



PRESIDIO TRUST

4310-4R-P

36 CFR Parts 1007, 1008, 1009 and 1011

RIN 3212-AA08; 3212-AA09; 3212-AA10; 3212-AA11

Freedom of Information Act; Privacy Act; Federal Tort Claims Act; Debt Collection Regulations

AGENCY: Presidio Trust.

ACTION: Final rule.

SUMMARY: This final rule revises Presidio Trust (Trust) regulations addressing requests under the Freedom of Information Act (FOIA), requests under the Privacy Act, administrative claims under the Federal Tort Claims Act (FTCA), and Debt Collection. The Trust is revising these regulations to update, clarify and streamline the language of several procedural provisions, and to incorporate amendments pursuant to the OPEN Government Act of 2007, the FOIA Improvement Act of 2016, and the Digital Accountability and Transparency Act of 2014.

DATES: These final rules are effective November 15, 2018.

FOR FURTHER INFORMATION CONTACT: Steve Carp, Legal Analyst, (415) 561-5300, scarp@presidiotrust.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 104(j) of the Presidio Trust Act (16 U.S.C. 460bb appendix) authorizes the Trust to prescribe regulations governing the manner in which it conducts its business and exercises its powers. This final rule revises the Trust's administrative regulations at 36 CFR part 1007 (FOIA), part 1008 (Privacy Act), part 1009 (FTCA), and part 1011 (Debt Collection), as described below. In addition, the Trust has made minor ministerial changes and corrected typographical errors to these parts of its regulations.

Revisions to 36 CFR Part 1007 (Requests Under the FOIA)

The Trust adopted FOIA regulations effective January 29, 1999. The OPEN Government Act of 2007 (OPEN Act), among other things, provided a statutory definition of a "representative of the news media" on September 14, 2007. The FOIA Improvement Act of 2016 (FOIA Act) amended the FOIA on June 30, 2016. The Trust's final rule conforms its regulations to the definition of a "representative of the news media" in the OPEN Act and conforms its regulations to the FOIA Act, as well as to the Department of Justice's revised FOIA regulations. Specifically, this rule revises § 1007.1 (Purpose and scope) by adding references to the text of FOIA and the Trust's Privacy Act regulations; § 1007.2 (Records available) by adopting a policy of presumption of openness and the "foreseeable harm" standard; § 1007.3 (Requests for records) by providing a requester an opportunity to consult with the Trust's FOIA Officer to perfect a request and adding procedures to verify the requester's identity; § 1007.4 (Preliminary processing of requests) by specifying the date used for searching, adding consultation and referral

procedures for requests of records of other departments and agencies, clarifying that consultation with submitters of commercial or financial information includes consultation with entities that are not individuals, and adding procedures to notify submitters and requesters of actions taken with respect to requests containing commercial or financial information; § 1007.5 (Action on initial requests) by specifying decisions that constitute adverse determinations of requests, adding procedures for notifying requesters of dispute resolution services, and adding types of requests that would qualify for expedited processing; § 1007.6 (Time limits for processing initial requests) by adding procedures for a requester to modify a request when an extension of time is necessary to respond to a request, and adding procedures for notifying requesters of dispute resolution services; § 1007.7 (Appeals) by changing the time period for requesters to file an administrative appeal from 20 working days to 90 calendar days and requiring an appeal of an adverse determination before seeking a court order; § 1007.8 (Action on appeals) by adding procedures for notifying requesters of dispute resolution services; and § 1007.9 (Fees) by adding definitions for the terms “direct costs” and “review” and modifying the definition for “representative of the news media.”

This rule also revises § 1007.9 to update the fees charged by the Trust for processing FOIA requests. The Trust previously published its fees on December 2, 1998 in its Interim Compendium. Under this final rule, the Trust’s Executive Director will set fees for processing these requests and will publish the fees on the Trust’s website instead of

the Interim Compendium. With these changes, the fees previously listed in § 1007.9 of the Interim Compendium will no longer be effective.

Revisions to 36 CFR Part 1008 (Requests Under the Privacy Act)

The Trust adopted Privacy Act regulations effective January 29, 1999. There has been little statutory change to the Privacy Act of 1974 since the Trust adopted its Privacy Act regulations. However, this rule conforms its regulations to guidance issued by the Department of Justice and the Office of Management and Budget. Specifically, this rule revises § 1008.2 (Definitions) by changing the definition of “individual”; § 1008.9 (Disclosure of records) by adding procedures for notice of court-ordered and emergency disclosures; and §§ 1008.11 (Request for notification of existence of records: Submission), 1008.14 (Requests for access to records: Submission), and 1008.19 (Petitions for amendment: Submission and form) by adding procedures to verify the requester’s identity.

This rule also revises § 1008.15 (Requests for access to records: Initial decision) to update the fees charged by the Trust for processing Privacy Act requests. The Trust previously published its fees on December 2, 1998 in its Interim Compendium. Under this final rule, the Trust’s Executive Director will set fees for processing these requests and will publish the fees on the Trust’s website instead of the Interim Compendium. With these changes, the fees previously listed in § 1008.15 of the Interim Compendium will no longer be effective.

Revisions to 36 CFR Part 1009 (Administrative Claims Under the FTCA)

The Trust adopted FTCA regulations effective January 29, 1999. This final rule revises § 1009.4 (Payment of claims) by adding procedures the Trust uses to pay FTCA claims from its proceeds or revenues.

Revisions to 36 CFR Part 1011 (Debt Collection)

The Trust adopted debt collection regulations effective January 12, 2006. The Digital Accountability and Transparency Act of 2014 amended federal debt collection law to require federal agencies to refer eligible delinquent debts to the Department of the Treasury for administrative offset after 120 days, rather than 180 days. This final rule makes minor revisions to §§ 1011.4 (What notice will the Presidio Trust send to a debtor when collecting a debt?), 1011.9 (When will the Presidio Trust transfer a debt to the Financial Management Service for collection?), and 1011.10 (How will the Presidio Trust use administrative offset (offset of non-tax federal payments) to collect a debt?) to reflect this requirement.

Response to Comments

On March 6, 2018, the Trust published a proposed rulemaking in the **Federal Register** (83 FR 9459) and requested comments over a 49-day period ending on April 24, 2018.

