



22 CFR Part 171

[Public Notice 12153]

RIN 1400-AE00

Public Access to Information

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (the Department) finalizes the proposed rule it published on March 3, 2020, relating to the availability to the public of information that is under the control of the Department. These changes were prompted by changes in the law governing disclosure of such information, including the Freedom of Information Act Improvement Act of 2016. This final rule reflects changes in the FOIA and consequent changes in the Department's procedures since the last major revision of the Department's regulations on public access to information, which occurred in 2016.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kellie Robinson, Office of Information Programs and Services, FOIAstatus@state.gov, 202-261-8484.

SUPPLEMENTARY INFORMATION: This rule finalizes the Notice of Proposed Rulemaking that was published on March 3, 2020. 85 FR 13104. It implements the Freedom of Information Act (FOIA) Improvement Act of 2016, P.L. 114-185, and updates the Department's FOIA regulations at 22 CFR part 171. The following summary of the substantive changes to Part 171 was included in the NPRM but is provided here for convenience.

The rule, in § 171.4, provides updated procedures and addresses for submitting FOIA requests to the Department, including procedures for requesting information about the requester and requests for visa information.

Subpart B of the rule (§§ 171.10 through 171.17) contains the rules governing the processing of a FOIA request. Section 171.11 covers the Department's initial processing of a request; it clarifies the information that is to be provided as part of a request, the Department's process for responding to requests, and consultation and referral with respect to requests. Section 171.12 covers the timing of responses to a request, including multi-track processing, expedited processing, and "unusual circumstances" (as defined in the FOIA) that might affect the Department's ability to respond. Section 171.13 covers responses to requests, including the procedures upon denial of a request. The updates add a provision for consultation with the Department of Justice's Office of Information Policy with respect to invocation of a FOIA exclusion. Section 171.14 modifies the Department's process with respect to reviews of confidential commercial information, including procedures for the owner of the information to object to the release of the information.

Section 171.15 revises the timeline for submission of appeals to 90 days and provides for information to be given to requesters about dispute resolution services at various stages of the processing of a request, in accordance with the FOIA Improvement Act of 2016. Section 171.16 provides updates on the fees to be charged for FOIA requests, including how fees are calculated. This section provides an updated explanation of the term, "representative of the news media."

Subpart C contains the rule's Privacy Act provisions. There are two substantive changes in this subpart from that published in the NPRM. The first relates to a Privacy Act exemption that was published after the NPRM was published. *See* the final rule on March 9, 2020, "Privacy Act; STATE-01, Email Archive Management Records," 85 FR 13482. This SORN was added to the lists in paragraph (a)(2)(iii), and (b)(1), (2), (3), (4), (5), (6) and (7). However, the Department has now determined that this item was added in error, and the Department is removing STATE-01 from the lists of Privacy Act exemptions in §§ 171.26(a)(2)(iii), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7). The reason for this action is that the Department has determined that its email records do not constitute a system of records under the Privacy Act;

therefore, STATE-01, “Email Archive Management Records”, will be rescinded. The Department finds that there is good cause for making this amendment subsequent to the Notice of Proposed Rulemaking. Since STATE-01 will be rescinded as not describing a system of records under the Privacy Act, it must be removed from the lists in § 171.26.

Also in Subpart C, there is a change relating to the “Risk Analysis and Management” System of Records Notice (SORN) (STATE-78), which was established in 2011.¹ At the time, it appeared that the Department anticipated sending and receiving classified national security name checks on some individuals. For that reason, this Department provided notice that this SORN would be exempt from certain portions of the Privacy Act, including § 552a(k)(1), which exempts records from certain provisions of the Privacy Act if the records are classified records subject to the provisions of 5 U.S.C. 552(b)(1). As it turned out, no classified records have been, or will be, included in STATE-78. Therefore, the exemption is not required, and the Department is removing it from the list in § 171.26(b)(1). Although this is a new action taken since the proposed rule was published, the Department believes that public comment thereon is not required since the Department is removing, not imposing, a Privacy Act exemption, and it is in the public interest for such action to be concluded expeditiously.

In Subpart D, the rule adds information about processing of requests for confidential financial disclosure reports.

Finally, the final rule makes minor changes throughout, to conform more closely to the Department of Justice *Office of Information Policy (OIP) Template for Agency FOIA Regulations*, <https://www.justice.gov/oip/template-agency-foia-regulations> (the “OIP Template”)² and to implement operational lessons learned since the last major revision of the Department’s FOIA regulations on April 6, 2016. *See* “Public Access to Information”, 81 FR 19863. The names of two Department bureaus have changed since publication of the NPRM: the

¹ 76 FR 76103, finalized at 80 FR 1847.

² *See also* “Guidance for Agency FOIA Regulations” at <https://www.justice.gov/oip/oip-guidance/guidance-agency-foia-regulations> (last accessed March 30, 2021)

Bureau of Human Resources is now the Bureau of Global Talent Management; and the Office of Medical Services is now the Bureau of Medical Services.

Response to Public Comments

The Department would like to thank the members of the public for reviewing the proposed changes to the FOIA and Privacy Act regulations, and for providing very useful feedback. The Department received 10 substantive comments, which were contained in two documents, from the International Refugee Assistance Project (IRAP) and the Immigration Reform Law Institute (IRLI). The Department also received four submissions that were nonresponsive, in that they had nothing to do with the proposed rule.

First public comment

IRAP stated that it is concerned about the lack of explanation or justification by the Department for the proposed changes to its FOIA regulations.

Department response

As noted in the proposed rule, there have been changes in the law governing disclosure of information, including the Freedom of Information Act Improvement Act of 2016. The Department is revising its FOIA regulations to make them consistent with the FOIA Improvement Act of 2016 and current law, policy, and the Department of Justice, Office of Information Policy, template for agency FOIA regulations.

Second public comment:

IRAP suggests that the proposed rule in § 171.4(a)(7), *Proof of Third-Party Consent*, contains too broad a discretion to effectively deny requests, without any substantive standard or procedural safeguards to ensure that the Department's denial is appropriate. IRAP further contends that the Department did not take into account the difficulties this could impose on some requesters considering the burden the requirements for obtaining such records can be in the immigration context. These requesters are often overseas in difficult circumstances as they await

the results of their application for resettlement in the United States and may face the possible struggle to find safe and affordable access to a printer and scanner, notary, and postal service.

Department response:

With respect to requests for third-party records, § 171.4(a)(7) provides that “a requester may receive greater access by submitting a notarized authorization signed by the person whose records are requested, or by submitting a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by the person whose records are requested, authorizing disclosure of the records to the requester, or by submitting proof that the third party is deceased (e.g., a copy of a death certificate or an obituary).” The rule does not *require* the requester to produce all these items. In fact, the rule does not say that the requester must produce any of the items, but that there might be a more expeditious response if more information is presented. The provisions of this rule are intended to advise the requester of the type of documentation to submit to ensure the most expeditious release of responsive records, while still protecting the privacy of the individual to whom the records pertain. It is not intended to deny the disclosure of records.

The Department agrees to remove the text, “As an exercise of administrative discretion, the Department may require a requester to supply additional information in order to verify that a particular individual has consented to disclosure or is deceased.”

Pertaining to requests for visa records (§ 171.4(a)(8)), the requirements have been simplified. The Department has eliminated the requirement for the submission of the country and Foreign Service post where the visa application was made; when the visa application was made; and whether the visa application was granted or denied (and if denied, on what grounds).

The Department’s public FOIA website provides requesters with further information regarding the electronic submission of their request and supplemental documentation, thereby eliminating the need for a requester to have access to a printer, scanner, notary, or postal service. The Department does not see a need to make any revisions to this section.

Third public comment:

IRAP notes that the proposed rule text in proposed § 171.4(a)(8), *Documents in Visa Files Not Within 212(f)*, omits language in the current regulations on visa-related requests. Specifically, it omits what types of records may be released. IRAP suggests that the change expands the scope of the exemption and has the potential to harm applicants by preventing them from obtaining important notices about benefits and leaving them without a means to obtain those documents.

Department response:

The Department will add the following text to the end of § 171.4(a)(8): “Other information found in the visa file, such as information submitted as part of the visa application and information not falling within section 222(f) or another FOIA exemption, may be provided to the requester.”

