

§ 5.22

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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.

(g) *Agreements regarding consultations and referrals.* Components may establish agreements with other components or agencies to eliminate the need for consultations or referrals with respect to types of records.

§ 5.23 Responses to requests for access to records.

(a) *In general.* Components should, to the extent practicable, communicate with requesters having access to the internet using electronic means, such as email or web portal.

(b) *Acknowledgements of requests.* Consistent with the procedures in subpart A of this part, a component will acknowledge the request and assign it an individualized tracking number if it will take longer than ten (10) working days to process. Components will include in the acknowledgement letter a brief description of the records sought to allow requesters to more easily keep track of their requests. Further, in the acknowledgment letter, the component will confirm the requester's agreement to pay fees under §§ 5.21(d) and 5.29.

(c) *Grants of requests for access.* Consistent with the procedures in subpart A to this part, a component will have twenty (20) working days from when a request is received to determine whether to grant or deny the request unless there are unusual or exceptional circumstances as defined by the FOIA and set out in § 5.5(c). Once a component decides to grant a request for access to record(s) in whole or in part, it will notify the requester in writing. The component will inform the requester in the notice of any fee charged under §§ 5.21(d) and 5.29 and will disclose records to the requester promptly upon payment of any applicable fee. The component will inform the requester of the availability of its FOIA Liaison to offer assistance.

(d) *Adverse determinations of requests for access.* A component making an adverse determination denying a request for access in any respect will notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the requested record does not exist or cannot be located; or the record requested is not subject to

the Privacy Act or JRA. Further, adverse determinations also include disputes regarding fees, or denials of a request for expedited processing. The denial letter will be signed by the head of the component, or the component head's designee, and will include:

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

(2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied by the component in denying the request; and

(3) A statement that the denial may be appealed under § 5.25(a) and a description of the requirements of § 5.25(a).

(e) *JRA access requests.* For purposes of responding to a JRA access request, a covered person is subject to the same limitations, including exemptions and exceptions, as an individual is subject to under section 552a of title 5, United States Code, when pursuing access to records. The implementing regulations and reasons provided for exemptions can be found in appendix C to this part.

§ 5.24 Classified information.

On receipt of any request involving classified information, the component will determine whether information is currently and properly classified and take appropriate action to ensure compliance with 6 CFR part 7. Whenever a request is made for access to a record that is covered by a system of records containing information that has been classified by or may be appropriate for classification by another component or agency under any applicable executive order, the receiving component will consult the component or agency that classified the information. Whenever a record contains information that has been derivatively classified by a component or agency because it contains information classified by another component or agency, the component will consult the component or agency that classified the underlying information. Information determined to no longer require classification will not be withheld from a requester based on exemption (k)(1) of the Privacy Act. On receipt of any appeal involving classified information, the DHS Office of the General Counsel, or its designee, shall