The Trust received three comment submissions, and these submissions were considered in drafting this final rule, as follows:

1. One comment suggested changing the word “must” to “should” in § 1007.3(b)(1) when invoking the FOIA in a request for records. The Trust has made this revision.

2. One comment suggested replacing the phrase “To expedite processing” with “To facilitate handling” in § 1007.3(b)(5) and § 1007.7(c)(3) to avoid confusion with the term of art “expedited processing” in § 1007.5(g). The Trust has made these revisions.

3. One comment suggested that for purposes of consulting with submitters of commercial or financial information, “person” in § 1007.4(c) should incorporate a wider range of entities, including corporations, states, and Native American tribes or nations. The Trust has revised this section to approximate the Department of Justice’s template for agency FOIA regulations.

4. One comment suggested striking “[i]f neither a statute nor an Executive order requires withholding” from § 1007.5(f)(iii) addressing adverse determinations of document requests. The commenter wrote that the language could be read to indicate that there are reasons other than the exemptions identified in the FOIA statute itself for withholding, and that it is the FOIA exemption itself, not a statute or executive order standing alone, that provides the basis for withholding a document. The Trust has made this revision.

5. One comment suggested adding in the Trust’s notice to requesters under § 1007.6(d) the availability of dispute resolution services offered by the Office of Government Information Services in the event unusual circumstances necessitate the

extension of the time limit for processing initial requests beyond ten additional working days. The Trust has revised this section to approximate the Department of Justice's template for agency FOIA regulations.

6. One comment suggested modifying §§ 1007.8(c)(3) and 1007.8(d)(1) with broader language to indicate that requesters may file a FOIA-related lawsuit against the Trust in venues other than the United States District Court for the Northern District of California. The Trust declines to make this revision. Section 104(h) of the Presidio Trust Act provides that “[t]he District Court for the Northern District of California shall have exclusive jurisdiction over any suit filed against the Trust.”

7. One comment suggested adding in the Trust's notice to appellants under § 1007.8(c)(4) the availability of dispute resolution services offered by the Office of Government Information Services when the Trust cannot reach a determination on an appeal within the applicable time limit. The Trust has made this revision.

8. One comment suggested adding in § 1007.8(d)(1) language that if the Trust agrees to participate in the dispute resolution services offered by the Office of Government Information Services, the Trust will actively engage in the process in an attempt to resolve the dispute. The Trust has revised this section to approximate the Department of Justice's template for agency FOIA regulations.

9. Two comments suggested revising the definition of “representative of the news media” in § 1007.9(a)(5)(vi) to make it consistent with the OPEN Act. The Trust has

revised this section to approximate the Department of Justice’s template for agency FOIA regulations.

Compliance With Laws and Executive Orders

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules.

This rule:

- (1) Will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule only affects administrative procedures of the Trust;
- (3) Does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and
- (4) Does not raise novel legal or policy issues.

This final rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the ORIA has not reviewed this regulation. Executive Order

13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The Trust has developed this rule in a manner consistent with these requirements.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

Executive Order 13771 requires an agency, unless prohibited by law, to identify at least two existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation. In furtherance of this requirement, section 2(c) of the Executive order requires that the new incremental costs associated with new regulations must, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. The OMB's interim guidance issued on February 2, 2017 explains that the above requirements only apply to each new "significant regulatory action that imposes costs." Further, see OMB's Memorandum M-17-21 titled "Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs'" (April 5, 2017). As this

rule only relates to the Trust's administrative procedures, many of the revisions are statutorily required, and the rule is not a "significant regulatory action," this final rule is exempt from the requirements of Executive Order 13771.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

This rule will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million or more; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule relates to internal administrative procedures and management of government function. It does not regulate external entities, impose any costs on them, or eliminate any procedures or functions that would result in a loss of employment or income on the part of the private sector.

Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. This rule produces no costs outside of the Federal government and does not create an additional burden on State, local, or tribal governments, or the private sector.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

This rule does not have sufficient federalism implications, as defined by section 1 of Executive Order 13132, to warrant the preparation of a federalism summary impact statement. This rule only affects use of Trust administered lands. It has no outside effects on other areas. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule: (a) meets the criteria of section 3(a) requiring that all regulations be reviewed to

eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211.

A Statement of Energy Effects is not required.

Consultation With Indian Tribes (Executive Order 13175)

This rule has no tribal implications or imposes substantial direct compliance costs on federally recognized Indian tribes. A tribal summary impact statement is not required.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This rule does not contain new collections of information that require approval by the OMB under the Paperwork Reduction Act. The rule does not impose new recordkeeping or reporting requirements on State, tribal, or local governments; individuals; businesses; or organizations.

National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act (NEPA) and the Trust's NEPA regulations at 36 CFR 1010.16. It is a modification of existing Trust

regulations in order to make them clearer, more complete, and consistent with current Federal statutory law. Moreover, a detailed statement under the NEPA is not required because the rule is covered by a categorical exclusion. The Trust has determined that the rule is categorically excluded under 36 CFR 1010.7(a)(10)(i) as it is a revision of Trust regulations that does not increase public use to the extent of compromising the nature and character of the Presidio Area B or of causing significant physical damage to it. Further, the rule will not result in the introduction of non-compatible uses, which might compromise the nature and characteristics of the Presidio Area B or cause significant physical damage to it. Finally, the rule will not conflict with adjacent ownerships or land uses or cause a significant nuisance to adjacent owners or occupants. The Trust has also determined that the rule does not involve any of the extraordinary circumstances listed in 36 CFR 1010.7(b) that would require further analysis under the NEPA.

Clarity of the Regulations

The Trust is required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the Trust publishes must: (a) be logically organized; (b) use the active voice to address readers directly; (c) use common, everyday words and clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible.

List of Subjects

36 CFR Part 1007

Administrative practice and procedure, Archives and records, Freedom of information, National parks, Natural resources, Public lands, Records, Recreation and recreation areas.

36 CFR Part 1008

Administrative practice and procedure, National parks, Natural resources, Personally identifiable information, Privacy, Public lands, Recreation and recreation areas.

36 CFR Part 1009

Administrative practice and procedure, Claims, National parks, Natural resources, Public lands, Recreation and recreation areas, Tort claims.

