

§ 5.61 When may I appeal HHS's FOIA determination?

In order to fully exhaust all of your administrative remedies, you must file an appeal of an adverse agency determination in writing, and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted within 90 calendar days from the date of such determination. Any electronic transmission made after normal business hours will be considered to have been transmitted on the next calendar day. If a postmark is not legible, the timeliness of a submission will be based on the date that we receive the appeal. Adverse determinations include:

- (a) Refusal to release a record, either in whole or in part;
- (b) Determination that a record does not exist or cannot be found;
- (c) Determination that a request does not reasonably describe the records sought;
- (d) Determination that the record you sought was not subject to the FOIA;
- (e) Denial of a request for expedited processing;
- (f) Denial of a fee waiver request; or
- (g) Fee category determination.