

§ 5.25

6 CFR Ch. I (1–1–23 Edition)

take appropriate action to ensure compliance with 6 CFR part 7.

§ 5.25 Administrative appeals for access requests.

(a) *Requirements for filing an appeal.* An individual may appeal an adverse determination denying the individual's request for access in any respect to the appropriate Appeals Officer. For the address of the appropriate component Appeals Officer, an individual may contact the applicable component FOIA Liaison using the information in appendix A to this part, visit www.dhs.gov/foia, or call 1-866-431-0486. An appeal must be in writing, and to be considered timely it must be postmarked or, in the case of electronic submissions, transmitted to the Appeals Officer within 90 working days, consistent with the procedures in subpart A to this part, after the date of the component's response. An electronically filed appeal will be considered timely if transmitted to the Appeals Officer by 11:59:59 p.m. EST or EDT on the 90th working day. The appeal should clearly identify the component determination (including the assigned request number if the requester knows it) that is being appealed and should contain the reasons the requester believes the determination was erroneous. For the quickest possible handling, an individual should mark both the appeal letter and the envelope "Privacy Act Appeal" or "Judicial Redress Act Appeal."

(b) *Adjudication of appeals.* The DHS Office of the General Counsel, or its designee, (e.g., Component Appeals Officer) is the authorized appeals authority for DHS. On receipt of any appeal involving classified information, the Appeals Officer will consult with the Chief Security Officer and take appropriate action to ensure compliance with 6 CFR part 7. If the appeal becomes the subject of a lawsuit, the Appeals Officer is not required to act further on the appeal.

(c) *Appeal decisions.* Consistent with the procedures in subpart A to this part, the decision on an appeal will be made in writing generally twenty (20) working days after receipt. However, consistent with the procedures in subpart A to this part, the time limit for

responding to an appeal may be extended provided the circumstances set forth in 5 U.S.C. 552(a)(6)(B)(i) are met. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the affirmance, including any Privacy Act exemption applied, and will inform the requester of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed or modified on appeal in whole or in part, the requester will be notified in a written decision and the request will be reprocessed in accordance with that appeal decision. An adverse determination by the DHS Office of the General Counsel or its designee or Component Appeals Officer will be the final action of the Department.

(d) *Appeal necessary before seeking court review.* If an individual wishes to seek review by a court of any adverse determination or denial of a request by DHS within the allotted 20 working days to respond unless there are unusual or exceptional circumstances, that individual must first appeal it under this subpart. An appeal will not be acted on if the request becomes a matter of litigation.

§ 5.26 Requests for amendment or correction of records.

(a) *How made and addressed.* Unless the record is not subject to amendment or correction as stated in paragraph (f) of this section, an individual may make a request for amendment or correction of a record of the Department about that individual by writing directly to the component that maintains the record, following the procedures in § 5.21. The request should identify each record in question, state the amendment or correction requested, and state the reason why the requester believes that the record is not accurate, relevant, timely, or complete. The requester may submit any documentation that the requester thinks would support the request. If the individual believes that the same record is in more than one system of records, the requester should state that and address the request to each component that maintains a system of records containing the record.

(b) *Component responses.* Within ten working days of receiving a request for amendment or correction of records, a component will send the requester a written acknowledgment of its receipt of the request, and it will promptly notify the requester whether the request is granted or denied. If the component grants the request in whole or in part, it will describe the amendment or correction made and will advise the requester of the right to obtain a copy of the corrected or amended record, in disclosable form. If the component denies the request in whole or in part, it will send the requester a letter signed by the head of the component, or the component head's designee, that will state:

(1) The reason(s) for the denial; and

(2) The procedure for appeal of the denial under paragraph (c) of this section, including the name and business address of the official who will act on the appeal.