36 CFR Part 1011

Administrative practice and procedure, Claims, Credit, Debt collection, Government employees, National parks, Natural resources, Public lands, Recreation and recreation areas, Reporting and recordkeeping requirements, Wages.

For the reasons set forth in the preamble, the Presidio Trust amends Chapter X of title 36 of the Code of Federal Regulations as follows:

PART 1007 – REQUESTS UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 1007 continues to read as follows:

Authority: Pub. L. 104-333, 110 Stat. 4097 (16 U.S.C. 460bb note); 5 U.S.C. 552; E.O. 12,600, 52 FR 23781, 3 CFR 1988 Comp., p. 235.

2. Revise § 1007.1 to read as follows:

§ 1007.1 Purpose and scope.

(a) This part contains the procedures for submission to and consideration by the Presidio Trust of requests for records under the FOIA. As used in this part, the term “FOIA” means the Freedom of Information Act, 5 U.S.C. 552. The regulations in this part should be read in conjunction with the text of the FOIA. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with the Presidio Trust’s Privacy Act regulations as well as under this subpart.

(b) Before invoking the formal procedures set out below, persons seeking records from the Presidio Trust may find it useful to consult with the Presidio Trust’s FOIA Officer, who can be reached at The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052, Telephone: (415) 561-5300. As used in this part, the term “FOIA Officer” means the employee designated by the Executive Director to process FOIA requests and otherwise supervise the Presidio Trust’s compliance with the FOIA, or the alternate employee so designated to perform these duties in the absence of the FOIA Officer.

(c) The procedures in this part do not apply to:

(1) Records published in the Federal Register, the Bylaws of the Presidio Trust, statements of policy and interpretations, and other materials that have been published by the Presidio Trust on its internet website (<http://www.presidiotrust.gov>) or are routinely made available for inspection and copying at the requester's expense.

(2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 1007.2(c)(7) if:

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that:

(A) The subject of the investigation or proceeding is not aware of its pendency; and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(3) Informant records maintained by the United States Park Police under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

3. Revise § 1007.2 to read as follows:

§ 1007.2 Records available.

(a) *Policy.* It is the policy of the Presidio Trust to make its records available to the public to the greatest extent possible consistent with the purposes of the Presidio Trust Act and the FOIA. The Presidio Trust administers the FOIA with a presumption of openness. As a matter of policy, the Presidio Trust may make discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. This policy does not create any right enforceable in court.

(b) *Statutory disclosure requirement.* The FOIA requires that the Presidio Trust, on a request from a member of the public submitted in accordance with the procedures in this part, make requested records available for inspection and copying.

(c) *Statutory exemptions.* Exempted from the FOIA's statutory disclosure requirement are matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

(ii) Are in fact properly classified pursuant to such Executive order.

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the Privacy Act), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which

furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) *Decisions on requests.* It is the policy of the Presidio Trust to withhold information falling within an exemption only if:

(1) Disclosure is prohibited by statute or Executive order; or

(2) Sound grounds exist for invocation of the exemption.

(e) *Disclosure of reasonably segregable nonexempt material.* If a requested record contains material covered by an exemption and material that is not exempt, and it is determined under the procedures in this part to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material and released. In such circumstances, the records disclosed in part shall be marked or annotated to show both the amount and the location of the information deleted wherever practicable.

4. Revise § 1007.3 to read as follows:

§ 1007.3 Requests for records.

(a) *Submission of requests.* A request to inspect or copy records shall be submitted to the Presidio Trust's FOIA Officer at P.O. Box 29052, San Francisco, CA 94129-0052.

(b) *Form of perfected requests.* (1) Requests under this part shall be in writing and should specifically invoke the FOIA.

(2) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Presidio Trust familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it was made, the person or office that made it, the present custodian of the record, and any other information that will assist in locating the requested record. If the request involves a

matter known by the requester to be in litigation, the request should also state the case name and court hearing the case. If after receiving a request the FOIA Officer determines that the request does not reasonably describe the records sought, the FOIA Officer will inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the FOIA Officer. If a request does not reasonably describe the records sought, the Presidio Trust's response to the request may be delayed or an adverse determination under § 1007.5(e).

(3)(i) A perfected request shall:

(A) Specify the fee category (commercial use, educational institution, noncommercial scientific institution, news media, or other, as defined in § 1007.9) in which the requester claims the request falls and the basis of this claim;

(B) State the maximum amount of fees that the requester is willing to pay or include a request for a fee waiver; and

(C) Provide contact information for the requester, such as phone number, email address and/or mailing address, to assist the Presidio Trust in communicating with them and providing released records.

(ii) Requesters who make requests for records about themselves must verify their identity.

(iii) Where a request for records pertains to another individual, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (e.g., a copy of a death certificate or an obituary). As an exercise of administrative discretion, the Presidio Trust may require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(iv) Requesters are advised that, under § 1007.9 (f), (g) and (h), the time for responding to requests may be delayed:

(A) If a requester has not sufficiently identified the fee category applicable to the request;

(B) If a requester has not stated a willingness to pay fees as high as anticipated by the Presidio Trust; or

(C) If a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by the Presidio Trust.

(4) A request seeking a fee waiver shall, to the extent possible, address why the requester believes that the criteria for fee waivers set out in § 1007.10 are met.

(5) To facilitate handling, both the envelope containing a request and the face of the request should bear the legend "FREEDOM OF INFORMATION REQUEST."

(c) *Creation of records.* A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not require that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends or comparisons. In those instances where the Presidio Trust determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the Presidio Trust may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records.

5. Revise § 1007.4 to read as follows:

§ 1007.4 Preliminary processing of requests.

(a) *Scope of requests.* Unless a request clearly specifies otherwise, requests to the Presidio Trust may be presumed to seek only records of the Presidio Trust in possession of the Presidio Trust at the time the Presidio Trust begins its search. If any other date is used, the Presidio Trust will inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) is not considered responsive to a request.

(b) *Records of other departments and agencies.* (1) When reviewing records in response to a request, the Presidio Trust will determine whether another Federal department or agency is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the Presidio Trust will proceed in one of the following ways:

(i) *Consultation.* When records originating with the Presidio Trust, but contain within them information of interest to another Federal department or agency, the Presidio Trust will consult with that other entity prior to making a release determination; or

(ii) *Referral.* (A) When the Presidio Trust believes that another department or agency is best able to determine whether to disclose the record, the Presidio Trust will refer the responsibility for responding to the request regarding the record to that department or agency. Ordinarily, the department or agency that originated the record is presumed to be the best entity to make the disclosure determination. However, if the Presidio Trust and the originating department or agency jointly agree that the Presidio Trust is in the best position to respond to the request, then the record may be handled as a consultation.

