

§ 704.1 Material available pursuant to 5 U.S.C. 552.

(a) *Purpose, scope, and definitions.* (1) This section contains the regulations of the United States Commission on Civil Rights implementing the Freedom of Information Act, 5 U.S.C. 552. These regulations inform the public with respect to where and how records and information may be obtained from the Commission. Officers and employees of the Commission shall make Commission records available under 5 U.S.C. 552 only as prescribed in this section. Nothing contained in this section, however, shall be construed to prohibit officers or employees of the Commission from routinely furnishing information or records that are customarily furnished in the regular performance of their duties.

(2) For the purposes of this part the following terms are defined as indicated:

Commission means the United States Commission on Civil Rights;

FOIA means Freedom of Information Act, 5 U.S.C. 552;

FOIA Request means a request in writing, for records pursuant to 5 U.S.C. 552, which meets the requirements of paragraph (d) of this part. This part does not apply to telephone or other oral communications or requests not complying with paragraph (d)(1)(i) of this section.

Office of the General Counsel means the General Counsel of the Commission or his or her designee;

Staff Director means the Staff Director of the Commission.

(b) *General policy.* In order to foster the maximum participation of an informed public in the affairs of Government, the Commission will make the fullest possible disclosure of its identifiable records and information consistent with such considerations as those provided in the exemptions of 5 U.S.C. 552 that are set forth in paragraph (f) of this section.

(c) *Material maintained on file pursuant to 5 U.S.C. 552(a)(2).* Material maintained on file pursuant to 5 U.S.C. 552(a)(2) shall be available for inspection during regular business hours at the offices of the Commission at 624 9th Street, NW., Washington, DC 20425. Copies of such material shall be available upon written request, specifying the material desired, addressed to the Office of the General Counsel, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425, and upon the payment of fees, if any, determined in accordance with paragraph (e) of this section.

(1) *Current index.* Included in the material available pursuant to 5 U.S.C. 552(a)(2) shall be an index of:

(i) All other material maintained on file pursuant to 5 U.S.C. 552(a)(2); and

(ii) All material published by the Commission in the Federal Register and currently in effect.

(2) *Deletion of identifying details.* Wherever deletions from material maintained on file pursuant to 5 U.S.C. 552(a)(2) are required in order to prevent a clearly unwarranted invasion of privacy,

justification for the deletions shall be placed as a preamble to documents from which such deletions are made.

(d) *Materials available pursuant to 5 U.S.C. 552(a)(3)—(1) Request procedures.* (i) Each request for records pursuant to this section shall be in writing over the signature of the requester, addressed to the Office of the General Counsel, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425 and:

(A) Shall clearly and prominently be identified as a request for information under the Freedom of Information Act (if submitted by mail or otherwise submitted in an envelope or other cover, be clearly and prominently identified as such on the envelope or other cover—*e.g.*, FOIA); and

(B) Shall contain a sufficiently specific description of the record requested with respect to names, dates, and subject matter to permit such record to be identified and located; and

(C) Shall contain a statement that whatever costs involved pursuant to paragraph (e) of this section will be paid, that such costs will be paid up to a specified amount, or that waiver or reduction of fees is requested pursuant to paragraph (e) of this section.

(ii) If the information submitted pursuant to paragraph (d)(1)(i)(B) of this section is insufficient to enable identification and location of the records, the General Counsel shall as soon as possible notify the requester in writing indicating the additional information needed. Every reasonable effort shall be made to assist in the identification and location of the record sought. Time requirements under the regulations in this part are tolled from the date notification under this section is sent to the requester until an answer in writing to such notification is received from requester.

(iii) A request for records that is not in writing or does not comply with paragraph (d)(1)(i) of this section is not a request under the Freedom of Information Act and the 10 day time limit for agency response under the Act will not be deemed applicable.

(iv) Except as otherwise provided in this section, the General Counsel shall immediately notify the requester of noncompliance with paragraphs (d)(1)(i)(C) and (e) of this section.

(2) *Agency determinations.* (i) Responses to all requests pursuant to 5 U.S.C. 552(a)(3) shall be made by the General Counsel in writing to the requester within 10 working days after receipt by the General Counsel of such request except as specifically exempted under paragraphs (d)(1) (ii), (iii) and (iv) of this section, and shall state:

(A) Whether and to what extent the Commission will comply with the request;

(B) The probable availability of the records or that the records may be furnished with deletions or that records will be denied as exempt pursuant to 5 U.S.C. 552(b)(1) through (9);

(C) The estimated costs, determined in accordance with paragraph (e) of this section, including waiver or reduction of fee as appropriate and any deposit or prepayment requirement; and

(D) When records are to be provided, the time and place at which records or copies will be available determined in accordance with the terms of the request and with paragraph (d)(3) of this section. Such response shall be termed a determination notice.

(ii) In the case of denial of requests in whole or part the determination notice shall state:

(A) Specifically what records are being denied;

(B) The reasons for such denials;

(C) The specific statutory exemption(s) upon which such denial is based;

(D) The names and titles or positions of every person responsible for the denial of such request; and

(E) The right of appeal to the Staff Director of the Commission and procedures for such appeal as provided under paragraph (g) of this section.

(iii) Each request received by the Office of the General Counsel for records pursuant to the regulations in this part shall be recorded immediately. The record of each request shall be kept current, stating the date and time the request is received, the name and address of the person making the request, any amendments to such request, the nature of the records requested, the action taken regarding the request, including waiver of fees, extensions of time pursuant to 5 U.S.C. 552(a)(6)(B), and appeals. The date and subject of any letters pursuant to paragraph (d)(1) of this section or agency determinations pursuant to paragraph (d)(2)(i) of this section, the date(s) any records are subsequently furnished, and the payment requested and received.

