



6117-01-P

AFRICAN DEVELOPMENT FOUNDATION

22 CFR Part 1502

RIN 3005-AA01

Availability of Records

AGENCY: U.S. African Development Foundation.

ACTION: Final Rule.

SUMMARY: The U.S. African Development Foundation (USADF) is revising its regulations on the availability of records in accordance with the FOIA Improvement Act of 2016, Public Law 114-185, and to make minor technical amendments and corrections.

DATES: This final rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: June B. Brown, 202-233-8882.

SUPPLEMENTARY INFORMATION

I. Background

The U.S. African Development Foundation (USADF) is revising its regulations on the availability of records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, to conform to requirements of the FOIA Improvement Act of 2016, Public Law 114-185, and to make minor technical amendments and corrections to the regulations.

II. Section-by-Section Analysis

Section 1502.1

In § 1502.1(a) the rule adds “United States” before “African Development Foundation”, adds “(FOIA)” after “Freedom of Information Act”, and otherwise revises the section to read as set forth in the regulatory text.

In § 1502.1(c) the rule removes “Director of Administration and Finance (A&F)” and adds in its place “Chief FOIA Officer”.

Section 1502.2

In § 1502.2(b) the rule adds “United States” before “African Development Foundation”.

Section 1502.3

The rule revises § 1502.3 to read as set forth in the regulatory text.

Section 1502.4

In § 1502.4 the rule revises paragraphs (a) and (c), and in paragraph (b) removes the sentence: “Blanket requests or requests for ‘the entire file of’ or ‘all matters relating to’ a specified subject will not be accepted.”

Section 1502.5

Section § 1502.5 is revised as set forth in the regulatory text.

Section 1502.6

The rule revises the first sentence of § 1502.6 to read as set forth in the regulatory text .

Section 1502.7

The rule amends § 1502.7 to add a new paragraph (a), to remove paragraph (c), to redesignate paragraphs (a) and (b) as paragraphs (b) and (c), and to revise paragraphs (b), (c)(2), (c)(3) and (c)(4) set forth in the regulatory text.

Section 1502.8

The rule revises §1502.8 to read as set forth in the regulatory text.

Section 1502.9

The rule amends § 1502.9 to revise paragraphs (a), (b), and (c), and to add paragraphs (d) and (e) to read as set forth in the regulatory text.

III. Matters of Regulatory Procedure

Executive Order 12866

The regulations have been determined to be non-significant within the meaning of Executive Order 12866.

Regulatory Flexibility Act

The USADF President, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed the regulations and by approving them certifies that they will not have a significant economic impact on a substantial number of small entities. The regulations pertain to the availability of USADF records under the Freedom of Information Act.

Unfunded Mandates Reform Act of 1995

These regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year,

and they will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 22 CFR Part 1502

Freedom of information.

Approved: January 30, 2017

June B. Brown,

Interim General Counsel, U.S. African Development Foundation

For the reasons set forth in the preamble, USADF revises 22 CFR part 1502 to read as follows:

PART 1502 – AVAILABILITY OF RECORDS

Sec.

1502.1 Introduction.

1502.2 Definitions.

1502.3 Access to Foundation records.

1502.4 Written requests.

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1502.6 Records of other departments and agencies.

1502.7 Fees.

1502.8 Exemptions.

1502.9 Processing of requests.

1502.10 Judicial review.

Authority: Title V of the International Security and Development Cooperation Act of 1980, 22 U.S.C. 290h; 5 U.S.C. 552; FOIA Improvement Act of 2016, Public Law 114-185.

§ 1502.1 Introduction.

(a) The United States African Development Foundation makes information about its operations, procedures, and records freely available to the public in accordance with the provisions of the Freedom of Information Act (FOIA).

(b) The Foundation will make the fullest possible disclosure of its information and identifiable records consistent with the provisions of the Act and the regulations in this part.

(c) The Chief FOIA Officer shall be responsible for the Foundation's compliance with the processing requirements of the Freedom of Information Act.

§ 1502.2 Definitions.

As used in this part, the following words have the meanings set forth below:

(a) Act means the Act of June 5, 1967, sometimes referred to as the “Freedom of Information Act” or the Public Information Section of the Administrative Procedure Act, as amended, Pub. L. 90-23, 81 Stat. 54, codified at 5 U.S.C. 552.

(b) Foundation means the United States African Development Foundation.

(c) President means the President of the Foundation.

(d) Record(s) includes all books, papers, or other documentary materials made or received by the Foundation in connection with the transaction of its business which have been preserved or are appropriate for preservation by the Foundation as evidence of its organization, functions, policies, decisions, procedures, operations, or other activities, or because of the informational value of the data contained therein. Library or other material acquired and preserved solely for reference or exhibition purposes, and stocks of publications and other documents provided by the Foundation to the public in the normal course of doing business are not included within the definition of the word “records.” The latter will continue to be made available to the public without charge.

§ 1502.3 Access to Foundation records.

Any person desiring to have access to Foundation records may call or apply in person between the hours of 10 a.m. and 4 p.m. on weekdays (holidays excluded) at the Foundation offices or mail a request to the Foundation at 1400 I Street, NW, Suite 1000, Washington, DC 20005, or submit a request by email to “info@usadf.gov” on the Foundation’s website, www.usadf.gov. Requests for access under the Freedom of Information Act should be made to the Chief FOIA Officer at the Foundation offices. If a request is made for copies of any record,

the Chief FOIA Officer will assist the person making such request in seeing that such copies are provided according to the rules in this part.