(B) If the Presidio Trust refers any part of the responsibility for responding to a request to another department or agency, the Presidio Trust will document the referral, maintain a copy of the record that it refers, and notify the requester of the referral,

informing the requester of the name(s) of the department or agency to which the record was referred, including that entity's FOIA contact information.

(2) Timing of responses to consultations and referrals. All consultations and referrals received by the Presidio Trust will be handled according to the date that the Presidio Trust received the perfected FOIA request.

(3) A request for documents that were classified by another agency shall be referred to that agency.

(c) *Consultation with submitters of commercial and financial information.* (1) If a request seeks a record containing trade secrets or commercial or financial information submitted by any person or entity, including a corporation, State, Native American tribe or nation, or foreign government, but not including another Federal Government entity, the Presidio Trust shall provide the submitter with notice of the request whenever:

(i) The submitter has made a good faith designation of the information as commercially or financially sensitive; or

(ii) The Presidio Trust has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.

(2) Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(3) The notice to the submitter shall afford the submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The submitter's statement shall explain the basis on which the information is claimed to be exempt under the FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement shall also include a certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(4) A submitter who fails to respond within the time period specified in the notice will be deemed to have no objection to disclosure of the information. The Presidio Trust shall not be required to consider any information received from the submitter after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(5) The Presidio Trust will 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.

(6) If a submitter's statement cannot be obtained within the time limit for processing the request under § 1007.6, the requester shall be notified of the delay as provided in § 1007.6(f).

(7) Notification to a submitter is not required if:

(i) The Presidio Trust determines, prior to giving notice, that the request for the record should be denied;

(ii) The information has previously been lawfully published or officially made available to the public;

(iii) Disclosure is required by a statute (other than the FOIA) or regulation (other than this part);

(iv) Disclosure is clearly prohibited by a statute, as described in § 1007.2(c)(3);

(v) The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter, if the submitter was specifically afforded an opportunity to make such a designation; however, a submitter will be notified of a request for information that was not designated as confidential at the time of submission, or a reasonable time thereafter, if there is substantial reason to believe that disclosure of the information would result in competitive harm;

(vi) The designation of confidentiality made by the submitter is obviously frivolous;
or

(vii) The information was submitted to the Presidio Trust more than ten years prior to the date of the request, unless the Presidio Trust has reason to believe that it continues to be confidential.

(8) If a requester brings suit to compel disclosure of information, the submitter of the information will be promptly notified.

6. Revise § 1007.5 to read as follows:

§ 1007.5 Action on initial requests.

(a) *Authority.* (1) Requests shall be decided by the FOIA Officer.

(2) A decision to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the General Counsel.

(b) *Acknowledgement of requests.* (1) The Presidio Trust shall send the requester a written acknowledgement of the receipt of the request, provide the requester with an individualized tracking number, and provide the requester with contact information for the FOIA Officer.

(2) Requesters must include the individualized tracking number in all communications with the Presidio Trust regarding the request.

(c) *Estimated dates of completion and interim responses.* Upon request, the Presidio Trust will provide an estimated date by which the Presidio Trust expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the Presidio Trust may provide interim responses, releasing records on a rolling basis.

(d) *Form of grant.* (1) When a requested record has been determined to be available, the FOIA Officer shall notify the requester as to when and where the record is available for inspection or, as the case may be, when and how copies will be provided. If fees are due, the FOIA Officer shall state the amount of fees due and the procedures for payment, as described in § 1007.9.

(2) The FOIA Officer shall honor a requester's specified preference of form or format of disclosure (e.g., paper, microform, audiovisual materials, or electronic records) if the record is readily available to the Presidio Trust in the requested form or format or if the record is reproducible by the Presidio Trust with reasonable efforts in the requested form or format.

(3) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 1007.4(c), both the requester and the submitter shall be notified of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include:

- (i) A statement of the reasons why the submitter's objections were not sustained;
- (ii) A specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part; and
- (iii) A specified disclosure date.

(4) If a claim of confidentiality has been found frivolous in accordance with § 1007.4(c)(7)(vi) and a determination is made to release the information without consultation with the submitter, the submitter of the information shall be notified of the decision and the reasons therefor a reasonable number of days prior to the date on which disclosure is to be made.

(e) *Adverse determinations of requests.* Adverse determinations, or denials of requests, include decisions that:

(1) The requester has not submitted a perfected request;

(2) The requested record is exempt, in whole or in part;

(3) The request does not reasonably describe the records sought;

(4) The information is not a record subject to the FOIA;

(5) The requested record does not exist, cannot be located, or has been destroyed;

or

(6) The requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waivers or denials of requests for expedited processing.

(f) *Form of denial.* (1) A decision withholding a requested record shall be in writing and shall include:

(i) A list of the names and titles or positions of each person responsible for the denial;

(ii) A reference to the specific exemption or exemptions authorizing the withholding;

(iii) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;

(iv) A statement that the denial may be appealed and a reference to the procedures in § 1007.7 for appeal; and

(v) A statement notifying the requester of the dispute resolution services offered by the Office of Government Information Services.

(2) A decision denying a request for failure to reasonably describe requested records or for other procedural deficiency or because requested records cannot be located shall be in writing and shall include:

(i) A description of the basis of the decision;

(ii) A list of the names and titles or positions of each person responsible;

(iii) A statement that the matter may be appealed and a reference to the procedures in § 1007.7 for appeal; and

(iv) A statement notifying the requester of the dispute resolution services offered by the Office of Government Information Services.

(g) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined by the FOIA Officer that they involve:

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

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

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) 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.

(4) Within ten calendar days of receiving of a request for expedited processing, the FOIA Officer shall decide whether to grant the request for expedited processing and shall notify the requester of the decision. If a request for expedited processing is granted, the underlying FOIA request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

7. Revise § 1007.6 to read as follows:

§ 1007.6 Time limits for processing initial requests.

