



## **OFFICE OF MANAGEMENT AND BUDGET**

### **5 CFR Parts 1302 and 1303**

**RIN 0348-AB87**

### **Privacy Act and Freedom of Information Act Regulations**

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Management and Budget (OMB) seeks public comment on a proposed rule that would revise OMB’s regulations implementing the Privacy Act and the Freedom of Information Act (FOIA). These revisions would update OMB’s regulations to reflect changes in OMB’s current organizational structure and best practices. The proposed amendments would also ensure consistency between the access to records procedures in OMB’s Privacy Act regulations and OMB’s FOIA regulations; and with applicable law and policies that were enacted after OMB originally issued its Privacy Act regulations in 1976. The proposed revisions would also align OMB’s regulations with those of other agencies.

**DATES:** Comments are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may send comments by:

***Federal eRulemaking Portal:*** <https://www.regulations.gov>.

***Instructions:*** All submissions must contain the subject heading “OMB Privacy Act and FOIA Regulations.”

**FOR FURTHER INFORMATION CONTACT:** For questions about these proposed regulations, please contact Timothy Ziese, 202-395-8693, [OMBPA@omb.eop.gov](mailto:OMBPA@omb.eop.gov). You must include “OMB Privacy Act and FOIA Regulations” in the subject line.

**SUPPLEMENTARY INFORMATION:**

**Background**

OMB proposes to revise its regulations at 5 CFR part 1302 governing requests and responses under the Privacy Act of 1974, as amended, 5 U.S.C. 552a (“Privacy Act”) and corresponding changes at 5 CFR part 1303 governing requests and responses under the Freedom of Information Act, as amended, 5 U.S.C. 552 (“FOIA”).

The Privacy Act establishes certain agency responsibilities and individual rights regarding the collection, use, maintenance, and disclosure of records about individuals. To carry out these responsibilities, the Privacy Act requires agencies to promulgate regulations that establish (1) procedures for notifying an individual if any system of records named by the individual contains a record pertaining to that individual; (2) procedures for making information pertaining to an individual available to that individual upon request, including with respect to timelines and other requirements; (3) procedures for reviewing and adjudicating a request from an individual concerning the amendment of any record or information pertaining to the individual, and generally ensuring that individuals can fully exercise their rights under the Privacy Act; and (4) fees to be charged, if any, to any individual for making copies of records pertaining to the individual, excluding the cost of any search for and review of the record. 5 U.S.C. 552a(f).

OMB’s current Privacy Act regulations are codified at 5 CFR part 1302. These regulations were promulgated in 1976. OMB proposes to update them for consistency with OMB’s current organizational structure and best practices. Amendments would also ensure consistency with (1) the access to records procedures in OMB’s FOIA regulations found at 5

CFR part 1303; and (2) applicable law and policies that were enacted after 1976. The proposed revisions would also make OMB's regulations more consistent with those of other agencies, including as recently proposed by the Department of Justice (DOJ).

OMB also proposes conforming revisions to OMB's FOIA regulations, most notably with regard to identity verification. In accordance with 5 U.S.C. 552a(t), this proposal provides FOIA requesters the benefit of both the Privacy Act and FOIA disclosure requirements. Additionally, if a requested record is not part of a system of records, or if the FOIA requester is not an individual for purposes of the Privacy Act, a FOIA requester may be required to provide verification of identity in order to obtain greater access to records about themselves under the FOIA. The proposed revisions to the FOIA regulations therefore account for the limited circumstances when a FOIA requester may need to verify their identity in order to receive information that would otherwise be withheld under a FOIA exemption. OMB proposes additional revisions to OMB's FOIA regulations to reflect organizational changes and clarify language. If a requester cannot satisfy the identity verification requirements of OMB's proposed Privacy Act regulations, OMB will process the matter as a FOIA request.

A shorter summary is available at [www.regulations.gov/docket/OMB-2023-0022](http://www.regulations.gov/docket/OMB-2023-0022).

### **Section-by-Section Analysis**

*General revisions to 5 CFR part 1302:* General revisions are proposed throughout part 1302 to update terminology used and to streamline language for clarity, such as by including titles for each section summarizing the relevance of each provision. The proposed regulation would also reorder the regulation's text for consistency with those of other agencies, including DOJ's proposed Privacy Act regulation (88 FR 1012). All references to communications that are written or in writing include communications in hardcopy and electronic mail.