Fourth public comment:

IRAP suggests that the proposed rule in § 171.4(b), *Description of Records Sought*, adds text that would give the Department broad discretion to deny or delay requests that are not able to meet this high standard of specificity. Also, IRAP contends that a requester may be able to provide some specifics regarding the topic matter but will not be able to provide such details as the author, file designation, or reference number of records that have never before been made publicly available.

Department response:

A request must reasonably describe the Department record(s) that the requester seeks. Requesters must describe the records sought in sufficient detail to enable agency personnel to locate them with a reasonable amount of effort. If a requester submits a request that meets the criteria, the request will be processed. If after receiving a request the Department determines that the request does not reasonably describe the records sought, the Department will inform the requester that the request is insufficient and may ask for additional information. FOIA calls for as much specificity as requesters can provide; if the Department cannot identify the record, it cannot act on the request, and it is up to requesters to identify what records they are seeking(see

FOIA subsections (a)(1) - (3) and (b)). In addition, the proposed section is drawn directly from the DOJ Template, Section III. The final rule is consistent with current law, policy, and the OIP Template.

Fifth public comment:

IRAP is concerned that the proposed regulation on expedited processing (proposed § 171.12(d), *Grounds for Expedited Processing*), removes the text “compelling need” as a factor in expedited processing.

Department response:

The Department agrees to revise the text to state that “requests shall receive expedited processing when a requester demonstrates that a ‘compelling need’ for the information exists. A ‘compelling need’ is deemed to exist where the requester can demonstrate one of the following:”

Sixth public comment:

IRAP stated that the proposed text in §171.12(d)(4), *Timeline to Appeal Denial of Expedited Processing*, removes language in the current regulations about a timeline for appealing a denial of expedited processing and provides only that “[i]f a request for expedited processing is denied, the Department must act on any appeal of that decision expeditiously.”

Department response:

The Department agrees to revise the text to state that “A denial of a request for expedited processing may be appealed within 90 calendar days of the date of the Department’s letter denying the request. A decision in writing on the appeal will be issued within 10 calendar days of the receipt of the appeal.”

Seventh public comment:

Regarding proposed § 171.14(c)(1-2), *When Notice to Submitters Is Not Required*, IRAP states that the “Department does not provide a reason why it would not provide individual notifications to ensure that all submitters were informed, rather than ‘likely’ to be informed, of

the ‘descri[ption] of the business information requested’ or ‘copy of the requested records or record portions containing the information’ in the notice.”

Department response:

The Department proposed the change to the rule as a way of facilitating handling notifications when there are voluminous responses. However, after review, the Department will delete the additional text.

Eighth public comment:

In proposed § 171.15(a)(1), *Incorrect Citation*, IRAP states that the proposed text for § 171.15(a)(1) cites to examples of adverse determination in § 171.13(d) of the proposed text. The text should cite to the proposed § 171.13(e).

Department response:

The Department agrees to revise the incorrect citation at § 171.15(a)(1) from § 171.13(d) to § 171.13(e).

Ninth public comment:

IRAP states that, in § 171.16, *Costs of Search and Review Time*, the proposed text for § 171.16(b)(5) and § 171.16(b)(6) removes provisions in the current regulations for costs of search and review time and a quota of pages provided free of charge. The commenter is concerned that this will impact certain categories of requesters when they do not meet the criteria for those who are not charged fees.

Department response:

The Department will add the following text as the penultimate sentence of § 171.16(b)(5): “Noncommercial scientific institution requesters will not be charged for search and review time, and the first 100 pages of the duplication will be provided free of charge.” The Department will add the following text as the penultimate sentence of § 171.16(b)(6): “A representative of the news media will not be charged for search and review time, and the first 100 pages of the duplication will be provided free of charge.”

Tenth public comment:

The Immigration Reform Law Institute (IRLI) is “primarily interested in the effect the proposed rule will have on public interest waiver FOIA procedures.”

Department response:

The text of §§ 171.16(j)(1)-(4) sets forth the requirements for waiver or reduction of fees. These sections are consistent with the FOIA and comply with the OIP Template. The Department is unaware of any reason why the revised rule would have any effect on public interest waivers of fees.

Regulatory Findings

Administrative Procedure Act

The Department published this rule under the provisions of 5 U.S.C. 553 and provided for a 60-day public comment period.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year, and it 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.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Order 12988—Civil Justice Reform

The Department has reviewed this regulation in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Executive Order 13175—Consultation and Coordination with Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14094 (Modernizing Regulatory Review)

The Department has considered this rule in light of these Executive Orders and affirms that this regulation is consistent with the guidance therein. The Office of Management and Budget has designated this rule as significant under E.O. 12866, as amended. The benefits of this rulemaking for the public include: providing the public with an up-to-date procedure for requesting information from the Department that is consistent with the FOIA Improvement Act of 2016, updating its procedures for communicating electronically with requesters, including in its acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests, adding a provision that the Department may divide a multi-part request into multiple requests to facilitate processing, adding a provision for consultation with

the Department of Justice’s Office of Information Policy with respect to invocation of a FOIA exclusion, providing information regarding the reasons for a denial and any FOIA exemptions applied in denying the request, revising the timeline for submission of appeals to 90 days, providing requesters with information regarding assistance available from the Department’s FOIA Public Liaison and the dispute resolution services offered by the Office of Government Information Services (OGIS), updating information on the fees to be charged for FOIA requests, and updating its description of “representative of the news media,” The Department is aware of no cost to the public from this rulemaking.

Paperwork Reduction Act

This rule does not impose or revise any reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 171

Administrative practice and procedure, Freedom of Information, Privacy.

1. For the reasons set forth in the preamble, 22 CFR part 171 is revised to read as follows:

PART 171—PUBLIC ACCESS TO INFORMATION

Subpart A— General Policy and Procedures **Sec.**

- 171.1 General provisions.
- 171.2 Types of records maintained.
- 171.3 Records available on the Department’s website.
- 171.4 Requests for information—types and how made.
- 171.5 Archival records.

Subpart B—Freedom of Information Act Provisions

- 171.10 Purpose and scope.
- 171.11 Processing requests.
- 171.12 Timing of responses to requests.
- 171.13 Responses to requests.
- 171.14 Confidential commercial information.
- 171.15 Administrative appeals.
- 171.16 Fees to be charged.
- 171.17 Preservation of records.

Subpart C—Privacy Act Provisions

- 171.20 Purpose and scope.
- 171.21 Definitions.
- 171.22 Request for access to records.
- 171.23 Request to amend or correct records.

- 171.24 Request for an accounting of record disclosures.
- 171.25 Appeals from denials of PA amendment requests.
- 171.26 Exemptions.

Subpart D—Access to Financial Disclosure Reports

- 171.30 Purpose and scope.
- 171.31 Requests for Public Financial Disclosure Reports—OGE Form 278.
- 171.32 Denial of Public Access to Confidential Financial Disclosure Reports—OGE Form 450.

Authority: 22 U.S.C. 2651a; 5 U.S.C. 552, 552a; E.O. 12600 (52 FR 23781); Pub. L. 114-185; Pub. L. 95-521, 92 Stat. 1824 (codified as amended at 5 U.S.C. Ch. 131); 5 CFR part 2634.

Subpart A—General Policy and Procedures

§ 171.1 General provisions.

(a) *In General.* This part contains the rules that the Department of State and the Foreign Service Grievance Board (FSGB), an independent body, follow in processing requests for records under the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552, and the Privacy Act of 1974 (PA), as amended, 5 U.S.C. 552a. These rules should be read in conjunction with the text of the FOIA, the PA, and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (“OMB Guidelines”).

(b) *Definitions.* For purposes of subparts A and B of this part,

Component means the offices that respond directly to requests concerning records under their jurisdiction: the Office of Inspector General; the Bureau of Consular Affairs’ Directorates for Visa Services, Passport Services, and Overseas Citizens Services; the Bureau of Diplomatic Security; the Bureau of Global Talent Management; the Bureau of Medical Services; and the Foreign Service Grievance Board.

Control means the Department’s legal authority over a record, taking into account the ability of the Department to use and dispose of the record, the intent of the record’s creator to retain or relinquish control over the record, the extent to which Department personnel have read or relied upon the record, and the degree to which the record has been integrated into the Department’s record-keeping systems or files.

Department means the United States Department of State, including its field offices, Foreign Service posts abroad, and its components. This part does not address FOIA requests to the U.S. Agency for International Development (USAID). Requesters should visit USAID's website for further information.