§ 1502.4 Written requests.

In order to facilitate the processing of written requests, every petitioner should:

(a) Address his or her request to: Chief FOIA Officer, United States African Development Foundation, 1400 I Street, NW, Suite 1000, Washington, DC 20005.

Both the envelope and the request itself, or the email, should be clearly marked: “Freedom of Information Act Request.”

(b) Identify the desired record by name, title, author, a brief description, or number, and date, as applicable. The identification should be specific enough so that a record can be identified and found without unreasonably burdening or disrupting the operations of the Foundation. If the Foundation determines that a request does not reasonably describe the records sought, the requestor shall be advised what additional information is needed or informed why the request is insufficient.

(c) Include a check or money order to the order of the “United States African Development Foundation” covering the appropriate search and copying fees, or a request for determination of the fee, or a specified amount that the requestor is willing to pay in connection with the FOIA request.

§ 1502.5 Records available at the Foundation.

Records that the FOIA requires be made available for public inspection in an electronic format may be accessed through the Foundation’s website.

§ 1502.6 Records of other departments and agencies.

Responsive records located by the Foundation which have been originated by, or are primarily the concerns of, another U.S. department or agency will be forwarded to the particular department or agency involved, and the requestor so notified. In response to requests for records or publications published by the Government Printing Office or other government printing

activity, the Foundation will refer the petitioner to the appropriate sales office and refund any fee payments which accompanied the request.

§ 1502.7 Fees.

(a) Authority. USADF charges for processing FOIA requests in accordance with the Uniform Freedom of Information Act Fee Schedule and Guidelines of the Office of Management and Budget, 52 FR 10012-10020 (March 17, 1987).

(b) When charged. Fees shall be charged in accordance with the schedules contained in paragraph (c) of this section for services rendered in responding to requests for Foundation records under this subpart. Requestors may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor. Fees shall also not be charged where they would amount, in the aggregate, for a request or series of related requests, to \$25 or less.

(c) Services charged for and amount charged. For the services listed below expended in locating or making available records or copies thereof, the following charges shall be assessed:

(1) Copies. For copies, \$.10 per copy of each page.

(2) Clerical searches. For each one quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and producing requested records, \$4.75.

(3) Non-routine, non-clerical searches. Where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and where the time required is substantial, for each one quarter hour spent in excess of the first quarter hour, \$10.00. No charge shall be made for the time spent in resolving legal or policy issues affecting access to records of known contents.

(4) Other charges. When a response to a request requires services or materials other than those described in paragraphs (c) (1) through (3) of this section, the direct cost of such services to

the Foundation may be charged, providing the requestor has been given an estimate of such cost before it is incurred.

§ 1502.8 Exemptions.

The categories of records maintained by the Foundation which may be exempted from disclosure are described in 5 U.S.C. 552(b).

§ 1502.9 Processing of requests.

(a) Processing. A person who has made a written request for records which meets the requirements of §1502.4 shall be informed by the Chief FOIA Officer within 20 working days after receipt of the request of the Foundation's decision whether to deny or grant access to the records and the right of the requestor to seek assistance from the Foundation's Chief Public Liaison.

(b) Denials. If the Chief FOIA Officer, with the concurrence of the General Counsel, denies a request for records, the requestor will be informed of the name and title of the official responsible for the denial, the reasons for it, and the right to appeal the decision to the President of the Foundation within 90 calendar days of receipt of the denial. The President shall determine any appeal within 20 days of receipt and notify the requestor within the time period of the decision. If the decision is to uphold the denial, the requestor will be informed of the reasons for the decision, of the right to a judicial review of the decision in the federal courts, and of the dispute resolution services offered by the FOIA Public Liaison of the Foundation or the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation.

(c) Extension of time. In unusual circumstances, as defined by the FOIA, to the extent reasonably necessary to the proper processing of requests, the time required to respond to a FOIA request or an appeal may be extended for an additional 10 working days upon written notification to the requestor providing the reasons for the extension. If the extension goes beyond 10 working

days, USADF will notify the requestor of services provided by the FOIA Public Liaison and the Office of Government Information Services.

(d) Expedited processing. USADF shall process requests and appeals on an expedited basis where the requestor demonstrates a compelling need for the records, as defined in 5 U.S.C. 552(a)(6)(E)(v). USADF shall make a determination of whether to provide expedited processing, and shall notify the requestor of the determination, within 10 calendar days after the receipt of the request. USADF shall provide expeditious consideration of administrative appeals of determinations of whether to provide expedited processing.

(e) Confidential commercial information. Whenever records containing confidential commercial information are requested under the FOIA and USADF determines that it may be required to disclose the records, USADF shall promptly provide written notice to the submitter of the confidential commercial information, in conformity with the procedures set forth in Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, 3 CFR, 1987 Comp., p. 235.

§ 1502.10 Judicial review.

On complaint, the district court of the United States in the district in which the complainant resides, or has his/her principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the Foundation from withholding Foundation records, and to order the production of any agency records improperly withheld from the complainant (5 U.S.C. 552(a)(4)(B)).

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