*Section 1302.1 – General provisions:* This new section would include (1) the purpose and scope of the Privacy Act regulations; (2) definitions for “request for access,” “request for

amendment or correction,” “request for an accounting,” “requester,” and “system manager”; and (3) a clarification that OMB may disclose any record covered by the Privacy Act pursuant to a written request or consent of the individual about whom the record pertains.

*Section 1302.2 – Requirements for making requests for access:* This proposed section, which would include material that is currently codified in 5 CFR 1302.1 (“Rules for determining if an individual is the subject of a record”) and 1302.2 (“Requests for access”), is modeled after DOJ’s proposed Privacy Act regulations. OMB proposes to replace its current regulations’ sections on “Rules for determining if an individual is the subject of a record” and “Requests for access” with sections for “Requirements for making requests for access” and “Responsibility for responding to requests.” OMB believes that this revised categorization better delineates what requesters must do and what OMB must do.

Proposed paragraph (d) would describe the method of providing identity verification and proofing. OMB believes this paragraph is necessary to ensure appropriate methods are available to individuals when verifying their identity under proposed paragraphs (e) and (f). As such, OMB intends to provide a number of methods pursuant to which individuals may submit verification information in a manner that safeguards their personal information. Failure to use the approved methods may result in failure to expunge information consistent with approved records schedules.

Proposed paragraph (e), which would include provisions currently codified in 5 CFR 1302.2(b)(2)(vi)(A) through (G), includes updates to reflect the specific processes that a requester must perform to verify their identity.

Proposed paragraph (f), which would include provisions currently codified in 5 CFR 1302.2(b)(2)(vi)(E) (“Access by the parent of a minor or legal guardian”), describes the additional processes required for a legal guardian to request information on behalf of a minor or an individual determined by a court of competent jurisdiction to be incompetent.

Proposed paragraphs (d), (e), and (f) includes updates to accept remote identity-proofing and authentication when an individual makes a request under the Privacy Act.

*Section 1302.3 – Responsibility for responding to requests:* This proposed section, which would include provisions currently codified in 5 CFR 1302.2(b)(2) (“OMB action on request”), includes revisions to reflect the current statutory requirements of 5 U.S.C. 552a.

Proposed paragraphs (a) and (b) describe how OMB would acknowledge a request, including any requests by OMB for additional information necessary to process a request.

Proposed paragraphs (c) and (d) would specify what information OMB will provide in response to a written request.

*Section 1302.4 – Requests for an Accounting:* This proposed section, which would include provisions currently codified in 5 CFR 1302.3 (“Access to the accounting of disclosures from records”), includes a few editorial changes but otherwise remains substantively the same as the current regulation.

*Section 1302.5 – Requests for an Amendment or Correction:* This proposed section, which would include provisions currently codified in 5 CFR 1302.4 (“Request to amend records”), adds paragraph (b)(2), which provides requesters an alternative address to which to send their Privacy Act request for amendment to a record. The requirements for notification and timelines in proposed paragraph (c), which would include provisions currently located in paragraph (b)(2) (“OMB action on the request”), are revised to reflect the current statutory requirements of 5 U.S.C. 552a.

*Section 1302.6 – Appeals:* This proposed section, which would include provisions currently codified in 5 CFR 1302.5 (“Request for review”), includes a number of updates. For example, requests for review should be addressed to the Senior Agency Official for Privacy, who is responsible for reviewing requests, consistent with E.O. 13719, OMB Circular No. A-130, and OMB’s current practices. The requirements for notification and timelines in proposed paragraph

(d), which would include provisions currently codified in 5 CFR 1302.5(g), are revised to reflect the current statutory requirements of 5 U.S.C. 552a.

*Section 1302.7 – Fees:* This proposed section, which would include provisions currently codified in 5 CFR 1302.6 (“Schedule of Fees”), includes a few editorial changes, but otherwise remains substantively the same as the existing regulation.

*General Revisions to 5 CFR part 1303:* OMB is proposing limited revisions to its FOIA regulations to update the requirements for the verification of identity, provide further clarity, and reflect OMB’s current organizational structure. The revisions to the identity verification requirements, while minimal, are significant in that they describe OMB’s practice of providing requesters the benefit of both the Privacy Act and the FOIA. Should a requester fail to provide adequate verification of identity under the Privacy Act, the request will normally be treated as a FOIA request and subject to the procedures in OMB’s FOIA regulations at 5 CFR part 1303. Nevertheless, under some circumstances, for instance if the requester is not an individual for purposes of the Privacy Act or if the record is not maintained in a system of records, a FOIA requester may provide verification of identity in order to obtain greater access to records that would otherwise be exempt under FOIA.