Record means information regardless of its physical form or characteristics—including information created, stored, and retrievable by electronic means—that is created or obtained by the Department and under the control of the Department at the time of the request, including information maintained for the Department by an entity under government contract for records management purposes. It does not include records that are not already in existence and that would have to be created specifically to respond to a request.

§ 171.2 Types of records maintained.

Most of the records maintained by the Department pertain to the formulation and execution of U.S. foreign policy. The Department also maintains certain records that pertain to individuals, such as applications for U.S. passports, applications for U.S. visas, records on consular assistance given abroad by U.S. Foreign Service posts to U.S. citizens and lawful permanent residents, and records on Department employees. Further information on the types of records maintained by the Department may be obtained by reviewing the Department's records disposition schedules, which are available on the Department's FOIA website at www.foia.state.gov.

§ 171.3 Records available on the Department's website.

(a) Records that are required by the FOIA to be made available for public inspection in an electronic format under 5 U.S.C. 552(a)(2) also are available on the Department's public website. Included on the Department's FOIA home page, www.foia.state.gov, are links to other sites where Department information may be available and to the Department's records disposition schedules. Also available on the FOIA website are certain records released by the Department pursuant to requests under the FOIA and compilations of records reviewed and

released in certain special projects. Links to the Department's Privacy Act System of Records Notices are available at www.state.gov/privacy. In addition, see 22 CFR part 173 regarding release within the United States of public diplomacy program material generated pursuant to the U.S. Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1431, et seq., also referred to as the Smith-Mundt Act).

(b) The Department's Office of Inspector General (OIG) is responsible for determining which of its records are required to be made publicly available on its website at www.stateoig.gov. OIG will ensure that its website of posted records and indices is reviewed and updated on an ongoing basis.

§ 171.4 Requests for information—types and how made.

(a) *General Information.* (1) Requests for records made in accordance with this part must be made in writing. FOIA requests may be made to the Office of Information Programs and Services (A/GIS/IPS) by email to foiarequest@state.gov, through the Department's FOIA website (www.foia.state.gov/), by fax to (202) 485-1669, or by mail to the address below. PA requests must be made in writing and signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746. See § 171.22(a). PA requests may be made to A/GIS/IPS by email to foiarequest@state.gov, by fax to (202) 485-1669, or by mail. FOIA and PA requests made by mail should be addressed to:

Office of Information Programs and Services (A/GIS/IPS)
Room B-266
U.S. Department of State
2201 C Street, NW
Washington, D.C. 20520

(2) Requests for passport records covered under PA System of Records Notice STATE-26 (available at www.state.gov/system-of-records-notices-privacy-office/) must be made in writing, and may be submitted directly to the Law Enforcement Liaison Division of the Passport Services directorate (PPT) of the Bureau of Consular Affairs by mailing the request to U.S. Department of State, Office of Law Enforcement Liaison, FOIA Officer, 44132 Mercure Circle, P.O. Box 1227,

Sterling, VA 20166-1227. Requests for passport records and information that do not need to be certified may also be emailed to PPT-Public-FOIARequests@state.gov.

(3) Requests for records of the OIG must be made in writing, and may be submitted via email to foia@stateoig.gov, by fax to 703-284-1866, or by mail addressed to FOIA Officer, Officer of General Counsel, Office of Inspector General, U.S. Department of State, 1700 N. Moore Street, Suite 1400, Arlington, VA 22209. Submission by e-mail is preferred. Guidance and contact information are available on the OIG's website at www.stateoig.gov/foiarequest.

(4) The Office of Information Programs and Services, the Law Enforcement Liaison Division of the Passport Services directorate, and the OIG are the only Department components authorized to accept FOIA and PA requests submitted to the Department.

(5) The requester should provide the specific citation to the authority under which he or she is requesting information (e.g., the FOIA, the PA, or Mandatory Declassification Review (MDR) under the current Executive Order on classification). This will facilitate the processing of the request. When individual U.S. citizens and lawful permanent residents request access to records about themselves, the Department processes responsive records maintained in Privacy Act systems of records under both the FOIA and the PA to provide requesters with the greatest degree of access to the records. Information in such records will be withheld only if it is exempt from access under both laws; if the information is exempt under only one of the laws, it will be released. Responsive records that are not maintained in a Privacy Act system of records are processed only under the FOIA.

(6) A requester who requests records about himself or herself, including passport records, must comply with the verification of identity requirements as set forth in § 171.22 of Subpart C (the Privacy Act Provisions) of this part in order for the request to be processed under the PA.

(7) Where a request for records pertains to a third party or to a requester's own records outside of a request under the Privacy Act, a requester may receive greater access by submitting a notarized authorization signed by the person whose records are requested, or by submitting a declaration

made in compliance with the requirements set forth in 28 U.S.C. 1746 by the person whose records are requested, authorizing disclosure of the records to the requester, or by submitting proof that the third party is deceased (e.g., a copy of a death certificate or an obituary).

(8) The Immigration and Nationality Act, as amended, section 222(f) (8 U.S.C. 1202(f)), provides that the records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States must be considered confidential and shall be used only for certain enumerated purposes, including the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States. As a result, information subject to release in response to a request for visa records about an individual may be limited. Requests for visa records should include the following information for the applicant and, if applicable, the petitioner: full name, as well as any aliases used; current address; email; and date and place of birth (including city, state, and country). Additional information describing the records sought will assist the Department in properly identifying the responsive records and in processing the request. Attorneys or other legal representatives requesting visa information on behalf of a visa applicant should submit a statement with the request signed by the applicant (and the petitioner if the records sought pertain to a petition) authorizing release of the requested visa information to the representative. Alternatively, requesters may submit a DS-4240-R to certify their identity or a DS-4240-C to provide authorization by the applicant (and the petitioner if the records sought pertain to a petition) to release the requested information to the legal representative. Forms created by other Federal agencies will not be accepted. Other information found in the visa file, such as information submitted as part of the visa application and information not falling within section 222(f) or another FOIA exemption, may be provided to the requester.

(b) *Description of records sought.* Although no particular format is required, a request must reasonably describe the Department record(s) that the requester seeks. Requesters must describe the records sought in sufficient detail to enable agency personnel to locate them with a

reasonable amount of effort. To the extent possible, requesters should include specific information that may assist the Department in identifying the requested record(s), such as the date, title or name, author, recipient, subject matter, case number, file designation reference number, or timeframe. If after receiving a request the Department determines that the request does not reasonably describe the records sought, the Department will inform the requester that the request is insufficient and shall inform the requester what additional information is needed or why the request is otherwise insufficient. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed. Any records provided in response to a request will be provided in the form or format requested if a releasable form of the records is readily reproducible in that form or format. Requesters must provide contact information, such as their phone number, email address, and/or mailing address, to assist the Department in communicating with them and providing released records.

(c) *Privacy Act versus FOIA*. While the Department makes every effort to provide the greatest possible access to all requested records regardless of the statute(s) under which the information is requested, the following guidance is provided for the benefit of requesters:

(1) The Freedom of Information Act applies to requests for records concerning the general activities of government and of the Department in particular (see subpart B of this part).

(2) The Privacy Act applies to requests from U.S. citizens or lawful permanent residents for records about them that are maintained by the Department in a system of records retrievable by the individual's name or personal identifier (see subpart C of this part).

§ 171.5 Archival records.

The Department ordinarily transfers records designated as historically significant to the National Archives when they are 25 years old. Accordingly, requests for some Department records 25 years old or older should be submitted to the National Archives by mail addressed to Special Access and FOIA Staff (RD-F), National Archives at College Park, 8601 Adelphi Road, Room 5500, College Park, MD 20740-6001; by fax to (301) 837-1864; or by e-mail to

specialaccess_foia@nara.gov. The Department's website, www.foia.state.gov, has additional information regarding archival records.

Subpart B—Freedom of Information Act Provisions

§ 171.10 Purpose and scope.

This subpart contains the rules that the Department follows under the Freedom of Information Act (FOIA) as amended, 5 U.S.C. 552. The rules should be read together with the FOIA, which provides additional information about access to records and contains the specific exemptions that are applicable for withholding information; the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Guidelines) (*see* www.justice.gov/oip/foia-resources#s5); and information located at www.foia.state.gov.

§ 171.11 Processing requests.

