

§ 1169.8 The appeals process.

(a) An individual whose request for access to, or correction or amendment of, a record is initially denied by NEH and who wishes to appeal that denial may do so by sending a letter within 90 days of receipt of the initial denial to the Chairperson. If an appeal concerns records retrieved from the OIG's Investigative Files, the OIG will act on the appeal and will carry out all responsibilities with respect to Privacy Act appeals otherwise assigned to the Chairperson under this section.

(b) The appeal letter must:

(1) Specify the records subject to the appeal;

(2) Include the information specified in § 1169.7(b);

(3) Include copies of the correspondence from NEH in which it initially denied the request for access, or for amendment or correction; and

(4) Explain why NEH's denial of access, amendment or correction was erroneous.

(c) Appeals should be directed to the NEH Office of the General Counsel at the physical address or email address identified in § 1169.3. The Office of the General Counsel will refer the appeal letter to the Chairperson (or his or his or her designee), or in the case of records retrieved from NEH's OIG Investigative Files, will refer the appeal letter to the NEH OIG.

(d) The Chairperson will review the initial request for access to, or amendment or correction of, the record, NEH's refusal, and any other pertinent material relating to the appeal. NEH will not hold a hearing on the appeal.

(e) The Chairperson will render a final decision on the appeal within 30 business days of its receipt by NEH, unless the Chairperson, for good cause shown, extends the 30-day period. Should the Chairperson extend the 30-day period, NEH will inform the requester of the extension and the circumstances of the delay.

(f) In conducting appeals under this provision, the Chairperson will be guided by the requirements of 5 U.S.C. 552a(e)(1) and (e)(5).

(g) NEH will notify a requester, in writing, when the Chairperson determines to grant an appeal in whole or in part, and will grant the requester access to his or her record, or correct or amend the record, in accordance with the Chairperson's determination.

(h) When the Chairperson determines to deny an appeal, in whole or in part, NEH will notify the requester in writing of the following:

(1) The basis for the decision;

(2) That the requester may submit to NEH a concise statement setting forth the reasons for disagreeing with NEH's decision.

(3) The procedures for filing such statement of disagreement.

(4) That, in a case where the Chairperson refuses a request to amend or correct a record, NEH will make such statements of disagreement available in subsequent disclosures of the record, together with a statement from NEH (if deemed appropriate) summarizing the agency's refusal.

(5) The requester's right to seek judicial review under 5 U.S.C. 552a(g)(1)(a).

[84 FR 34789, July 19, 2019, as amended at 84 FR 59314, Nov. 4, 2019]