(c) *Appeals.* Within 90 working days after the date of the component's response, the requester may appeal a denial of a request for amendment or correction to the Component Appeals Officer or the DHS Office of the General Counsel or its designee. The Component Appeals Officer or the DHS Office of the General Counsel or its designee must complete its review and make a final determination on the requester's appeal no later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review unless good cause is shown, and communicated to the individual, for which the 30-day period may be extended for an additional 30 days. If the appeal is denied, the requester will be advised of the right to file a Statement of Disagreement as described in paragraph (d) of this section and of the right under the Privacy Act, 5 U.S.C. 552a(d)(3), for court review of the decision. If an individual wishes to seek review by a court of any adverse determination or denial of a request, that individual must first appeal it under this subpart. For purposes of responding to a JRA amendment 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 amendment to records. The implementing regulations and reasons provided for exemptions can be found in appendix C to this part, titled DHS Systems of Records Exempt from the Privacy Act.

(d) *Statements of Disagreement.* If an individual's appeal under this section is denied in whole or in part, that individual has the right to file a Statement of Disagreement, unless exempt, that states the individual's reason(s) for disagreeing with the Department's denial of the request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. The individual's Statement of Disagreement must be sent to the component involved, which will place it in the system of records in which the disputed record is maintained and will mark the disputed record to indicate that a Statement of Disagreement has been filed and where in the system of records it may be found.

(e) *Notification of amendment/correction or disagreement.* Within 30 working days of the amendment or correction of a record, the component that maintains the record will, unless exempt, notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made or should have been made, that the record has been amended or corrected. If an individual has filed a Statement of Disagreement, the component will append a copy of it to the disputed record whenever the record is disclosed and may also append a concise statement of its reason(s) for denying the request to amend or correct the record.

(f) *Records not subject to amendment or correction.* The following records are not subject to amendment or correction:

(1) Transcripts of testimony given under oath or written statements made under oath;

(2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings;

§ 5.27

(3) Presentence records that originated with the courts; and

(4) Records in systems of records that have been exempted from amendment and correction under the Privacy Act (5 U.S.C. 552a(j) or (k)) pursuant to a final rule published in the FEDERAL REGISTER.

§ 5.27 Requests for an accounting of record disclosures.

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in paragraph (b)(1) of this section), an individual may make a request for an accounting of any disclosure that has been made by the Department to another person, organization, or agency of any record about the requester. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. A request for an accounting should identify each record in question and should be made by writing directly to the Department component that maintains the record, following the procedures in § 5.21.

(b) *Where accountings are not required.* Components are not required to provide accountings to the requester where they relate to:

(1) Disclosures for which accountings are, by statute (5 U.S.C. 552a(c)(1)), not required to be kept, such as disclosures that are made to officers and employees within the agency and disclosures that are required to be made under the FOIA, or for records covered by the JRA;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from those law enforcement agencies specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures made from systems of records that have been exempted from accounting requirements by a rule-making pursuant to 5 U.S.C. 552a(j) or (k).

(c) *Appeals.* A requester may appeal a denial of a request for an accounting to the Component Appeals Officer or the DHS Office of the General Counsel or its designee in the same manner as a

6 CFR Ch. I (1–1–23 Edition)

denial of a request for access to records (*see* § 5.25) and the same procedures will be followed.

§ 5.28 Preservation of records.

Each component will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested 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 4.2. Records will not be disposed of while they are the subject of a pending request, appeal, lawsuit, or litigation or audit hold under the Act.

§ 5.29 Fees.

(a) Fees for access requests granted in full under the Privacy Act are limited to duplication fees, which are chargeable to the same extent that fees are chargeable under subpart A of this part. An access request not granted in full under the Privacy Act will be processed under the FOIA and will be subject to all fees chargeable under the applicable FOIA regulations. Fees are not charged for processing amendment and accounting requests.

(b) DHS will not process a request under the Privacy Act or JRA from persons with an unpaid fee from any previous Privacy Act or JRA request to any Federal agency until that outstanding fee has been paid in full to the agency.

§ 5.30 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When the component discloses an individual's information covered by a system of records pursuant to an order from a court of competent jurisdiction, and the order is a matter of public record, the Privacy Act requires the component to send a notice of the disclosure to the last known address of the person whose record was disclosed. Notice will be given within a reasonable time after the component's receipt of the order, except that in a case in which the order is not a matter of public record, the notice will be given only after the order becomes public. This notice will be mailed to the individual's last known