*Section 1303.3 – Organization:* Proposed paragraph (a)(5) deletes “Intellectual Property Enforcement Coordinator” because this office is no longer housed within OMB, and is now a separate office within the Executive Office of the President. This proposed paragraph also inserts the “Made in America Office” as a statutory office in OMB.

*Section 1303.20 – Where to send requests:* Among other things, this proposed section adds “or the Government-wide FOIA.Gov portal” to account for the ability of members of the public to submit FOIA requests through the consolidated online request portal described in 5 U.S.C. 552(m), currently available at <https://www.foia.gov>.

*Section 1303.21:* This proposed revision would clarify that OMB retains discretion to request additional information relating to a FOIA request, including verification of identity. When OMB does so it will follow the identity verification processes as proposed in the Privacy Act regulations.

*Section 1303.30 – Responsibility for responding to requests:* Proposed paragraph (c)(2)(i), concerning situations when OMB refers records responsive to FOIA requests to other agencies, clarifies that OMB will notify the requester, and will inform them of the agency that will be processing the record, so that requesters will be informed when a referral is made, not just upon the final determination concerning the record. In paragraph (c)(2)(ii), OMB is proposing to revise the opening language to clarify that the coordination process is undertaken with regard to particular records, and not to the request as a whole, and proposing to provide additional language to illustrate circumstances under which the coordination process would be appropriate.

*Section 1303.40 – Timing of responses to requests:* Minimal proposed revisions are for clarity.

*Section 1303.50 – Responses to requests:* Among other revisions, proposed revisions to paragraph (c) would clarify types of adverse determinations, and proposed paragraph (c)(4) adds “under which the withholding is being made” to clarify which exemption the regulation refers to.

*Section 1303.60 – Notification procedures for confidential commercial information:* Proposed paragraph (e)(2) adds “privileged or” for clarity and consistency with the statutory standard for withholding under FOIA Exemption 4, 5 U.S.C. 552(b)(4).

*Section 1303.70 – Appeals:* Minimal proposed revisions are for clarity.

*Section 1303.91 – Fees to be charged—general:* Among other revisions, this proposed section replaces “(see definition in § 1303.30(b))” with “(see 5 U.S.C. 552(a)(4)(A)(vi))”

because the former is an unrelated provision, and the latter forms the statutory basis of this language.

*Section 1303.92 – Fees to be charged—categories of requesters:* Proposed paragraphs (a) through (d) replace “reproduction” with “duplication” to better match the relevant statutory language. Proposed paragraph (d) also replaces “reproducing” with “producing” for clarity, and replaces “reproduction” with “producing copies of records” for clarity.

*Section 1303.93 – Miscellaneous fee provisions:* Among other revisions, proposed paragraph (d)(1) replaces “payments” with “a payment” to clarify that a requester’s single failure to pay fees in a timely fashion may result in OMB requiring advance payment of subsequent fees.

## **Regulatory Certifications**

### ***Regulatory Flexibility Act***

The Director of OMB, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule and certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Under the Privacy Act, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters, and only for certain classes of requesters and when particular conditions are satisfied. Thus, fees assessed by OMB are nominal.

### ***Executive Orders 12866, 13563, and 14094***

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This is not a significant regulatory action under section 3(f) of E.O. 12866, as amended by E.O. 14094, and, therefore was not subject to review under section 6(b) of E.O. 12866.

### ***Unfunded Mandates Reform Act of 1995***

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

### **Comments Requested**

Interested persons are invited to provide written comments concerning the proposed rule. In particular, comments are requested regarding OMB's proposal to require verification of identity through approved OMB processes that will be described on OMB's upcoming privacy program webpage. These regulations do not specify the various methods of submitting identity verification information because OMB contemplates those methods will change based on evolving market tools and the capability of the Government to verify identity. Other methods, such as mail and stand-alone facsimile submissions, will continue to be available. OMB currently contemplates mail, stand-alone facsimile, password protected submissions to a designated email account, digital verification for current federal employees, and in-person verification for current OMB employees. Comments are requested on each of these methods and whether OMB should consider other methods of remote identity verification for all requesters.

