

§ 1.6

such releases are not otherwise specifically prohibited by Executive Order, statute, or regulation.

(f) *Reasonable segregation of records.* If a requested record contains portions that are exempt from mandatory disclosure and other portions that are not exempt, the processing component will ensure that all reasonably segregable nonexempt portions are disclosed, and that all exempt portions are identified according to the specific exemption(s) that are applicable.

(g) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect will notify the requester of that determination in writing. The written communication to the requester will include the name and title of the person responsible for the adverse determination, if other than the official signing the letter; a brief statement of the reason(s) for the determination, including any exemption(s) applied in denying the request; an estimate of the volume of records or information withheld, such as the number of pages or some other reasonable form of estimation; a statement that the determination may be appealed, followed by a description of the requirements to file an appeal; and a statement advising the requester that he or she has the right to seek dispute resolution services from the component's FOIA Public Liaison or the Office of Government Information Services ("OGIS"). An adverse determination includes:

(1) A determination to withhold any requested record in whole or in part;

(2) A determination that a requested record does not exist or cannot be found, when no responsive records are located and released;

(3) A determination that a record is not readily reproducible in the format sought by the requester;

(4) A determination on any disputed fee matter; or

(5) A denial of a request for expedited treatment.

(h) Upon request, the component will provide an estimated date by which the agency expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the component may provide interim re-

7 CFR Subtitle A (1-1-24 Edition)

sponses, releasing the records on a rolling basis.

§ 1.6 Timing of responses to perfected records requests.

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt. In instances involving misdirected requests that are re-routed pursuant to § 1.4(c), the response time will commence on the date that the request is received by the proper component's office that is designated to receive requests, but in any event not later than 10-working days after the request is first received by any component's office that is designated to receive requests.

(b) *Response time for responding to requests.* Components ordinarily will inform requesters of their determination concerning requests within 20 working days of the date of receipt of the requests, plus any extension authorized by paragraph (d) of this section.

(c) *Multitrack processing and how it affects requests.* All components must designate a specific track for requests that are granted expedited processing in accordance with the standards set forth in paragraph (f) of this section. A component also may designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors a component may consider are the number of pages involved in processing the request and the need for consultations or referrals. Upon request, components will advise requesters of the track into which their request falls and, when appropriate, will offer the requesters an opportunity to narrow their request so that it can be placed in a different processing track in order to decrease the processing time.

(d) *Circumstances for extending the response time.* Whenever the component cannot meet the statutory time limit for processing a request because of "unusual circumstances," as defined in the FOIA, and the component extends the time limit on that basis, the component must, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by

which the component estimates processing of the request will be completed. Where the extension exceeds 10 working days, the component must, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. The component must make available its designated FOIA contact or its FOIA Public Liaison for this purpose. The component also must alert requesters to the availability of the OGIS to provide dispute resolution services.

(e) *Procedures for requesting expedited processing.* A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(1) Requests and appeals will be processed on an expedited basis whenever it is determined by the component that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information.

(2) Requests for expedited processing may be made at any time. Requests based on paragraphs (e)(1)(i) or (ii) of this section must be submitted to the component that maintains the records requested. Components receiving requests for expedited processing will decide whether to grant them within 10 calendar days of their receipt of these requests and will notify the requesters accordingly. If a request for expedited treatment is granted, the request or appeal will be given priority, placed in the processing track for expedited requests or appeals, and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 1.7 Records responsive to records requests.

(a) In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date that the component begins its search.

(b) A component is not required to create a new record in order to fulfill a request for records. The FOIA does not require agencies to do research, to analyze data, or to answer written questions in response to a request.

(c) Creation of records may be undertaken voluntarily.

(d) A component will provide a record in the format specified by a requester, if the record is readily reproducible by the component in the format requested.

§ 1.8 Requirements for processing records requests seeking business information.

(a) *In general.* Each component is responsible for making the final determination with regard to the disclosure or nondisclosure of business information in records submitted by an outside entity.

(b) *Definitions.* For purposes of this section:

(1) *Confidential commercial information* means commercial or financial information obtained by the USDA from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, or Tribe, but not including another Federal Government entity, that provides confidential commercial information, either directly or indirectly, to the Federal Government.

(c) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good-faith efforts to designate by appropriate markings, at the time of submission, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.