(a) *In general.* (1) The Office of Information Programs and Services (A/GIS/IPS) is responsible for initial action on all FOIA requests for Department records, with two exceptions: requests seeking records under the purview of the Office of Inspector General (OIG), which receives and processes requests for OIG records (*see* § 171.4 (a)(3)); and requests seeking records under the purview of the Law Enforcement Liaison Division of the Passport Services directorate of the Bureau of Consular Affairs (CA), which receives and processes requests for certain consular records (*see* § 171.4 (a)(2)).

(2) For requests for which A/GIS/IPS is responsible for initial action, A/GIS/IPS will issue all initial decisions on whether a request is valid (or has subsequently been perfected) and whether to grant or deny requests for a fee waiver or for expedited processing.

(3) After A/GIS/IPS takes initial action, all requests for records coming under the jurisdiction of the following components are processed by those components, although A/GIS/IPS may provide review and coordination support to these components in some situations: the Directorates for Visa Services, Passport Services, and Overseas Citizens Services, in the Bureau of Consular Affairs; the Bureau of Diplomatic Security; the Bureau of Global Talent Management; and the

Bureau of Medical Services. Additionally, the Foreign Service Grievance Board (FSGB), as an independent body, processes all FOIA requests seeking access to its records and responds directly to requesters.

(b) *Receipt of request.* The Department is in receipt of a request when the request is received by A/GIS/IPS, OIG, or PPT, depending on which office is the proper recipient. At that time, the Department must send an acknowledgement letter to the requester that identifies the date of receipt of the request in the proper office (A/GIS/IPS, OIG, or PPT), and the case tracking number. When one of these offices determines that a request was misdirected within the Department, that office must promptly route the request to the proper office(s) within the Department.

(c) *Cut-off date and exclusions.* In determining which records are responsive to a request, the Department ordinarily will include only records in its possession as of the date of initiation of the search for responsive records, unless the requester has specified an earlier cut-off 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.

(d) *Consultation, referral, and coordination.* When reviewing records located in response to a request, the component processing the request will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the component must proceed in one of the following ways:

(1) *Consultation.* When records originated with the Department, but contain within them information of interest to another agency or other Federal Government office, the component processing the request should typically consult with that other entity prior to making a release determination.

(2) *Referral.* (i) When the component processing the request believes that a different Department component or other Federal Government agency is better able to determine whether to disclose

the record, the component processing the request typically should refer the responsibility for responding to the request regarding that record to that component or agency, as long as the referral is to an entity subject to the FOIA. Ordinarily, the agency that originated the record will be presumed to be best able to make the disclosure determination. However, if the component processing the request and the originating agency jointly agree that the former is in the better position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever the component processing the request refers any part of the responsibility for responding to a request to another entity, the component must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral and inform the requester of the name(s) of the entity to which the record was referred, including that entity's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the component or agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement component responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if a component locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harm. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the component that received the request should coordinate with the originating component or agency to seek its views on the whether the record may be disclosed. The release

determination for the record that is the subject of the coordination will be conveyed to the requester by the component that originally received the request.

(e) *Timing of responses to consultations and referrals.* All consultations and referrals received by the Department will be handled according to the date that the perfected FOIA request was received by the first agency.

(f) *Agreements regarding consultations and referrals.* The Department may make agreements with other agencies to eliminate, reduce, or streamline the need for consultations or referrals for particular types of records.

§ 171.12 Timing of responses to requests.

(a) *In general.* The Department ordinarily will respond to requests in the order received. In instances involving misdirected requests that are re-routed pursuant to § 171.11 (b), the response time will commence on the date that the request is received by the proper office that is designated to receive requests (A/GIS/IPS, OIG or PPT), but in any event not later than 10 working days after the request is first received by any of these three offices.

(b) *Multi-track processing.* The Department has a specific track for requests that are granted expedited processing, in accordance with the standards that are set forth in paragraph (d) of this section. An intake office (A/GIS/IPS, OIG, or PPT) may also designate additional processing tracks that, for example, distinguish between simple and more complex requests based on the estimated amount of work and/or time needed to process the request. Among the factors that may also be considered are the number of records requested, the number of pages involved in processing the request, and the need for consultations or referrals. The Department must advise requesters of the track in which their request falls and, when appropriate, should offer the requesters an opportunity to narrow their request so that it can be placed in a different processing track.

(c) *Unusual circumstances.* Whenever the statutory time limit for processing a request cannot be met because of unusual circumstances, as defined in the FOIA, and the Department extends the

time limit on that basis, the Department must, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved. Where the extension exceeds 10 working days, the Department must, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or a modified request. The Department must make available its designated FOIA contact and FOIA Public Liaison for this purpose (*see foia.state.gov/contact/*). In the written notice to the requester, the Department must also alert the requester to the availability of the Office of Government Information Services to provide dispute resolution services.

(d) *Expedited processing.* (1) Requests shall receive expedited processing when a requester demonstrates that a compelling need for the information exists. A compelling need is deemed to exist when the requester can demonstrate one of the following:

- (i) Failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- (ii) With respect to a request made by a person primarily engaged in disseminating information, there exists an urgency to inform the public concerning actual or alleged Federal Government activity; or
- (iii) Failure to release the information would impair substantial due process rights or harm substantial humanitarian interests.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. Requests for expedited processing must be submitted to the office responsible for receiving the FOIA request (A/GIS/IPS, OIG, or PPT). When making a request for expedited processing of an administrative appeal, the request must be submitted to A/GIS/IPS, or OIG in the case of appeals of OIG decisions (see § 171.15). A Department FOIA office that receives a misdirected request for expedited processing must forward it promptly to the correct office responsible for receiving requests (A/GIS/IPS, OIG, or PPT) for its determination. The time period for making the determination on the request for expedited

processing commences on the date that the correct office receives the request, provided that the Department will be considered to have received the request for expedited processing no more than 10 working days after the request for expedited processing is received by A/GIS/IPS, OIG, or PPT.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (d)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an “urgency to inform” the public on the topic. As a matter of administrative discretion, the Department may waive the formal certification requirement.

(4) A notice of the determination whether to grant expedited processing must be provided to the requester within 10 calendar days of the date of the receipt of the request for expedited processing in the appropriate office (whether A/GIS/IPS, OIG, or PPT). If expedited processing is granted, the request must be given priority, placed in the processing track for expedited requests, and processed as soon as practicable. A denial of a request for expedited processing may be appealed within 90 calendar days of the date of the Department’s letter denying the request. A decision in writing on the appeal will be issued within 10 calendar days of the receipt of the appeal.

§ 171.13 Responses to requests.

(a) *In general.* The Department will, to the extent practicable, communicate with requesters having access to the Internet using electronic means, such as email or a web portal.

(b) *Acknowledgment of requests.* The Department must acknowledge the request in writing and assign it an individualized tracking number if it will take longer than 10 working days to process. The Department must include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests. The Department may in its discretion divide a multi-part request into multiple requests in order to facilitate processing.

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

(d) *Grants of requests.* Once the Department makes a determination to grant a request in full or in part, it must notify the requester in writing. The Department also must inform the requester of any fees charged under §171.16 and must disclose the requested records to the requester promptly upon payment of any applicable fees. The Department must inform the requester of the availability of the FOIA Public Liaison to offer assistance.

(e) *Adverse determinations of requests.* If the Department makes an adverse determination denying a request in any respect, it must notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt from disclosure, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or 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 waiver matters or denials of requests for expedited processing.

(f) *Content of denial.* The denial must be signed by the head of the component processing the request, or designee, and must include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemptions applied in denying the request;

(3) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;

(4) A statement that the denial may be appealed under § 171.15 and a description of the requirements set forth therein; and

(5) A statement notifying the requester of the assistance available from the Department's FOIA Public Liaison and the dispute resolution services offered by the Office of Government Information Services of the National Archives and Records Administration.

(g) *Markings on released documents.* Markings on released documents must be clearly visible to the requester. Records disclosed in part must be marked to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted must also be indicated on the record, if technically feasible.

(h) *Use of record exclusions.* (1) In the event that the Department identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), A/GIS/IPS or OIG must confer with the Department of Justice, Office of Information Policy to obtain approval to apply the exclusion.

(2) Any time the Department invokes an exclusion, it must maintain an administrative record of the process of invocation and approval of the exclusion by OIP.

§ 171.14 Confidential commercial information.