Comments are due no later than 30 days after the date of publication of this document in the **Federal Register**. All comments and suggestions received will be available for review on *Regulations.gov*.

***Privacy Act Statement:*** OMB proposes this rule pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a ("Privacy Act") and the Freedom of Information Act, as amended, 5 U.S.C. 552 ("FOIA"). Submission of comments is voluntary. The information will be used to

inform sound decision-making. Please note that all comments received in response to this document may be posted or released in their entirety, including any personal and business confidential information provided. Do not include any information you would not like to be made publicly available. Additionally, the OMB System of Records Notice, OMB Public Input System of Records, OMB/INPUT/01, 88 FR 20913 (available at [www.federalregister.gov/documents/2023/04/07/2023-07452/privacy-act-of-1974-system-of-records](http://www.federalregister.gov/documents/2023/04/07/2023-07452/privacy-act-of-1974-system-of-records)), includes a list of routine uses associated with the collection of this information.

### **List of Subjects in 5 CFR Parts 1302 and 1303**

Administrative practices and procedures, Archives and records, Freedom of information, Privacy.

For the reasons stated in the preamble, OMB proposes to amend 5 CFR parts 1302 and 1303 as follows:

1. Revise part 1302 to read as follows:

### **PART 1302 - PRIVACY ACT PROCEDURES**

#### **Sec.**

1302.1 General provisions.

1302.2 Requirements for making requests for access.

1302.3 Responsibility for responding to requests.

1302.4 Requests for an accounting.

1302.5 Requests for an amendment or correction.

1302.6 Appeals.

1302.7 Fees.

**Authority:** 5 U.S.C. 552a.

#### **§ 1302.1 General provisions.**

(a) *Purpose and scope.* This part implements the rules that the Office of Management and Budget (OMB) follows under the Privacy Act of 1974, codified as amended at 5 U.S.C. 552a (Privacy Act). This part applies to all records in systems of records maintained by OMB that are retrieved by an individual's name or personal identifier. This part describes 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 OMB.

(b) *Definitions.* As used in this part:

*Request for access* to a record means a request made under 5 U.S.C. 552a(d)(1).

*Request for amendment or correction* of a record means a request made under 5 U.S.C. 552a(d)(2).

*Request for an accounting* means a request made under 5 U.S.C. 552a(c)(3).

*Requester* means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act. The Privacy Act defines an "individual" as a citizen of the United States or an alien lawfully admitted for permanent residence.

*System manager* means the OMB official identified in a system of records notice as the manager of a system of records; and for Government-wide systems of records, the individual designated by the agency to act on behalf of the system manager.

(c) *Providing written consent to disclose records protected under the Privacy Act.* OMB may disclose any record contained in a system of records by any means of communication to any person, or to another agency, pursuant to a written request by, or with the prior written consent of, the individual about whom the record pertains. An individual must verify the individual's identity in the same manner as required by § 1302.2(d) when providing written consent to disclose a record protected under the Privacy Act and pertaining to the individual.

## § 1302.2 Requirements for making requests for access.

(a) *How made and addressed.* You may make a Privacy Act request for access to an OMB record by submitting a request in writing to Privacy Officer, Office of Management and Budget, 725 17th Street NW, Room 9204, Washington, DC 20503 or by email at [OMBPA@omb.eop.gov](mailto:OMBPA@omb.eop.gov) or by any other means described on OMB's privacy webpage.

(b) *Description of the records sought.* In making a request for access, you must describe the records that you want in enough detail to enable OMB to locate the system of records containing them with a reasonable amount of effort. Your access request should name the system of records or contain a concise description of such system of records. OMB publishes notices of OMB systems of records subject to the Privacy Act in the *Federal Register*.

(c) *Information about yourself.* Your access request should also contain sufficient information to identify yourself in order to allow OMB to determine if there is a record pertaining to you in a particular system of records.

(d) *Verification of identity.* To ensure that information about you is disclosed only to you or your authorized representative, you are required to verify your identity when making a Privacy Act request for access, as detailed in paragraphs (d)(1) through (3) of this section. If OMB cannot verify your identity, disclosure will be limited to information that would be required to be made available if requested under 5 U.S.C. 552 by any person.

(1) You must state your name, current address, and date and place of birth and provide either a notarized statement of identity or a signed submission under 28 U.S.C. 1746; or

(2) When available, verify your identity through remote identity-proofing and authentication using digital processes.

