

§ 1169.5 Procedures for acquiring access to NEH records pertaining to an individual.

(a) An individual may request access to his or her own records contained within an NEH system of records by writing to the Office of the General Counsel at the email or physical address identified in § 1169.3. The individual making the request should include his or her full name, address, email address, and telephone number. The individual making the request should also specifically indicate whether he or she wishes to review such records in person.

(b) The request for access to a record within a system of records should refer to the specific system or systems of records listed in the NEH Notice of Systems of Records within which NEH may retrieve the individual's records, or describe the type of record in sufficient detail such that NEH may reasonably identify the relevant system of records. The request should further state that it is made pursuant to the Privacy Act. In addition, the request should include any other information which may permit NEH to identify the record for which access is being requested, such as maiden name, dates of employment, etc.

(c) Where an individual requests records pertaining to himself or herself, NEH will process such request under both these regulations and NEH's regulations implementing the Freedom of Information Act ("FOIA"), set forth in 45 CFR part 1171, so as to provide the greatest degree of lawful access.

(d) Upon receipt of any such request, NEH will determine whether the records identified by the requester exist and whether they are subject to any exemption under § 1169.10. Should NEH determine that the records are releasable under the Privacy Act and these regulations, and upon verifying the individual's identity per § 1169.6, NEH will provide access to copies of the records by transmitting them to the requester at the mailing or email address provided by the requester, or by permitting the requester to inspect the records at NEH's offices should the requester ask for in-person inspection or where the requester is a current NEH employee.

(e) NEH will acknowledge a request for access as soon as practicable, and in no event in less than 5 business days. Consistent with the agency's FOIA regulations, NEH will otherwise substantively answer a request for access in no less than 20 business days, except when NEH determines otherwise, in which case NEH will inform the person making the request of the reasons for the delay and the estimated date by which NEH will answer the request. When NEH can answer the request within 20 business days, the response shall include the following:

(1) A statement that there is no record as requested or a statement that there is no such record in the systems of records maintained by NEH;

(2) A statement as to whether NEH will grant access by providing a copy of the record through the mail or email; or, where an individual requests in-person inspection, the address of the location and the date and time at which the record may be examined. In the event the person requesting access is unable to meet the specified date and time, he or she may make alternative arrangements with NEH;

(3) The amount of fees charged, if any (see § 1169.9);

(4) Any documentation required by NEH to verify the identity of the person making the request.

(f) NEH will provide only one copy of each requested record, based on the fee schedule in § 1169.9.

(g) Per 5 U.S.C. 552a(h), a parent of a minor, upon presenting suitable personal identification, may act on behalf of the minor to gain access to any record pertaining to the minor maintained by NEH in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, upon the presentation of the documents authorizing the legal guardian to so act, and upon suitable personal identification of the guardian.

(h) In the event NEH gains access to a record by permitting in-person inspection, the individual to which the record pertains may be accompanied by a person of his or her choice to review the record. Under such circumstances, NEH may require that the individual who is the subject of the record furnish a written statement authorizing discussion of the record in the accompanying person's presence.

(i) In accordance with this provision, NEH will disclose medical or psychological records pertaining to an individual to whom they pertain unless NEH determines, in consultation with a physician, that disclosure of such records might adversely affect the individual to whom they pertain. Under these circumstances, NEH will disclose this information to a licensed physician designated by such individual in writing.