(a) *Definitions.* The following definitions apply for purposes of this section:

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

Submitter means any person or entity from which the Department obtains confidential commercial information, directly or indirectly. The term includes corporations, partnerships, and sole proprietorships; state, local, and tribal governments; foreign governments; NGOs; and educational institutions. This term does not include another Federal Government entity.

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

(c) *Notice to submitters.* (1) The Department must provide a submitter with prompt written notice whenever records containing its confidential commercial information are requested under the FOIA if the agency determines that it may be required to disclose the records, provided:

(i) The information has been designated in good faith by the submitter as information considered exempt from disclosure under Exemption 4; or

(ii) The Department has reason to believe that the requested information may be exempt from disclosure under Exemption 4 but has not yet determined whether the information is protected from disclosure.

(2) The notice must either describe the confidential commercial information requested or include a copy of the requested records or record portions containing the information.

(d) *When notice is not required.* The notice requirements of this section do not apply if:

(1) The Department determines that the information is exempt from disclosure under the FOIA and, therefore, will not be disclosed;

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

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such a case, the Department must give the submitter written notice of any final decision to disclose the information a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.* The Department must allow a submitter a reasonable time to respond to the notice described in paragraph (c) of this section and must specify that time period in the notice. If a submitter has any objections to disclosure, it should provide the Department a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. The Department is not required to consider any information received after any disclosure decision. Information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* The Department will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose confidential commercial information. Whenever the Department decides to disclose information over the objection of a submitter, it must give the submitter written notice, which must include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed or copies of the records as the Department intends to release them; and

(3) A specified disclosure date, which must be a reasonable time after the notice.

(g) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the Department must promptly notify the submitter.

(h) *Notice to requester.* The Department must notify the requester whenever it provides a submitter with notice and an opportunity to object to disclosure; whenever it notifies a submitter of its intent to disclose requested information; and whenever a submitter files a lawsuit seeking to prevent the disclosure of the requested information.

§ 171.15 Administrative appeals.

(a) *Requirements for making an appeal.* (1) Requesters may appeal any adverse determinations made on their FOIA request by the Department. Examples of adverse determinations are provided in §171.13 (e). The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the adverse determination. The appeal must clearly identify the component's determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Freedom of Information Act Appeal."

(2) To appeal any adverse determinations made by A/GIS/IPS or a component other than OIG, requesters must submit an administrative appeal to the A/GIS/IPS FOIA Appeals Office using any of the following methods: by mail to the Appeals Officer, Office of Information Programs and Services (A/GIS/IPS), Room B-266, U.S. Department of State, 2201 C Street, NW, Washington, D.C. 20520; by fax to (202) 485-1718; or by email to FOIAAppeals@state.gov.

(3) To appeal any adverse determinations made by OIG, requesters must submit an administrative appeal to OIG via email to foia@stateoig.gov, by fax to 703-284-1866, or by mail

addressed to the FOIA Officer, Officer of General Counsel, Office of Inspector General, U.S. Department of State, 1700 N. Moore Street, Suite 1400, Arlington, VA 22209. Contact information for OIG is available on OIG's FOIA website at www.stateoig.gov/foiaappeals. For those cases in which both A/GIS/IPS and OIG provided written denials to the requester, the requester may administratively appeal to both A/GIS/IPS and OIG and each office will handle its respective portion of the appeal.

(4) To appeal any adverse determinations made by the FSGB, requesters must submit an administrative appeal to A/GIS/IPS using the methods listed above in paragraph (2). A/GIS/IPS will assign a tracking number to the appeal and forward it to the FSGB, which is an independent body, for adjudication.

(b) *Adjudication of appeals.* (1) The A/GIS/IPS Director or designee will act on behalf of the Assistant Secretary for Administration on all appeals of A/GIS/IPS FOIA determinations under this section. Likewise, the General Counsel of OIG or his/her designee will act on behalf of the Inspector General on all appeals of OIG FOIA determinations under this section.

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

(c) *Decisions on appeals.* The Department must provide its decision on an appeal in writing. A decision that upholds the Department's determination in whole or in part must include a brief statement of the reason for the affirmance, including any FOIA exemptions applied. The decision must inform the requester that the decision represents the final decision of the Department; must advise the requester of the statutory right to file a lawsuit; and must inform the requester of the dispute resolution services offered by the Office of Government Information Services of the National Archives and Records Administration (OGIS) as a non-exclusive alternative to litigation. If a decision is remanded or modified on appeal, the requester will be notified in writing. The appropriate component will then further process the request in accordance with that appeal determination and respond directly to the requester.

(d) *Engaging in dispute resolution services provided by OGIS.* Dispute resolution is a voluntary process. If a component agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(e) *When appeal is required.* Before seeking review by a court of the Department's adverse determination, a requester generally must first submit a timely administrative appeal.

§ 171.16 Fees to be charged.

(a) *In general.* The Department will charge fees for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. For purposes of assessing fees, the FOIA establishes three categories of requesters: (1) commercial use requesters, (2) non-commercial scientific or educational institutions or news media requesters, and (3) all other requesters. Different fees are assessed depending on the category. Requesters may seek a fee waiver. The Department considers fee waivers in accordance with the requirements set forth below. To resolve any issues that arise under this section, the Department may contact a requester for additional information. The Department must use the most efficient and least costly methods to comply with requests for records made under the FOIA. The Department shall attempt to notify the requester if fees are estimated to exceed \$25.00, unless the requester has expressed a willingness to pay fees as high as those anticipated. Such notification shall include a breakdown of the fees for search, review, and duplication. The Department ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States, or by another method as determined by the Department.

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

Charging fees. In responding to FOIA requests, the Department will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (j) of this section.

Because the fee amounts provided below already account for the direct costs associated with a

given fee type, the Department should not add any additional costs to charges calculated under this section.

Commercial use request is a request that asks for information for a use or purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The Department's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information. The Department will notify requesters of their placement in this category.

Direct costs are those expenses the Department incurs in searching for, duplicating, and, in the case of commercial use requests, reviewing records in response 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. The term does not include overhead expenses such as the costs of space and of heating or lighting of a facility.

Duplication is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

Educational institution is any school that operates a program of scholarly research. A requester in this category must show that the request is made in connection with the requester's role at the educational institution. The Department may seek verification from the requester that the request is in furtherance of scholarly research. The Department will advise requesters of their placement in this category.

Non-commercial scientific institution is an institution that is not operated on a "commercial" basis, as defined in paragraph (b)(1) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further

scientific research and are not for a commercial use. Noncommercial scientific institution requesters will not be charged for search and review time, and the first 100 pages of the duplication will be provided free of charge. The Department will advise requesters of their placement in this category.

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. 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 shall not be considered to be for a commercial use. Freelance journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Department shall also consider a requester’s past publication record in making this determination. A representative of the news media will not be charged for search and review time, and the first 100 pages of the duplication will be provided free of charge. The Department will advise requesters of their placement in this category.

Review is the examination of a record located in response to a request 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 made by a confidential

commercial information submitter under §171.14 but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search is the process of looking for, identifying, and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(i) Requests made by educational institutions, non-commercial scientific institutions, or representatives of the news media are not subject to search fees. Search fees shall be charged for all other requesters, subject to the restrictions of paragraph (j) of this section. The Department may properly charge for time spent searching even if responsive records are not located, or if records are determined to be entirely exempt from disclosure.

(ii) For each hour spent by personnel searching for requested records, the fees shall be as stated at the following website: *foia.state.gov/Request/Guide.aspx* (section VII, “Fees”) and *www.stateoig.gov/foiafees* for OIG requested records.

(iii) For requests that require the retrieval of records stored by the Department at a Federal records center operated by the National Archives and Records Administration (NARA), the Department will charge additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Review*. The Department will charge review fees to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, i.e., the review conducted to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with the Department’s re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees shall be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(3) *Duplication.* The Department will charge duplication fees to all requesters, subject to the restrictions of paragraph (d) of this section. The Department must honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the Department in the form or format requested. The Department charges the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester must also pay the direct costs associated with scanning those materials. Duplication fees are as stated at the following website: foia.state.gov/Request/Guide.aspx (section VII, "Fees").

(d) *Restrictions on charging fees.* (1) The Department will not charge search fees for requests by educational institutions, non-commercial scientific institutions, or representatives of the news media, unless the records are sought for a commercial use.

(2) If the Department fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees, except as described in paragraphs (d)(2)(i) through (iii) of this section.

(i) If the Department has determined that unusual circumstances as defined by the FOIA apply and the agency provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit is excused for an additional 10 days.