(3) OMB may require you to supply additional information as necessary in order to verify your identity.

(e) *Verification of guardianship.* When making a request for access as the parent or guardian of a minor or as the guardian of someone determined by a court of competent jurisdiction to be incompetent, for access to records about that individual, you must establish the criteria listed in paragraphs (e)(1) through (4) of this section. If OMB cannot verify your identity, disclosure will be limited to information that would be required to be made available if requested under 5 U.S.C. 552 by any person.

(1) The identity of the individual who is the subject of the record, by stating the name, current address, and date and place of birth;

(2) Your own identity, as required in this paragraph (e);

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

(4) That you are acting on behalf of that individual in making the request.

(f) *Submit identifying information only using approved OMB processes.* In order to safeguard information you submit in making a request for access for purposes of verifying your identity or verifying guardianship, or any information about yourself that may assist in the rapid identification of the record to which you are requesting access (e.g., prior names, dates of employment, etc.) as well as any other identifying information contained in an OMB system of records, you must use one of OMB's approved processes as described on OMB's Privacy webpage. Failure to submit identifying information through an OMB approved process may result in the failure to expunge your information in accordance with approved OMB records schedules after your access request has been processed.

(g) *Subsequent requests for access.* If your request for access follows a prior request under this section, and you already provided appropriate verifications with that prior request, you do

not need to include the same verification or identifying information in the subsequent request for access if you reference that prior request or attach a copy of the OMB response to that request.

### **§ 1302.3 Responsibility for responding to requests.**

(a) *Acknowledgment of requests.* OMB will acknowledge your request for access in writing and provide an individualized tracking number. Upon request, OMB will make information available to you about the status of your request using the assigned tracking number.

(b) *Timing of responses to a Privacy Act request for access.* OMB will respond to Privacy Act requests for access to records according to the order in which OMB receives the requests. Consistent with OMB's FOIA procedures at 5 CFR 1303.40(b), OMB may designate multiple processing tracks that distinguish between simple and more complex Privacy Act requests for access, based on the estimated amount of work or time needed to process the request.

(c) *Additional information.* If, after receiving a request, OMB determines that your request does not reasonably describe the records sought, OMB will inform you what additional information is needed and why the request is otherwise insufficient. If a request does not reasonably describe the records sought, OMB's response to the request may be delayed.

(d) *Grant of request for access.* Once OMB makes a determination to grant a request for access, OMB will provide you a written response, which may include the following:

(1) A statement as to whether OMB will grant access by providing a copy of the record through electronic means or the mail; and

(2) The amount of fees charged, if any (see § 1302.7). (Fees are applicable only to requests for duplicates.)

(e) *Adverse determination of request for access.* OMB will notify you of an adverse determination denying a request for access in writing. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a

determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; a determination on any disputed fee matter; or a denial of a request for expedited treatment. OMB's notification letter to you will include:

- (1) The decision of OMB whether to grant in whole, or deny any part of the request;
- (2) The reasons for the determination for any portion of the request that is denied; and
- (3) A description of the procedure by which the OMB decision to deny your request may be appealed, including the name and address of the official with whom you may lodge such an appeal.

#### **§ 1302.4 Requests for an accounting.**

You may request an accounting of disclosures by the same rules governing requests for access, outlined in § 1302.2.

#### **§ 1302.5 Requests for an amendment or correction.**

(a) *Requirement for written requests.* If you want to amend a record that pertains to you in a system of records maintained by OMB, you must submit your request in writing following the procedures established in this section unless the system manager waives the requirements in this section. OMB is not required to amend records that are not subject to the Privacy Act of 1974. However, individuals who believe that such records are inaccurate may bring this to the attention of OMB.

(b) *Procedures.* (1) You should address your request to amend a record in a system of records to the system manager. You should include the name of the system and a brief description of the record proposed for amendment. If the request to amend the record is the result of you gaining access to the record in accordance with the provisions concerning access to

records as set forth in § 1302.2, you may attach a copy of previous correspondence between you and OMB instead of providing a separate description of the record.

(2) If a requester cannot determine where within OMB to send the Privacy Act request to amend a record, the requester may send it to Privacy Officer, Office of Management and Budget, 725 17th Street NW, Room 9204, Washington, DC 20503 or by email at *OMBPA@omb.eop.gov*. OMB will forward the request to the component(s) it believes most likely to have the relevant records. For the quickest possible handling, the requester should specify on either the letter and envelope, or in the email subject line, as applicable, “Privacy Act Record Amendment Request.”