(a) *Basic limit.* Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within 20 working days after receipt of a request. This determination shall be communicated immediately to the requester.

(b) *Running of basic time limit.* (1) The 20 working day time limit begins to run when a perfected request meeting the requirements of § 1007.3(b) is received at the Presidio Trust.

(2) The running of the basic time limit may be delayed or tolled as explained in § 1007.9(f), (g) and (h) if a requester:

(i) Has not stated a willingness to pay fees as high as are anticipated and has not sought and been granted a full fee waiver; or

(ii) Has not made a required advance payment.

(c) *Extensions of time.* In the following unusual circumstances, the time limit for acting on an initial request may be extended to the extent reasonably necessary to the proper processing of the request, but in no case may the time limit be extended by more than 20 working days:

(1) The need to search for and collect the requested records from facilities or other establishments that are separate from the main office of the Presidio Trust;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another department or agency having a substantial interest in the determination of the request.

(d) *Notice of extension.* A requester shall be notified in writing of an extension under paragraph (c) of this section. The notice shall state the reason for the extension and the date on which a determination on the request is expected to be made. When the extension exceeds ten working days, the requester shall be provided with an opportunity to modify the request or arrange an alternative time period for processing

the original or modified request. The requester shall also be notified of the dispute resolution services offered by the Office of Government Information Services.

(e) *Treatment of delay as denial.* If no determination has been reached at the end of the 20 working day period for deciding an initial request, or an extension thereof under paragraph (c) of this section, the requester may deem the request denied and may exercise a right of appeal in accordance with § 1007.7.

(f) *Notice of delay.* When a determination cannot be reached within the time limit, or extension thereof, the requester shall be notified of the reason for the delay, of the date on which a determination may be expected, and of the right to treat the delay as a denial for purposes of appeal, including a reference to the procedures for filing an appeal in § 1007.7.

8. Revise § 1007.7 to read as follows:

§ 1007.7 Appeals.

(a) *Right of appeal.* A requester may appeal to the Executive Director when:

(1) Records have been withheld;

(2) A request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located;

(3) A fee waiver has been denied;

(4) A request has not been decided within the time limits provided in § 1007.6; or

(5) A request for expedited processing under § 1007.5(g) has been denied.

(b) *Time for appeal.* An appeal must be received at the office of the Presidio Trust no later than 90 calendar days after the date of the initial denial, in the case of a denial of an entire request, or 90 calendar days after records have been made available, in the case of a partial denial.

(c) *Form of appeal.* (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appellate process and give the requester an opportunity to present his or her arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(2) The appeal shall be addressed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052.

(3) To facilitate handling, both the envelope containing a notice of appeal and the face of the notice should bear the legend "FREEDOM OF INFORMATION APPEAL."

(d) *Appeal required.* Before seeking review by a court of an adverse determination by the Presidio Trust, a requester must first submit a timely administrative appeal.

9. Revise § 1007.8 to read as follows:

§ 1007.8 Action on appeals.

(a) *Authority.* Appeals shall be decided by the Executive Director after consultation with the FOIA Officer and the General Counsel.

(b) *Time limit.* A final determination shall be made within 20 working days after receipt of an appeal meeting the requirements of § 1007.7(c).

(c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of § 1007.6(c) or was extended for fewer than ten working days, the time for processing of the appeal may be extended to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than ten working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 1007.6(c) requires an extension.

(2) The appellant shall be advised in writing of the reasons for the extension and the date on which a final determination on the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the 20 working day period, or the extension thereof, the requester is deemed to have exhausted administrative remedies, giving rise to a right of review in the United States District Court for the Northern District of California, as specified in 5 U.S.C. 552(a)(4).

(4) When no determination can be reached within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be reached to be dispatched, of the dispute resolution services offered by the Office of Government Information Services, and of the right to seek judicial review.

(5) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(d) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the FOIA Officer shall immediately make the records available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of the right to obtain judicial review in the U.S. District Court for the Northern District of California and shall set forth the names and titles or positions of each person responsible for the denial. The determination shall also inform the requester of the dispute resolution services offered by the Office of Government Information Services. Dispute resolution is a voluntary process. If the Presidio Trust agrees to participate in the dispute resolution services offered by the Office of Government Information Services, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 1007.4(c), the submitter shall be provided notice as described in § 1007.5(b)(3).

10. Revise § 1007.9 to read as follows:

§ 1007.9 Fees.

(a) *Policy.* (1) Unless waived pursuant to the provisions of § 1007.10, fees for responding to FOIA requests shall be charged in accordance with the provisions of this section and the current schedule of charges determined by the Executive Director and published on the Presidio Trust's website. Such charges shall be set at the level necessary to recoup the full allowable direct costs to the Presidio Trust.

(2) Fees shall not be charged if the total amount chargeable does not exceed the costs of routine collection and processing of the fee. The Presidio Trust shall periodically determine the cost of routine collection and processing of a fee and publish such amount on its website.

(3) Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.

(4) Fees shall be charged to recover the full costs of providing such services as certifying that records are true copies or sending records by a method other than regular mail, when the Presidio Trust elects to provide such services.

(5) The following definitions shall apply to this part:

(i) A *commercial use request* is a request from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interest through litigation. The intended use of records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.

(ii) The term *direct costs* refers to those expenses the Presidio Trust incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (i.e., the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(iii) The term *duplication* refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy,

microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(iv) *An educational institution* is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(v) *A noncommercial scientific institution* is an institution that is not operated for commerce, trade or profit and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(vi) *A representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Non-exhaustive examples of news media entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination

function of the requester will not be considered to be for a commercial use.

“Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Presidio Trust can also consider a requester’s past publication record in making this determination. The Presidio Trust will advise requesters of their placement in this category.

(vii) The term *review* refers to the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure under § 1007.4(c) made by a submitter of confidential commercial information, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(viii) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents, databases and information in other electronic records. Searches shall be undertaken in the most efficient and least expensive manner possible, consistent with the Presidio Trust’s obligations under the FOIA and other applicable laws.

(b) *Commercial use requests.* (1) A requester seeking records for commercial use shall be charged fees for direct costs incurred in document search and review (even if the search and review fails to locate records that are not exempt from disclosure) and duplication.

(2) A commercial use requester may not be charged fees for time spent resolving legal and policy issues affecting access to requested records.