(ii) If the Department has determined that unusual circumstances as defined by the FOIA apply, and more than 5,000 pages are necessary to respond to the request, the Department may charge search fees, or, in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees, if the following steps are taken. The Department must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA, and the Department must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit

the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the Department may charge all applicable fees incurred in the processing of the request.

(iii) If a court has determined that exceptional circumstances exist as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) Except for requesters seeking records for a commercial use, the Department must provide without charge:

(i) the first 100 pages of duplication (or the cost equivalent for other media); and

(ii) the first two hours of search.

(4) When, after deducting the 100 free pages (or its cost equivalent) and the first two hours of search, the total fee calculated under paragraph (c) of this section is \$25.00 or less, no fee will be charged.

(5) Apart from the stated provisions regarding waiver or reduction of fees, see paragraph (j) of this section, the Department may in its sole discretion decide to not assess fees or to reduce them if it is in the best interests of the government not to do so.

(e) *Notice of anticipated fees in excess of \$25.00.* (1) When the Department determines or estimates that the fees to be assessed in accordance with this section will exceed \$25.00, the Department must notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review, or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the Department will advise the requester accordingly. If the request is not for commercial use, the notice will specify that the requester is entitled to the statutory entitlement of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and will advise the requester whether those entitlements have been provided.

(2) In cases in which the Department has notified the requester that the actual or estimated fees are in excess of \$25.00, the request will not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates an amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. The Department is not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the Department estimates that the total fee will exceed that amount, the Department will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The Department will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The Department must make available its FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if a component chooses to do so as a matter of administrative discretion, the direct costs of providing the service shall be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* The Department may charge interest on any unpaid bill starting on the 31st day following the date the bill was sent to the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and shall accrue from the date of the billing until payment is

received by the Department. The fact that a fee has been received by the Department within the thirty-day grace period, even if not processed, shall stay the accrual of interest. The Department must follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* When the Department reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the Department may aggregate those requests and charge accordingly. The Department may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, components will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters cannot be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) or (i)(3) of this section, the Department cannot require a requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (i.e., payment before copies are sent to the requester) is not advance payment.

(2) When the Department estimates or determines that a total fee to be charged under this section will exceed \$250, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The Department may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay FOIA fees to any component within 30 calendar days of the date of its billing, the Department may require the requester to pay the full amount due, plus any applicable interest on that prior request, and to make an advance payment of the full amount of any anticipated fee before the Department begins to process a new request

or continues to process a pending request or any appeal from that requester. Where the Department has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity. Additionally, if a requester has failed to pay FOIA fees to another U.S. Government agency in a FOIA case, the Department may require proof that such fee has been paid before processing a new or pending request from that requester.

(4) In cases in which the Department requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the Department's fee determination, the request will be closed.

(j) *Requirements for waiver or reduction of fees.* (1) Requesters 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 requester.

(2) The Department must furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the factors described in paragraphs (j)(2)(i) through (iii) of this section are satisfied:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in

either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public shall be considered. The Department will presume that a representative of the news media satisfies this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the information is primarily in the commercial interest of the requester, the Department will consider the following factors:

(A) The Department must identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters must be given an opportunity to provide explanatory information regarding this consideration.

(B) If there is an identified commercial interest, the Department must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirement of paragraphs (j)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. The Department ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (j)(2)(i) and (ii) of this section, the request is not primarily in the commercial interest of the requester.

Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver or reduction of fees, a waiver or reduction must be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Department and should address the criteria referenced above. A requester may submit a

fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester must pay any costs incurred up to the date the fee waiver request was received.

§ 171.17 Preservation of records.

The Department must preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code and applicable records disposition schedules, including the General Records Schedule 4.2 of the National Archives and Records Administration. The Department must not dispose of or destroy records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

Subpart C—Privacy Act Provisions

§ 171.20 Purpose and scope.

This subpart contains the rules that the Department follows when implementing certain provisions of the Privacy Act of 1974 (PA), as amended, 5 U.S.C. 552a. These rules should be read together with the statute. The rules in this subpart apply to all records in systems of records maintained by the Department that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the Department. If any records retrieved pursuant to an access request under the PA are found to be exempt from access under that Act, they will be processed for possible disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. No fees shall be charged when an individual requests access to or amendment of his or her own PA records.

§ 171.21 Definitions.

As used in this subpart, the following definitions shall apply:

Individual means a citizen or a lawful permanent resident (LPR) of the United States.

Maintain includes maintain, collect, use, or disseminate.

Record means any item, collection, or grouping of information about an individual that is maintained by the Department and that contains the individual's name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voice print, or photograph.

System of records means a group of any records under the control of the Department from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

§ 171.22 Request for access to records.

(a) *In general.* Requests for access to records under the PA must be made in writing and sent to the Office of Information Programs and Services, the Law Enforcement Liaison Division of the Passport Services directorate within the Bureau of Consular Affairs, or the Office of Inspector General at the addresses given in §171.4. The Director of the Office of Information Programs and Services (A/GIS/IPS) is responsible for acting on all PA requests for Department records except for requests received directly by the Office of Inspector General, which processes its own requests for information, and the Law Enforcement Liaison Division of the Passport Services directorate within the Bureau of Consular Affairs, which receives directly and processes its own PA requests for information as described in PA System of Record Notice STATE-26. All processing of PA requests coming under the jurisdiction of the Directorates for Visa Services and Overseas Citizens Services in the Bureau of Consular Affairs, the Bureau of Diplomatic Security, the Bureau of Global Talent Management, the Bureau of Medical Services, and the Foreign Service Grievance Board (FSGB) are handled by those bureaus or offices.

(b) *Description of records sought.* Requests for access should describe the requested record(s) in sufficient detail to permit identification of the record(s). At a minimum, requests should include the individual's full name (including maiden name, if appropriate) and any other names used,

current complete mailing address, and date and place of birth (city, state, and country). Helpful information includes the approximate time period of the record and the circumstances that give the individual reason to believe that the Department maintains a record under the individual's name or personal identifier, and, if known, the system of records in which the record is maintained. In certain instances, it may be necessary for the Department to request additional information from the requester, either to ensure a full search, or to ensure that a record retrieved does in fact pertain to the individual.

(c) *Verification of personal identity.* The Department will require reasonable identification of individuals requesting records about themselves under the PA's access provisions to ensure that records are only accessed by the proper persons. Requesters must state their full name, current address, citizenship or legal permanent resident alien status, and date and place of birth (city, state, and country). The request must be signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746. If the requester seeks records under another name the requester has used, a statement, under penalty of perjury, that the requester has also used the other name must be included. Requesters seeking access to copies of the Passport Services' passport records must meet the requirements in paragraph (d) of this section.

(d) *Special requirements for passport records.* Given the sensitive nature of passport records and their use, requesters seeking access to copies of passport records from Passport Services under the PA must submit a letter that is either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746, which includes the full name at birth and any subsequent name changes of the individual whose records are being requested (if submitting the request on behalf of a minor, provide the representative's full name as well); the date and place of birth of the individual whose records are being requested; the requester's current mailing address; and, if available, daytime telephone number and e-mail address; the date or estimated date the passport(s) was issued; the passport number of the person whose records are being sought, if known; and any

other information that will help to locate the records. The requester must also include a clear copy of both sides of the requester's valid government-issued photo identification, e.g., a driver's license.

(e) *Authorized third party access.* The Department shall process all properly authorized third party requests, as described in this section, under the PA. In the absence of proper authorization from the individual to whom the records pertain, the Department will process third party requests under the FOIA. The Department's forms DS-4240-R and DS-4240-C, respectively, may be used to certify identity and provide third party authorization. Forms created by other Federal agencies will not be accepted.

(1) *Parents and guardians of minor children.* Upon presentation of acceptable documentation of the parental or guardian relationship, a parent or guardian of a U.S. citizen or LPR minor (an unmarried person under the age of 18) may, on behalf of the minor, request records under the PA pertaining to the minor. In any case, U.S. citizen or LPR minors may request such records on their own behalf. When making a request as the parent or guardian of a minor child, for access to records about that individual, a requester must establish: (1) the identity of the individual who is the subject of the records, by stating the name, current address, date and place of birth; (2) the requester's own identity, as required in paragraph (c) of this section; (3) that the requester is the parent of that individual, which the requester may prove by providing a copy of the individual's birth certificate showing parentage, or by providing a court order establishing guardianship; and (4) that the requester is acting on behalf of that individual in making the request.