(3) You must validate your identity as described in § 1302.2(e). If OMB has previously verified your identity pursuant to § 1302.2(e), further verification of identity is not required as long as the communication does not suggest that a need for verification is present.

(4) You should clearly indicate the exact portion of the record you seek to have amended. If possible, you should also propose alternative language, or at a minimum, identify the facts that you believe are not accurate, relevant, timely, or complete, with such particularity as to permit OMB not only to understand the basis for your request, but also to make an appropriate amendment to the record.

(5) Your request must also state why you believe your record is not accurate, relevant, timely, or complete. The burden of persuading OMB to amend a record will be upon you. You must furnish sufficient facts to persuade the official in charge of the system of the inaccuracy, irrelevancy, timeliness, or incompleteness of the record.

(6) OMB will not categorically reject incomplete or inaccurate requests. OMB will ask you to clarify the request as needed.

(c) *OMB action on the request.* (1) OMB will acknowledge, in writing, receipt of a request to amend a record within 10 business days (i.e., excluding Saturdays, Sundays, and legal Federal holidays) of OMB’s receipt.

(2) OMB will promptly respond to a Privacy Act request for amendment or correction. OMB ordinarily will respond to Privacy Act requests for amendment or correction according to their order of receipt. Consistent with OMB's FOIA procedures at 5 CFR 1303.40(b), OMB may designate multiple processing tracks that distinguish between simple and more complex Privacy Act requests for amendment or correction, based on the estimated amount of work or time needed to process the request. The response reflecting the decision upon a request for amendment will include the following:

(i) The decision of OMB whether to grant in whole, or deny any part of, the request to amend the record;

(ii) The reasons for the determination for any portion of the request which is denied; and

(iii) A description of the procedure by which the OMB decision to deny your request may be appealed, including the name and address of the official with whom you may lodge such an appeal.

### **§ 1302.6 Appeals.**

(a) If you wish to appeal a decision by OMB with regard to your request to access or amend a record in accordance with the provisions of §§ 1302.2 and 1302.5, you should submit the appeal in writing and, to the extent possible, include the information specified in paragraph (b) of this section.

(b) Your appeal should contain a brief description of the record involved or copies of the correspondence from OMB in which the request to access or to amend was denied and also the reasons why you believe that access should be granted or the information amended, as relevant. Your appeal should refer to the information you furnished in support of your claim and the reasons set forth by OMB in its decision denying access or amendment, as required by §§ 1302.2 and 1302.5. In order to make the appeal process as meaningful as possible, you should set forth your disagreement in an understandable manner. In order to avoid the unnecessary retention of

personal information, OMB reserves the right to dispose of the material concerning the request to access or amend a record if OMB receives no appeal in accordance with this section within 180 days of the sending by OMB of its decision upon an initial request. OMB may treat an appeal received after the 180-day period as an initial request to access or amend a record.

(c) You should address your appeal to the Senior Agency Official for Privacy.

(d) The Senior Agency Official for Privacy will review a refusal to amend a record within 30 business days (excluding Saturdays, Sundays, and legal Federal holidays) from the date on which the individual requests such review, unless the OMB Director extends the 30-day period for good cause. If the Senior Agency Official for Privacy's decision does not grant in full the request, the notice of the decision will describe the steps you may take to obtain judicial review of such a decision.

#### **§ 1302.7 Fees.**

(a) *Prohibitions against charging fees for Privacy Act requests.* OMB will not charge you for:

(1) The search and review of requests for records subject to this part;

(2) Any copies of the record produced as a necessary part of the process of making the record available for access; or

(3) Any copies of the requested record when OMB determines that the only way you can access the record is by providing a copy to you through the mail.

(b) *Waiver.* OMB may at no charge provide copies of a record if it is determined the production of the copies is in the interest of the Government.

(c) *Fee schedule and method of payment.* OMB will charge fees as provided in paragraphs (c)(1) through (5) of this section except as provided in paragraphs (a) and (b) of this section.

(1) OMB will duplicate records at a rate of \$.10 per page for all copying of 4 pages or more. There is no charge for duplication 3 or fewer pages.