(c) *Educational and noncommercial scientific institution requests.* (1) A requester seeking records under the auspices of an educational institution in furtherance of scholarly research or a noncommercial scientific institution in furtherance of scientific research shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged fees for costs incurred in:

(i) Searching for requested records;

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure;

(iii) Deleting reasonably segregable exempt matter;

(iv) Monitoring the requester's inspection of agency records; or

(v) Resolving legal and policy issues affecting access to requested records.

(d) *News media requests.* (1) A representative of the news media shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Representatives of the news media may not be charged fees for costs incurred in:

(i) Searching for requested records;

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure;

(iii) Deleting reasonably segregable exempt matter;

(iv) Monitoring the requester's inspection of agency records; or

(v) Resolving legal and policy issues affecting access to requested records.

(e) *Other requests.* (1) A requester not covered by paragraphs (b), (c), or (d) of this section shall be charged fees for the direct costs for document search (even if the search fails to locate records that are not exempt from disclosure) and duplication, except that the first two hours of search time and the first 100 pages of paper copies (or the

equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged for costs incurred in:

(i) Examining requested records to determine whether they are exempt from disclosure;

(ii) Deleting reasonably segregable exempt matter;

(iii) Monitoring the requester's inspection of agency records; or

(iv) Resolving legal and policy issues affecting access to requested records.

(f) *Requests for clarification.* Where a request does not provide sufficient information to determine whether it is covered by paragraph (b), (c), (d), or (e) of this section, the requester should be asked to provide additional clarification. If it is necessary to seek such clarification, the request may be deemed to have not been received for purposes of the time limits established in § 1007.6 until the clarification is received. Requests to requesters for clarification shall be made promptly.

(g) *Notice of anticipated fees.* Where a request does not state a willingness to pay fees as high as anticipated by the Presidio Trust, and the requester has not sought and been granted a full waiver of fees under § 1007.10, the request may be deemed to have not been received for purposes of the time limits established in § 1007.6 until the

requester has been notified of and agrees to pay the anticipated fee. Advice to requesters with respect to anticipated fees shall be provided promptly.

(h) *Advance payment.* (1) Where it is anticipated that allowable fees are likely to exceed \$250.00, the requester may be required to make an advance payment of the entire fee before processing of his or her request.

(2) Where a requester has previously failed to pay a fee within 30 days of the date of billing, processing of any request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees anticipated in connection with the request.

(3) Advance payment of fees may not be required except as described in paragraphs (h) (1) and (2) of this section.

(4) Issuance of a notice requiring payment of overdue fees or advance payment shall toll the time limit in § 1007.6 until receipt of payment.

(i) *Form of payment.* Payment of fees should be made by check or money order payable to the Presidio Trust. Where appropriate, the official responsible for handling a request may require that payment by check be made in the form of a certified check.

(j) *Billing procedures.* A bill for collection shall be prepared for each request that requires collection of fees.

(k) *Collection of fees.* The bill for collection or an accompanying letter to the requester shall include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations, 4 CFR 102.13, if the fees are not paid within 30 days of the date of the bill for collection is mailed or hand-delivered to the requester. This requirement does not apply if the requester is a unit of State or local government. Other authorities of the Debt Collection Act of 1982 shall be used, as appropriate, to collect the fees.

PART 1008 – REQUESTS UNDER THE PRIVACY ACT

11. The authority citation for part 1008 continues to read as follows:

Authority: Pub. L. 104-333, 110 Stat. 4097 (16 U.S.C. 460bb note); 5 U.S.C. 552a.

12. Amend § 1008.2 to revise the definition of *individual* to read as follows:

§ 1008.2 Definitions.

* * * * *

Individual means a citizen of the United States or an alien who is currently lawfully admitted for permanent residence.

* * * * *

13. Revise § 1008.9 to read as follows:

§ 1008.9 Disclosure of records.

(a) *Prohibition of disclosure.* No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) *General exceptions.* The prohibition contained in paragraph (a) of this section does not apply where disclosure of the record would be:

(1) To those officers or employees of the Presidio Trust who have a need for the record in the performance of their duties; or

(2) Required by the Freedom of Information Act, 5 U.S.C. 552.

(c) *Specific exceptions.* The prohibition contained in paragraph (a) of this section does not apply where disclosure of the record would be:

(1) For a routine use which has been described in a system notice published in the Federal Register;

(2) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, U.S. Code;

(3) To a recipient who has provided the system manager responsible for the system in which the record is maintained with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(4) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(5) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Presidio Trust specifying the particular portion desired and the law enforcement activity for which the record is sought;

(6) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(7) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(8) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(9) Pursuant to the order of a court of competent jurisdiction; or

(10) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(e)).

(d) *Reviewing records prior to disclosure.* (1) Prior to any disclosure of a record about an individual, unless disclosure is required by the Freedom of Information Act, reasonable efforts shall be made to ensure that the records are accurate, complete, timely and relevant for agency purposes.

(2) When a record is disclosed in connection with a Freedom of Information Act request made under this part and it is appropriate and administratively feasible to do so, the requester shall be informed of any information known to the Presidio Trust indicating that the record may not be fully accurate, complete, or timely.

(e) *Notice of court-ordered and emergency disclosures.* (1) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the Presidio Trust will make reasonable efforts to provide notice of this to the individual. Notice will be given within a reasonable time after the Presidio Trust'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 address and will contain a copy of the order and a description of the information disclosed. Notice will not be given if disclosure is made from a criminal law enforcement system of records that has been exempted from the notice requirement.

(2) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the Presidio Trust will notify that individual of the disclosure. This notice will be mailed to the individual's last known address and will state the nature of the information disclosed, the person, organization or agency to which it was disclosed, the date of the disclosure, and the compelling circumstances justifying the disclosure.

14. Revise § 1008.10 to read as follows:

§ 1008.10 Accounting for disclosures.

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any person, or to another agency, under any of the specific exceptions provided by § 1008.9(c), an accounting shall be made.

(2) The accounting shall record:

(i) The date, nature, and purpose of each disclosure of a record to any person or to another agency; and

(ii) The name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section shall be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accountings.* (1) Except for accountings of disclosures made under § 1008.9(b) or 1008.9(c)(5), accountings of all disclosures of a record shall be made available to the individual to whom the record relates at the individual's request.

