use the most efficient and least expensive method for processing requested records. DHS may contact a requester for additional information in order to resolve any fee issues that arise under this section. DHS ordinarily will collect all applicable fees before sending copies of records to a requester. If one makes a Privacy Act or JRA request for access to records, it will be considered a firm commitment to pay all applicable fees charged under § 5.29, up to \$25.00. The component responsible for responding to a request ordinarily will confirm this agreement in an acknowledgement letter. When making a request, an individual may specify a willingness to pay a greater or lesser amount. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(e) *Verification of identity.* When an individual makes a request for access to their own records, their identity must be verified. The individual must provide their full name, current address, date and place of birth, and country of citizenship or residency. The individual must sign the request and provide a signature that must either be notarized or submitted by the requester under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury, as a substitute for notarization. An individual may obtain more information about this process at <http://www.dhs.gov/foia> or 1-866-431-0486. In order to help the identification and location of requested records, an individual may also voluntarily include other identifying information that are relevant to the request (e.g., passport number, Alien Registration Number (A-Number)).

(f) *Verification of guardianship.* When making a request as the parent or guardian of a minor or as the guardian of someone determined by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, for access to records about that individual, the individual submitting a request must establish:

(1) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and country of citizenship or residency of the individual;

(2) The submitting individual's own identity, in the same manner as required in paragraph (e) of this section;

(3) That the submitting individual is the parent or guardian of the subject of the record, which may be proven by providing a copy of the subject of the record's birth certificate showing parentage or by providing a court order establishing guardianship; and

(4) That the submitting individual is acting on behalf of that individual that is the subject of the record.

(g) *Verification in the case of third-party information requests.* Outside of requests made pursuant to paragraph (f) of this section, if a third party requests records about a subject individual, the third party requester must provide verification of the subject individual's identity in the manner provided in paragraph (e) of this section along with

the subject individual's written consent authorizing disclosure of the records to the third party requester, or by submitting proof by the requester that the subject individual is deceased (*e.g.*, a copy of a death certificate or an obituary). As an exercise of its administrative discretion, each component can require a third-party requester to supply additional information to verify that the subject individual has consented to disclosure or is deceased.

§ 5.22 Responsibility for responding to requests for access to records.

(a) *In general.* Except as stated in paragraphs (c), (d), and (e) of this section, the component that first receives a request for access to a record, and has possession of that record, is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only those records in its possession as of the date the component begins its search for them. If any other date is used, the component will inform the requester of that date.

(b) *Authority to grant or deny requests.* The head of a component, or the component head's designee, is authorized to grant or deny any request for access or amendment to a record of that component.

(c) *Consultations, coordination, and referrals.* All consultations, coordination, and referrals for requests of records subject to the Privacy Act or JRA will follow the same process and procedures as described in § 5.4(d), including how to handle those requests that pertain to law enforcement information, as specified in § 5.4(d)(2), and classified information, as specified in § 5.4(d)(2) and (e). Further, whenever a request is made for access to a record containing information that has been classified by or may be appropriate for classification by another component or agency under any relevant executive order concerning the classification of records, the receiving component will refer to § 5.24 for processing.

(d) *Release of medical records.* (1) Generally, an individual has the right to access their medical records maintained by the Department. Special procedures for requests from an individual

requesting medical records that include psychological records for which direct release may cause harm to the individual requesting access are set forth in paragraph (d)(2) of this section.

(2) If a request is made for access to medical records that include psychological records, and a component medical practitioner or qualified designee determines that direct release is likely to adversely affect the individual who is requesting access, the component will request the individual to provide the name and contact information of a representative who is capable of ameliorating the potential adverse effect. The representative may be a physician or other health professional who will be willing to review the record and inform the requester of its contents. Once provided, the component FOIA office or designated component official will send the medical records to the individual's designated representative. The component will inform the subject individual in writing (either via U.S. mail or electronic mail whenever possible) that the record has been sent to that individual's chosen representative. The representative does not have the discretion to withhold any part of the individual's record. If the subject individual does not comply with the procedural requirement to designate a representative, the component may decline to release the requested information.

(3) Paragraph (d)(2) of this section does not apply to Coast Guard records held by another agency.

(e) *Notice of referral.* Whenever a component refers all or any part of the responsibility for responding to a request to another component or agency, it ordinarily will notify the requester of the referral and inform the requester of the name of each component or agency to which the request has been referred and of the part of the request that has been referred.

(f) *Timing of responses to consultations and referrals.* All consultations and referrals received by DHS will be handled according to the date the Privacy Act or JRA access request was initially received by the first component or agency, not any later date.