(2) Where OMB anticipates that the fees chargeable under this section will amount to more than \$25.00, OMB shall promptly notify you of the amount of the anticipated fee or such portion thereof as can readily be estimated. If the estimated fees will greatly exceed \$25.00, OMB may require an advance deposit. OMB's request for an advance deposit shall extend an offer to the requester to consult with OMB personnel in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of the requester.

(3) You should pay fees in full before the requested copies are issued. If the requester is in arrears for previous requests, OMB will not provide copies for any subsequent request until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Assistant Director for Management and Operations, Office of Management and Budget, Washington, DC 20503.

(5) OMB will provide a receipt for fees paid upon request.

## **PART 1303—PUBLIC INFORMATION PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT**

2. The authority citation for part 1303 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 5 U.S.C. 552, unless otherwise noted.

3. Amend § 1303.3 by revising paragraph (a)(5) to read as follows:

### **§ 1303.3 Organization.**

(a) \* \* \*

(5) Statutory offices include the Office of Federal Financial Management; Office of Federal Procurement Policy; Office of E-government and Information Technology; Made in America Office; and Office of Information and Regulatory Affairs.

\* \* \* \* \*

4. Revise § 1303.20 to read as follows:

**§ 1303.20 Where to send requests.**

The FOIA Officer is responsible for acting on all initial requests. Individuals wishing to file a request under the FOIA should address their request in writing to FOIA Officer, Office of Management and Budget, 725 17th Street NW, Room 9272, Washington, DC 20503, via fax to (202) 395–3504, by email at OMBFOIA@omb.eop.gov, or the Government-wide FOIA.Gov portal. Requesters must provide contact information sufficient to enable OMB to communicate with the requester. Additionally, OMB's FOIA Public Liaison is available to assist requesters who have questions and can be reached at (202) 395–FOIA or in writing at the address provided in this section.

5. Revise § 1303.21 to read as follows:

**§ 1303.21 Requesters making requests about themselves or on behalf of others.**

In order to obtain greater access to records, a requester who is making a request for records about the requester or on behalf of another individual must comply with the verification of identity requirements as determined by OMB pursuant to OMB's requirements for making requests for access in 5 CFR part 1302. OMB may require a requester to supply additional information as necessary in order to verify the identity of the requester or to verify that a particular individual has consented to disclosure.

6. Amend § 1303.30 by revising paragraphs (c)(2)(i) and (ii) to read as follows:

**§ 1303.30 Responsibility for responding to requests.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) When OMB believes that a different agency is best able to determine whether to disclose the record, OMB will refer the responsibility for responding to the request regarding that record to that agency, will notify the requester, and will inform them of the agency which will be processing the record, including that agency's FOIA contact information. Ordinarily, the agency that originated the record is best situated to make the disclosure determination. However, if OMB and the originating agency jointly agree that OMB is in the best position to respond regarding the record, then OMB may respond to the requester.

(ii) When OMB believes that a different agency is best able to determine whether to disclose the record, but also believes that disclosure of the identity of the different agency could harm an interest protected by an applicable FOIA exemption, such as the exemptions that protect personal privacy or national security interests, OMB will coordinate with the originating agency to seek its views on the disclosability of the record and convey the release determination for the record that is the subject of the coordination to the requester. For example, if a non-law enforcement agency 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 an agency 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 harms.

7. Amend § 1303.40 by revising paragraphs (e)(1)(iv) and (e)(4) to read as follows:

**§ 1303.40 Timing of responses to requests.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iv) There are possible questions, in a matter of widespread and exceptional public interest, about the Government's integrity which affect public confidence.

\* \* \* \* \*

(4) OMB will decide whether to grant a request for expedited processing and will notify the requester within 10 calendar days after the date of the request. If a request for expedited treatment is granted, OMB will prioritize the underlying FOIA request, place the request in the processing track for expedited requests, and process the request as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

8. Amend § 1303.50 by revising paragraphs (a), (c) introductory text, and (c)(4) to read as follows:

**§ 1303.50 Responses to requests.**

(a) *Acknowledgments of requests.* OMB will assign an individualized tracking number to each request received that will take longer than ten days to process; and acknowledge each request, informing the requester of their tracking number if applicable; and, upon request, make available information about the status of a request to the requester using the assigned tracking number, including—

(1) The date on which OMB originally received the request; and

(2) An estimated date on which OMB will complete action on the request.