(2) *Guardians of incompetent adults.* A guardian of an individual who has been declared by a court to be incompetent may act for and on behalf of the incompetent individual upon presentation of appropriate documentation of the guardian relationship.

(i) *Verification of guardianship of incompetent adult.* When making a request as the guardian of someone determined by a court to be incompetent, for access to records about that individual, a requester must establish: (1) the identity of the individual who is the subject of the records, by

stating the name, current address, date and place of birth; (2) the requester's own identity, as required in paragraph (c) of this section; (3) that the requester is the guardian of that individual, which the requester may prove by providing a copy of a court order establishing guardianship; and (4) that the requester is acting on behalf of that individual in making the request.

(ii) *Authorized representatives or designees.* When an individual wishes to authorize the Department to permit a third party access to his or her records, the individual to whom the records pertain must submit, in addition to the identity verification information described in paragraph (c) (or paragraph (d) of this section if the request is for passport records), a signed statement from the individual to whom the records pertain, either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746, giving the Department authorization to release records about the individual to the third party. The designated third party must submit identity verification information described in paragraph (c). Third party requesters seeking access to copies of the Passport Office's records must submit a clear copy of both sides of a valid government-issued photo identification (e.g., a driver's license) in addition to the other information described above.

(f) *Referrals and consultations.* If the Department determines that records retrieved as responsive to the request were created by another agency, it ordinarily will refer the records to the originating agency for direct response to the requester. If the Department determines that Department records retrieved as responsive to the request are of interest to another agency, it may consult with the other agency before responding to the request. The Department may make agreements with other agencies to eliminate the need for consultations or referrals for particular types of records.

(g) *Records relating to civil actions.* Nothing in this subpart entitles an individual to access any information compiled in reasonable anticipation of a civil action or proceeding.

(h) *Time limits.* The Department will acknowledge the request promptly and furnish the requested information as soon as possible thereafter.

§ 171.23 Request to amend or correct records.

(a) An individual has the right to request that the Department amend a record pertaining to the individual that the individual believes is not accurate, relevant, timely, or complete.

(b) Requests to amend records must be in writing and mailed or delivered to A/GIS/IPS or OIG at the address given in §171.4, with ATTENTION: PRIVACY ACT AMENDMENT REQUEST written on the envelope. A/GIS/IPS or OIG will coordinate the review of the request with the appropriate offices under its purview. The Department will require verification of personal identity as provided in §171.22(c) before it will initiate action to amend a record. Amendment requests should contain, at a minimum, identifying information needed to locate the record in question, a description of the specific correction requested, and an explanation of why the existing record is not accurate, relevant, timely, or complete. The request must be signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746. The requester should submit as much pertinent documentation, other information, and explanation as possible to support the request for amendment.

(c) All requests for amendments to records shall be acknowledged within 10 working days.

(d) In reviewing a record in response to a request to amend, the Department shall review the record to determine if it is accurate, relevant, timely, and complete.

(e) If the Department agrees with an individual's request to amend a record, it shall:

(1) Advise the individual in writing of its decision;

(2) Amend the record accordingly; and

(3) If an accounting of disclosure has been made, advise all previous recipients of the record of the amendment and its substance.

(f) If the Department denies an individual's request to amend a record, it shall advise the individual in writing of its decision and the reason for the refusal, and the procedures for the individual to request further review. See §171.25.

§ 171.24 Request for an accounting of record disclosures.

(a) *How made.* Except where accountings of disclosures are not required to be kept, as set forth in paragraph (b) of this section, or where accountings of disclosures do not need to be provided to a requesting individual pursuant to 5 U.S.C. 552a(c)(3), an individual has a right to request an accounting of any disclosure that the Department has made to another person, organization, or agency of any record about such individual, provided that the disclosed records are maintained in a system of records. This accounting shall contain the date, nature, and purpose of each disclosure as well as the name and address of the recipient of the disclosure. Any request for accounting should identify each particular record in question and may be made by writing directly to A/GIS/IPS at the address given in §171.4.

(b) *Where accountings not required.* The Department is not required to keep an accounting of disclosures in the case of:

(1) Disclosures made to employees within the Department who have a need for the record in the performance of their duties; and

(2) Disclosures required under the FOIA.

§ 171.25 Appeals from denials of PA amendment requests.

(a) If the Department denies a request for amendment of such records, the requester shall be informed of the reason for the denial and of the right to appeal the denial within 90 working days of the date of the Department's denial letter.

(b) For decisions made by A/GIS/IPS, requesters should submit their appeal to the A/GIS/IPS FOIA Appeals Office using any of the following methods: by mail to the Appeals Officer, Office of Information Programs and Services (A/GIS/IPS), Room B-266, U.S. Department of State, 2201 C Street, NW, Washington, D.C. 20520; by fax to (202) 485-1718; or by email to FOIAAppeals@state.gov. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Privacy Act Appeal."

(c) For decisions made by OIG, requesters should submit their appeal to the OIG. The contact information for OIG is available at www.stateoig.gov/foiaappeals. To facilitate handling, the

requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, "Privacy Act Appeal."

(d) Appellants should submit an administrative appeal of any denial, in whole or in part, of a request for access to FSGB records under the PA to A/GIS/IPS FOIA Appeals Office using any of the following methods: by mail to the Appeals Officer, Office of Information Programs and Services (A/GIS/IPS), Room B-266, U.S. Department of State, 2201 C Street, NW, Washington, D.C. 20520; by fax to (202) 485-1718; or by email to FOIAAppeals@state.gov. A/GIS/IPS will assign a tracking number to the appeal and forward it to the FSGB, which is an independent body, for adjudication.

(e) A/GIS/IPS or OIG will decide appeals from denials of PA amendment requests within 30 working days from the date when the appeal is received, unless an extension of that period for good cause shown is needed.

(f) Decisions will be made in writing, and appellants will receive notification of the decision. A reversal will result in reprocessing of the request in accordance with that decision. An affirmance will include a brief statement of the reason for the affirmance and will inform the appellant that the decision represents the final decision of the Department and of the right to seek judicial review of the decision, when applicable.

(g) If the decision is that a record shall be amended in accordance with the appellant's request, A/GIS/IPS or OIG shall direct the office under its purview that is responsible for the record to amend the record, advise all previous recipients of the record of the amendment and its substance (if an accounting of previous disclosures has been made), and so advise the individual in writing.

(h) If the decision is that the amendment request is denied, in addition to the notification required by paragraph (f) of this section, A/GIS/IPS or OIG shall advise the appellant:

(1) of the right to file a concise Statement of Disagreement stating the reasons for disagreement with the decision of the Department;

(2) of the procedures for filing the Statement of Disagreement;

(3) that any Statement of Disagreement that is filed will be made available to anyone to whom the record is subsequently disclosed, together with, at the discretion of the Department, a brief statement by the Department summarizing its reasons for refusing to amend the record;

(4) that prior recipients of the disputed record will be provided a copy of any statement of disagreement, to the extent that an accounting of disclosures was maintained.

(i) If the appellant files a Statement of Disagreement under paragraph (h) of this section, the Department will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently access the record. When the disputed record is subsequently disclosed, the Department will note the dispute and provide a copy of the Statement of Disagreement. The Department may also include a brief summary of the reasons for not amending the record. Copies of the Department's statement shall be treated as part of the individual's record for granting access; however, it will not be subject to amendment by an individual under this part.

§ 171.26 Exemptions.

Systems of records maintained by the Department are authorized to be exempt from certain provisions of the PA under both general and specific exemptions set forth in the Act. In utilizing these exemptions, the Department is exempting only those portions of systems that are necessary for the proper functioning of the Department and that are consistent with the PA. Where compliance would not interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, the applicable exemption may be waived, either partially or totally, by the Department or the OIG, in the sole discretion of the Department or the OIG, as appropriate. Records exempt under 5 U.S.C. 552a(j) or (k) by the originator of the record remain exempt if subsequently incorporated into any Department system of records, provided the reason for the exemption remains valid and necessary.

(a) *General exemptions.* If exempt records are the subject of an access request, the Department will advise the requester of their existence and of the name and address of the source agency, unless that information is itself exempt from disclosure.

(1) Individuals may not have access to records maintained by the Department that are maintained or originated by the Central Intelligence Agency under 5 U.S.C. 552a(j)(1).

