

Office of the Secretary, USDA

§ 1.10

compel the disclosure of confidential commercial information, the component will promptly notify the submitter.

(i) *Corresponding notice to requester.* The component must notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever 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.

§ 1.9 Administrative appeals.

(a) *Appeals of adverse determinations.* If a requester is dissatisfied with a component's response to his or her request, the requester may submit a written appeal of that component's adverse determination denying the request in any respect.

(b) *Deadline for submitting an appeal.* Requesters must make the appeal in writing. To be considered timely, the appeal must be postmarked, or in the case of electronic submissions transmitted, within 90 calendar days of the date of the adverse determination. Components adjudicating appeals will issue a decision on an appeal, within 20-working days of its date of receipt, plus any extension authorized by § 1.6(d).

(c) *Appeals officials.* Each component will provide for review of appeals by an official different from the official who made the initial determination(s).

(d) *Components' responses to appeals.* The decision on an appeal will be made in writing.

(1) If the component grants the appeal in part or in whole, it will inform the requester of any conditions surrounding the granting of the request (*e.g.*, payment of fees). If the component grants only a portion of the appeal, it will treat the portion not granted as a denial.

(2) If the component denies the appeal, either in part or in whole, it will inform the requester of that decision and of the following:

(i) The reasons for denial, including any FOIA exemptions asserted;

(ii) The name and title or position of each official responsible for denial of the appeal;

(iii) The availability of mediation services offered by the OGIS of the National Archives and Records Administration as a non-exclusive alternative to litigation; and

(iv) The right to judicial review of the denial in accordance with 5 U.S.C. 552(a)(4)(B).

(e) *Legal sufficiency review of an appeal.* If a component makes the determination to deny an appeal in part or whole, that component will send a copy of all records to the Assistant General Counsel, General Law and Research Division, that the Office of the General Counsel ("OGC") would need to examine to provide a legal sufficiency review of the component's decision.

(1) Frequently, these records will include a copy of the unredacted records requested, a copy of the records marked to indicate information the component proposes to withhold, all correspondence relating to the request, and a proposed determination letter. When the volume of records is so large as to make sending a copy impracticable, the component will enclose an informative summary and representative sample of those records. The component will not deny an appeal until it receives concurrence from the Assistant General Counsel.

(2) With regard to appeals involving records of OIG, the records in question will be referred to the OIG Office of Counsel, which will coordinate all necessary reviews.

(f) *Submission of an appeal before judicial review.* Before seeking review by a court of a component's adverse determination, a requester generally must first submit a timely administrative appeal.

§ 1.10 Authentication under Departmental Seal and certification of records.

(a) *In general.* Requests seeking either authenticated or certified copies of records will generally be processed under the FOIA. FOIA search, review, and duplication fees, where applicable, may also apply. However, because the costs for authenticated and certified copies are outside of the FOIA, the provisions of § 1.12 that call for the automatic waiver of FOIA fees under \$25.00 do not apply.

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(b) *Authentication of records.* (1) Authentication provides confirmation by a USDA officer that a certified copy of a record is what it purports to be, an accurate duplicate of the original record.

(2) When a request is received for an authenticated copy of a record that the component determines may be made available, under the FOIA, each component will send an authentic (*i.e.*, correct) copy of the record to the Assistant General Counsel in the OGC Division responsible for the applicable component program or other designee of the Secretary of Agriculture. The Assistant General Counsel for the applicable component program or other designee of the Secretary of Agriculture will confirm the authenticity of the record and affix the seal of the USDA to it.

(3) The Hearing Clerk in the Office of Administrative Law Judges may authenticate copies of records for the Hearing Clerk. The Director of the National Appeals Division may authenticate copies of records for the National Appeals Division. The Inspector General is the official who authenticates copies of records for OIG.

(4) When any component determines that a record for which authentication is requested may be made available only in part, because certain portions of it are exempt from release under the FOIA, the component will process the record under the FOIA and make any needed redactions, including notations on the record as to the FOIA exemption(s) which require(s) the removal of the information redacted. In such an instance, the component will supply a copy of the record both in its unredacted state and in its redacted state to the party authorized to perform authentication, along with a copy of the proposed determination letter regarding the withholding of the information redacted.

(5) The cost for authentication of records is \$10.00 each.

(c) *Certification of records.* (1) Certification is the procedure by which a USDA official confirms that a copy of a record is a true reproduction of the original.

(2) When a request is received for a certified copy of a record that the com-

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ponent determines may be made available under the FOIA, each component will prepare a correct copy and a statement attesting that the copy is a true and correct copy.

(3) When any component determines that a record for which a certified copy is requested may be made available only in part, because certain portions of it are exempt from release under the FOIA, the component will process the record under the FOIA and make any needed redactions, including notations on the record as to the FOIA exemption(s) which require(s) the removal of the information redacted.

(4) The cost for certification of records is \$5.00 each.

§ 1.11 Preservation of records.

Components will preserve all correspondence and records relating to requests and appeals received under this subpart, as well as copies of all requested records, until disposition or destruction of such correspondence and records is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the NARA. Agency records will not be disposed of, or destroyed, while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 1.12 Fees and fee schedule.

(a) *Authorization to set FOIA fees.* The Chief Financial Officer is delegated authority to promulgate regulations providing for a uniform fee schedule applicable to all components of the USDA regarding requests for records under this subpart. The regulations providing for a uniform fee schedule are found in appendix A of this subpart.

(b) *In general.* Components will charge for processing requests under the FOIA in accordance with the provisions of appendix A of this subpart and the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget (“OMB Fee Guidelines”).

(c) *Guidance for lowering FOIA fees.* Components will ensure that searches, review, and duplication are conducted in the most efficient and least expensive manner practicable.

(d) *Communicating with requesters on fee issues.* In order to resolve any fee