\* \* \* \* \*

(c) *Adverse determinations of requests.* Adverse determinations, or denials of requests, include decisions that the requested record is exempt, 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. In the case of an adverse determination, the FOIA Officer will immediately notify the requester of –

\* \* \* \* \*

(4) OMB's estimate of the volume of any requested records OMB is withholding, unless providing such estimate would harm an interest protected by the exemption in 5 U.S.C. 552(b) under which the withholding is being made.

9. Amend § 1303.60 by revising paragraphs (a)(2) and (e)(2) to read as follows:

**§ 1303.60 Notification procedures for confidential commercial information.**

(a) \* \* \*

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

\* \* \* \* \*

(e) \* \* \*

(2) If a submitter has any objections to disclosure, it should provide OMB 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. OMB is not required to consider any information received after the date of any disclosure decision.

\* \* \* \* \*

10. Amend § 1303.70 by revising paragraph (a) to read as follows:

## **§ 1303.70 Appeals.**

(a) A requester must appeal to the head of OMB in writing within 90 calendar days after the date of such adverse determination addressed to the FOIA Officer at the address specified in § 1303.20. The appeal must include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the Deputy Director, or their designee, within 20 working days. If on appeal the denial is upheld in whole or in part, the written determination will also contain a notification of the provisions for judicial review, the names of the persons who participated in the determination, and notice of the services offered by OGIS as a non-exclusive alternative to litigation.

\* \* \* \* \*

11. Amend § 1303.91 by revising the introductory text and paragraph (i) to read as follows:

## **§ 1303.91 Fees to be charged—general.**

OMB will charge fees that recoup the full allowable direct costs it incurs. Moreover, it will use the most efficient and least costly methods to comply with requests for documents made under the FOIA. For example, employees should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. Search should be distinguished, moreover, from review of material in order to determine whether the material is exempt from disclosure. When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see 5 U.S.C. 552(a)(4)(A)(vi)), such as the National Technical Information Service, OMB will inform requesters of the steps necessary to obtain records from those sources.

\* \* \* \* \*

(i) *No Fees under \$25.* No fee will be charged when the total fee, after deducting the first 100 free pages (or its cost equivalent) and the first two hours of search, is equal to or less than \$25. If OMB estimates that the charges are likely to exceed \$25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance their willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel to meet the requester's needs at a lower cost.

12. Amend § 1303.92 by revising paragraphs (a) through (d) to read as follows:

**§ 1303.92 Fees to be charged—categories of requesters.**

\* \* \* \* \*

(a) *Commercial use requesters.* When OMB receives a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of duplication of documents. OMB may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see § 1303.93(b)).

(b) *Educational and non-commercial scientific institution requesters.* OMB will provide documents to requesters in this paragraph (b) for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this paragraph (b), a requester must meet the criteria in § 1303.90(g) or (h). OMB may seek evidence from the requester that the request is in furtherance of scholarly research and will advise requesters of their placement in this paragraph (b).

(c) *Requesters who are representatives of the news media.* OMB will provide documents to requesters in this paragraph (c) for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this paragraph (c), a requester must meet the criteria in § 1303.90(i) and (j) and not make the request for commercial use. A

request for records supporting the news dissemination function of the requester is not a commercial use for this paragraph (c).

(d) *All other requesters.* OMB will charge requesters who do not fit into any of the categories in paragraphs (a) through (c) of this section fees that recover the full reasonable direct cost of searching for and producing records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time will be furnished without charge. Moreover, requests for records about the requesters filed in OMB's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for producing copies of records.

13. Amend § 1303.93 by revising paragraph (a), the first sentence of paragraph (c), and paragraph (d)(1) to read as follows:

**§ 1303.93 Miscellaneous fee provisions.**

(a) *Charging interest—notice and rate.* OMB may begin assessing interest charges on an unpaid bill starting on the 31st day after OMB sends the bill. If OMB receives the fee within the thirty-day grace period, interest will not accrue on the paid portion of the bill, even if the payment is unprocessed. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

\* \* \* \* \*

(c) \* \* \* When OMB 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, OMB may aggregate those requests and charge fees accordingly. \* \* \*

(d) \* \* \*

(1) OMB will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless OMB estimates or determines that

allowable charges that a requester may be required to pay will exceed \$250 or the requester has previously failed to make a payment due within 30 days of billing.

\* \* \* \* \*

**Shraddha A. Upadhyaya,**

*Associate General Counsel,*

*Office of Management and Budget.*

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