(2) An individual desiring access to an accounting of disclosures of a record pertaining to the individual shall submit a request by following the procedures of § 1008.13.

(c) *Notification of disclosure.* When a record is disclosed pursuant to § 1008.9(c)(9) as the result of the order of a court of competent jurisdiction, reasonable efforts shall be made to notify the individual to whom the record pertains as soon as the order becomes a matter of public record.

15. Revise § 1008.11 to read as follows:

§ 1008.11 Request for notification of existence of records: Submission.

(a) *Submission of requests.* (1) Individuals desiring to determine under the Privacy Act whether a system of records contains records pertaining to them shall address inquiries to the Privacy Act Officer, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052, unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) Individuals desiring to determine whether records pertaining to them are maintained in two or more systems shall make a separate inquiry concerning each system.

(b) *Form of request.* (1) An inquiry to determine whether a system of records contains records pertaining to an individual shall be in writing.

(2) To expedite processing, both the envelope containing a request and the face of the request should bear the legend "PRIVACY ACT INQUIRY."

(3) The request shall state that the individual is seeking information concerning records pertaining to him or herself and shall supply such additional identifying information, if any, as is called for in the system notice describing the system.

(4) The request must include verification of the requester's identity, including the requester's full name, current address, and date and place of birth. The request must be signed by the requester, and the signature must be notarized or submitted under 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization.

(5) If the request is made on behalf of a minor or someone determined by a court to be incompetent, for access to records about that individual, the requester must establish:

(i) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at the requester's option, the Social Security number of the individual;

(ii) The requester's identity, as required in paragraph 4 above of this section;

(iii) That the requester is the parent or guardian of that individual, which the requester may prove by providing a copy of the individual's birth certificate showing the requester's parentage or by providing a court order establishing the requester's guardianship; and

(iv) That the requester is acting on behalf of that individual in making the request.

(6) Individuals who have reason to believe that information pertaining to them may be filed under a name other than the name they are currently using (e.g., maiden name), shall include such information in the request.

16. Revise § 1008.14 to read as follows:

§ 1008.14 Requests for access to records: Submission.

(a) *Submission of requests.* (1) Requests for access to records shall be submitted to the Privacy Act Officer unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) Individuals desiring access to records maintained in two or more separate systems shall submit a separate request for access to the records in each system.

(b) *Form of request.* (1) A request for access to records subject to the Privacy Act shall be in writing and addressed to Privacy Act Officer, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052.

(2) To expedite processing, both the envelope containing a request and the face of the request should bear the legend "PRIVACY ACT REQUEST FOR ACCESS."

(3) Requesters shall specify whether they seek all of the records contained in the system which relate to them or only some portion thereof. If only a portion of the records which relate to the individual are sought, the request shall reasonably describe the specific record or records sought.

(4) If the requester seeks to have copies of the requested records made, the request shall state the maximum amount of copying fees which the requester is willing to pay. A request which does not state the amount of fees the requester is willing to pay will be treated as a request to inspect the requested records. Requesters are further notified that under § 1008.15(d) the failure to state willingness to pay fees as high as are anticipated by the Presidio Trust will delay processing of a request.

(5) The request shall supply such identifying information, if any, as is called for in the system notice describing the system.

(6) The request must include verification of the requester's identity, including the requester's full name, current address, and date and place of birth. The request must be signed by the requester, and the signature must be notarized or submitted under 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization.

(7) If the request is made on behalf of a minor or someone determined by a court to be incompetent, for access to records about that individual, the requester must establish:

(i) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at the requester's option, the Social Security number of the individual;

(ii) The requester's identity, as required in paragraph 6 above of this section;

(iii) That the requester is the parent or guardian of that individual, which the requester may prove by providing a copy of the individual's birth certificate showing the requester's parentage or by providing a court order establishing the requester's guardianship; and

(iv) That the requester is acting on behalf of that individual in making the request.

(8) Requests failing to meet the requirements of this paragraph shall be returned to the requester with a written notice advising the requester of the deficiency in the request.

17. Revise § 1008.15 to read as follows:

§ 1008.15 Requests for access to records: Initial decision.

(a) *Acknowledgements of requests.* Upon receipt of a request, the Presidio Trust ordinarily will send an acknowledgement letter to the requester which will confirm the requester's agreement to pay fees and will provide an assigned request number for further reference.

(b) *Decisions on requests.* A request made under this part for access to a record shall be granted promptly unless the record:

(1) Was compiled in reasonable anticipation of a civil action or proceeding; or

(2) Is contained in a system of records which has been excepted from the access provisions of the Privacy Act by rulemaking.

(c) *Authority to deny requests.* A decision to deny a request for access under this part shall be made by the Privacy Act Officer in consultation with the General Counsel.

(d) *Form of decision.* (1) No particular form is required for a decision granting access to a record. The decision shall, however, advise the individual requesting the

record as to where and when the record is available for inspection or, as the case may be, where and when copies will be available. If fees are due under § 1008.15(e), the individual requesting the record shall also be notified of the amount of fees due or, if the exact amount has not been determined, the approximate amount of fees due.

(2) A decision denying a request for access, in whole or part, shall be in writing and shall:

(i) State the basis for denial of the request;

(ii) Contain a statement that the denial may be appealed to the Executive Director pursuant to § 1008.16 by writing to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052; and

(iii) State that the appeal must be received by the foregoing official within 20 working days of the date of the decision.

(3) If the decision denying a request for access involves records which fall under the jurisdiction of another agency, the individual shall be informed in a written response which shall:

(i) State the reasons for the denial;

(ii) Include the name, position title, and address of the official responsible for the denial; and

(iii) Advise the individual that an appeal of the declination may be made only to the appropriate official of the relevant agency, and include that official's name, position title, and address.

(4) Copies of decisions denying requests for access made pursuant to paragraphs (d)(2) and (d)(3) of this section will be provided to the Privacy Act Officer.

(e) *Fees.* (1) No fees may be charged for the cost of searching for or reviewing a record in response to a request made under § 1008.14.

(2) Unless the Privacy Act Officer determines that reduction or waiver of fees is appropriate, fees for copying a record in response to a request made under § 1008.14 shall be charged in accordance with the provisions of this section and the current schedule of charges determined by the Executive Director and published on the Trust's website. Such charges shall be set at the level necessary to recoup the full allowable direct costs to the Trust.