(2) In accordance with 5 U.S.C. 552a(j)(2), individuals may not have access to records maintained or originated by an agency or component thereof that performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of:

(i) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(ii) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(iii) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. The reason for invoking these exemptions is to ensure effective criminal law enforcement processes. Records maintained by the Department in the following systems of records are exempt from all of the provisions of the PA except paragraphs (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (e)(7), (e)(9), (e)(10), and (e)(11), and (i), to the extent to which they meet the criteria of section (j)(2) of 5 U.S.C. 552a. The names of the systems correspond to those published in the *Federal Register* by the Department.

Table 1 to Paragraph (a)(2)(iii)

Title	Number
Information Access Program Records	STATE-35

Office of Inspector General Investigation Management System	STATE-53
Risk Analysis and Management	STATE-78
Security Records	STATE-36

(b) *Specific exemptions.* Portions of the following systems of records are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), and (4), (G), (H), and (I), and (f). The names of the systems correspond to those published in the *Federal Register* by the Department.

(1) *Exempt under 5 U.S.C. 552a(k)(1).* Records contained within the following systems of records are exempt under this section to the extent that they are subject to the provisions of 5 U.S.C. 552(b)(1).

Table 2 to Paragraph (b)(1)

Title	Number
Board of Appellate Review Records	STATE-02
Congressional Correspondence	STATE-43
Congressional Travel Records	STATE-44
Coordinator for the Combating of Terrorism Records	STATE-06
External Research Records	STATE-10
Extradition Records	STATE-11
Family Advocacy Case Records	STATE-75
Foreign Assistance Inspection Records	STATE-48
Human Resources Records	STATE-31
Information Access Programs Records	STATE-35
Intelligence and Research Records	STATE-15
International Organizations Records	STATE-17
Law of the Sea Records	STATE-19
Legal Case Management Records	STATE-21
Munitions Control Records	STATE-42
Office of Inspector General Investigation Management System	STATE-53
Overseas Citizens Services Records	STATE-05
Passport Records	STATE-26
Personality Cross Reference Index to the Secretariat Automated Data Index	STATE-28
Personality Index to the Central Foreign Policy Records	STATE-29
Personnel Payroll Records	STATE-30
Records of Domestic Accounts Receivable	STATE-23
Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes	STATE-54
Records of the Office of White House Liaison	STATE-34

Refugee Records	STATE-59
Rover Records	STATE-41
Security Records	STATE-36
Visa Records	STATE-39

(2) *Exempt under 5 U.S.C. 552a(k)(2)*. Records contained within the following systems of records are exempt under this section to the extent that they consist of investigatory material compiled for law enforcement purposes, subject to the limitations set forth in 5 U.S.C. 552a(k)(2).

Table 3 to Paragraph (b)(2)

Title	Number
Board of Appellate Review Records	STATE-02
Coordinator for the Combating of Terrorism Records	STATE-06
Extradition Records	STATE-11
Family Advocacy Case Records	STATE-75
Foreign Assistance Inspection Records	STATE-48
Garnishment of Wages Records	STATE-61
Information Access Program Records	STATE-35
Intelligence and Research Records	STATE-15
Munitions Control Records	STATE-42
Office of Foreign Missions Records	STATE-81
Office of Inspector General Investigation Management System	STATE-53
Overseas Citizens Services Records	STATE-05
Passport Records	STATE-26
Personality Cross Reference Index to the Secretariat Automated Data Index	STATE-28
Personality Index to the Central Foreign Policy Records	STATE-29
Risk Analysis and Management Records	STATE-78
Security Records	STATE-36
Visa Records	STATE-39

(3) *Exempt under 5 U.S.C. 552a(k)(3)*. Records contained within the following systems of records are exempt under this section to the extent that they are maintained in connection with providing protective services pursuant to 18 U.S.C. 3056.

Table 4 to Paragraph (b)(3)

Title	Number
Extradition Records	STATE-11
Information Access Programs Records	STATE-35

Intelligence and Research Records	STATE-15
Overseas Citizens Services Records	STATE-05
Passport Records	STATE-26
Personality Cross-Reference Index to the Secretariat Automated Data Index	STATE-28
Personality Index to the Central Foreign Policy Records	STATE-29
Security Records	STATE-36
Visa Records	STATE-39

(4) *Exempt under 5 U.S.C. 552a(k)(4)*. Records contained within the following systems of records are exempt under this section to the extent that they are required by statute to be maintained and are used solely as statistical records.

Table 5 to Paragraph (b)(4)

Title	Number
Foreign Service Institute Records	STATE-14
Human Resources Records	STATE-31
Information Access Programs Records	STATE-35
Overseas Citizens Services Records	STATE-05
Personnel Payroll Records	STATE-30
Security Records	STATE-36

(5) *Exempt under 5 U.S.C. 552a(k)(5)*. Records contained within the following systems of records are exempt under this section to the extent that they consist of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that disclosure of such material would reveal the identity of a confidential informant.

Table 6 to Paragraph (b)(5)

Title	Number
Foreign Assistance Inspection Records	STATE-48
Foreign Service Grievance Board Records	STATE-13
Human Resources Records	STATE-31
Information Access Programs Records	STATE-35
Legal Adviser Attorney Employment Application Records	STATE-20
Office of Inspector General Investigation Management System	STATE-53
Overseas Citizens Services Records	STATE-25

Personality Cross-Reference Index to the Secretariat Automated Data Index	STATE-28
Records Maintained by the Office of Civil Rights	STATE-09
Records of the Office of White House Liaison	STATE-34
Risk Analysis and Management Records	STATE-78
Rover Records	STATE-41
Security Records	STATE-36
Senior Personnel Appointments Records	STATE-47

(6) *Exempt under 5 U.S.C. 552a(k)(6)*. Records contained within the following systems of records are exempt under this section to the extent that they consist of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

Table 7 to Paragraph (b)(6)

Title	Number
Foreign Service Institute Records	STATE-14
Human Resources Records	STATE-31
Information Access Programs Records	STATE-35
Records Maintained by the Office of Civil Rights	STATE-09
Security Records	STATE-36

(7) *Exempt under 5 U.S.C. 552a(k)(7)*. Records contained within the following systems of records are exempt under this section to the extent that they consist of evaluation material used to determine potential for promotion in the armed services, but only to the extent that such disclosure would reveal the identity of a confidential informant.

Table 8 to Paragraph (b)(7)

Title	Number
Human Resources Records	STATE-31
Information Access Programs Records	STATE-35
Overseas Citizens Services Records	STATE-25
Personality Cross-Reference Index to the Secretariat Automated Data Index	STATE-28
Personality Index to the Central Foreign Policy Records	STATE-29
Security Records	STATE-36

Subpart D—Access to Financial Disclosure Reports

§ 171.30 Purpose and scope.

This subpart sets forth the process by which persons may request access to public financial disclosure reports filed with the Department in accordance with sections 101 and 103(l) of the Ethics in Government Act of 1978, as amended, recodified at 5 U.S.C. 13103 and 13105. The retention, public availability, and improper use of these reports are governed by 5 U.S.C. 13107 and 5 CFR 2634.603. It also sets forth the prohibition on access to confidential financial disclosure reports filed under 5 CFR 2634, Subpart I, in accordance with sections 107(a) of the Ethics in Government Act of 1978, 5 U.S.C. 13109 and 5 CFR 2634.604.

§ 171.31 Requests for Public Financial Disclosure Reports---OGE Form 278.

Requests for access to public financial disclosure reports filed with the Department should be made by submitting the information required by 5 CFR 2634.603(c) or a completed Office of Government Ethics request form, OGE Form 201, to OGE201Request@state.gov or to the Office of the Assistant Legal Adviser for Ethics and Financial Disclosure, U.S. Department of State, 2201 C Street NW, Washington, DC 20520. The OGE Form 201 may be obtained by visiting www.oge.gov or writing to the address in this section.

§ 171.32 Denial of Public Access to Confidential Financial Disclosure Reports—OGE Form 450.

No member of the public shall have access to confidential financial disclosure reports filed pursuant to 5 CFR 2634, Subpart I, except pursuant to the order of a Federal court or as otherwise provided under the Privacy Act. See 5 U.S.C. 552a.

Kevin E. Bryant,

Deputy Director,

Office of Directives Management,

Department of State.

Billing Code: 4710-24

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