(3) Where it is anticipated that fees chargeable in connection with a request will exceed the amount the person submitting the request has indicated a willingness to pay, the Privacy Act Officer shall notify the requester and shall not complete processing of the request until the requester has agreed, in writing, to pay fees as high as are anticipated.

18. Revise § 1008.18 to read as follows:

§ 1008.18 Amendment of records.

The Privacy Act permits individuals to request amendment of records pertaining to them contained in a system of records if they believe the records are not accurate, relevant, timely or complete. 5 U.S.C. 552a(d)(2). A request for amendment of a record shall be submitted in accordance with the procedures in this part.

19. Revise § 1008.19 to read as follows:

§ 1008.19 Petitions for amendment: Submission and form.

(a) *Submission of petitions for amendment.* (1) A request for amendment of a record shall be submitted to the Privacy Act Officer unless the system notice describing the system prescribes or permits submission to a different official or officials. If an individual wishes to request amendment of records located in more than one system, a separate petition must be submitted with respect to each system.

(2) A petition for amendment of a record may be submitted only if the individual submitting the petition has previously requested and been granted access to the record and has inspected or been given a copy of the record.

(b) *Form of petition.* (1) A petition for amendment shall be in writing, shall specifically identify the record for which amendment is sought, and shall be addressed to the Privacy Act Officer, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052.

(2) To expedite processing, both the envelope containing a petition and the face of the petition should bear the legend "PRIVACY ACT PETITION FOR AMENDMENT."

(3) The petition shall state, in detail, the reasons why the petitioner believes the record, or the objectionable portion thereof, is not accurate, relevant, timely or complete. Copies of documents or evidence relied upon in support of these reasons shall be submitted with the petition.

(4) The petition shall state, specifically and in detail, the changes sought in the record. If the changes involve rewriting the record or portions thereof or involve adding new language to the record, the petition shall propose specific language to implement the changes.

(5) The petition must include verification of the petitioner's identity, including the petitioner's full name, current address, and date and place of birth. The petition must be signed by the petitioner, and the signature must be notarized or submitted under 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization.

(6) If the petition is made on behalf of a minor or someone determined by a court to be incompetent, for access to records about that individual, the petitioner must establish:

(i) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at the petitioner's option, the Social Security number of the individual;

(ii) The petitioner's identity, as required in paragraph 5 above of this section;

(iii) That the petitioner is the parent or guardian of that individual, which the petitioner may prove by providing a copy of the individual's birth certificate showing the petitioner's parentage or by providing a court order establishing the petitioner's guardianship; and

(iv) That the petitioner is acting on behalf of that individual in making the request.

(7) Petitions failing to meet the requirements of this paragraph shall be returned to the petitioner with a written notice advising the petitioner of the deficiency in the petition.

PART 1009 – ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT

20. The authority citation for part 1009 continues to read as follows:

Authority: Pub. L. 104-333, 110 Stat. 4097 (16 U.S.C. 460bb note); 28 U.S.C. 2672.

21. Revise § 1009.1 to read as follows:

§ 1009.1 Purpose.

The purpose of this part is to establish procedures for the filing and settlement of claims under the Federal Tort Claims Act (in part, 28 U.S.C. secs. 2401(b), 2671-2680, as amended). The officers to whom authority is delegated to settle tort claims shall follow and be guided by the regulations issued by the Attorney General prescribing standards and procedures for settlement of tort claims (28 CFR part 14).

22. Revise § 1009.4 to read as follows:

§ 1009.4 Payment of claims.

(a) In making an award from proceeds or revenues of the Presidio Trust, the Presidio Trust will process payment using an agreement signed by the claimant and the Executive Director, or his or her designee. In making an award from proceeds or revenues not provided for by the Presidio Trust, the Presidio Trust will process payment as prescribed by 28 CFR 14.10.

(b) Prior to payment, appropriate releases shall be obtained as provided in 28 CFR 14.10.

(c) Any award, compromise, or settlement in excess of \$25,000 shall be effected only with the prior written approval of the Attorney General or his or her designee.

PART 1011 – DEBT COLLECTION

23. The authority citation for part 1011 continues to read as follows:

Authority: 16 U.S.C. 460bb appendix, as amended.

24. Revise § 1011.4(a)(7) to read as follows:

§ 1011.4 What notice will the Presidio Trust send to a debtor when collecting a debt?

(a) * * *

(7) The following timelines for the referral of a delinquent debt to the FMS:

(i) That debts over 120 days delinquent and eligible for the centralized administrative offset collection actions described in paragraph (a)(6)(i) of this section must be referred to the FMS for collection (see §§ 1011.10 through 1011.12);

(ii) That debts over 180 days delinquent not previously referred to the FMS under paragraph (a)(7)(i) of this section must be referred to the FMS for cross servicing debt collection (see § 1011.9).

* * * * *

25. Revise § 1011.9(a) to read as follows:

§ 1011.9 When will the Presidio Trust transfer a debt to the Financial Management Service for collection?

(a) *Cross-servicing.* Unless a delinquent debt has previously been transferred to the FMS for administrative offset in accordance with § 1011.10, the Presidio Trust will transfer any eligible debt that is more than 180 days delinquent to the FMS for debt collection services, a process known as “cross-servicing.” The Presidio Trust may

transfer debts delinquent 180 days or less to the FMS in accordance with the procedures described in 31 CFR 285.12. The FMS takes appropriate action to collect or compromise the transferred debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt and the collection action to be taken. Appropriate action includes, without limitation, contact with the debtor, referral of the debt to the Treasury Offset Program, private collection agencies or the Department of Justice, reporting of the debt to credit bureaus, and administrative wage garnishment.

* * * * *

26. Revise § 1011.10(a)(1) to read as follows:

§ 1011.10 How will the Presidio Trust use administrative offset (offset of non-tax federal payments) to collect a debt?

(a) Centralized administrative offset through the Treasury Offset Program. (1) The Presidio Trust will refer any eligible debt over 120 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. The Presidio Trust may refer any eligible debt less than 120 days delinquent to the Treasury Offset Program for offset.

* * * * *

Nancy J. Koch,

General Counsel.

October 3, 2018

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