(3) *Time limitations.* (i) Time limitations for agency response to a request for records established by the regulations in this part shall begin when the request is recorded pursuant to paragraph (d)(2)(iii) of this section. A written request pursuant to FOIA but sent to an office of the Commission other than the Office of the General Counsel shall be date stamped, initialed, and redirected immediately to the Office of the General Counsel. The required period for agency determination shall begin when it is received by the Office of the General Counsel in accordance with paragraph (d)(2)(iii) of this section.

(ii) In unusual circumstances, pursuant to 5 U.S.C. 552(a)(6)(B), the General Counsel may, in the case of initial determinations under the regulations in this part, extend the 10 working day time limit in which the agency is required to make its determination notification. Such extension shall be communicated in writing to the requesting party setting forth with particularity the reasons for such extension and the date on which a determination is expected to be transmitted. Such extensions may not exceed 10 working days for any request and may only be used to the extent necessary to properly process a particular request. Such extension is permissible only where there is a demonstrated need:

(A) To search for and collect the requested records from field facilities or other establishments that are separate from the Office of the General Counsel;

(B) To search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(C) For consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the same agency having substantial subject matter interest therein.

(e) *Fees*—(1) *Definitions*. The following definitions apply to the terms when used in this section:

(i) *Direct costs* means those expenditures that the Commission actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under paragraph (d) of this section. Direct costs include, for example, the salary of the employee(s) performing the work (the basic rate of pay for the employee(s) plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

(ii) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification within documents. However, an entire document will be duplicated if this would prove to be a more efficient and less expensive method of complying with a request than a more detailed manner of searching. Search is distinguished from review of material in order to determine whether the material is exempt from disclosure.

(iii) *Duplication* means the process of making a copy of a document necessary to respond to a request for disclosure of records. Such copies can take the form of paper or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(iv) *Review* means the process of examining documents located in response to an information request to determine whether any portion of any document is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(v) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In deciding whether a requester properly belongs in this category, the General Counsel will determine the use to which a requester will put the documents requested. When the General Counsel has reasonable cause to doubt such intended use, or where such use is not clear from the request itself, the General Counsel will seek additional clarification before assigning the request to a specific category.

(vi) *Educational institution* means a school, an institution of higher education, an institution of professional education, or an institution of vocational education that operates a program or programs of scholarly research.

(vii) *Noncommercial scientific institution* means an institution that is not operated on a commercial basis and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(viii) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. News media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(2) *Costs to be included in fees.* The direct costs included in fees will vary according to the following categories of requests:

(i) *Commercial use requests.* Fees will include the Commission's direct costs for searching for, reviewing, and duplicating the requested records.

(ii) *Educational and noncommercial scientific institution requests.* The Commission will provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(iii) *Requests from representatives of the news media.* The Commission will provide documents to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category a requester must meet the criteria in paragraph (e)(1)(viii) of this section.

(iv) *All other requests.* The Commission will charge requesters who do not fit into any of the categories in paragraphs (e)(2)(i) through (iii) of this section fees that cover the direct costs of searching for and duplicating records that are responsive to the requests, except for the first two hours of search time and the first 100 pages duplicated. However, requests from persons for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 and § 705.10 of this chapter.

(3) *Fee calculation.* Fees will be calculated as follows:

(i) *Manual search.* At the salary rate (basic pay plus 16 percent) of the employee(s) making the search.

(ii) *Computer search.* At the actual direct cost of providing the search, including computer search time directly attributable to search for records responsive to the request, runs, and operator salary apportionable to the search.

(iii) *Review* (commercial use requests only). At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Only the review necessary at the initial administrative level to determine the applicability of any exemption, and not review at the administrative appeal level, will be included in the fee.

(iv) *Duplication*. At 20 cents per page for paper copy. For copies of records prepared by computer (such as tapes or printouts), the actual cost of production, including operator time, will be charged.

(v) *Additional services; certification*. Express mail and other additional services that may be arranged by the requester will be charged at actual cost. The fee for certification or authentication of copies shall be \$3.00 per document.

(vi) *Assessment of interest*. The Commission may begin assessing interest charges on the 31st day following the day the fee bill is sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(vii) No fee shall be charged if the total billable cost calculated under paragraphs (e)(2) and (3) of this section is less than \$10.00.

(4) *Waiver or reduction of fees*. (i) Documents will be furnished without charge, or at a reduced charge, where disclosure of the 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.

(ii) Whenever a waiver or reduction of fees is granted, only one copy of the record will be furnished.

(iii) The decision of the General Counsel on any fee waiver or reduction request shall be final and unappealable.

(5) *Payment procedures*—(i) *Fee payment*. Payment of fees shall be made by cash (if delivered in person), check, or money order payable to the United States Commission on Civil Rights.

(ii) *Notification of fees*. No work shall be done that will result in fees in excess of \$25.00 without written authorization from the requester. Where it is anticipated that fees will exceed \$25.00, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester will be notified of the amount of the projected fees. The notification shall offer the requester an opportunity to confer with the General Counsel in an attempt to reformulate the request so as to meet the requester's needs at a lower cost. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester agrees in writing to accept the prospective charges.

(6) *Advance payment of fees*. When fees are projected to exceed \$250.00, the requester may be required to make an advance payment of all or part of the fee before the request is processed. If a requester has previously failed to pay a fee in a timely fashion (*i.e.*, within 30 days of the billing date), the requester will be required to pay the full amount owed plus any applicable interest, and

to make an advance payment of the full amount of the estimated fee before a new or pending request is processed from that requester. The administrative time limits prescribed in 5 U.S.C. 552(a)(6) will not begin until after the requester has complied with this provision.

(7) *Other provisions*—(i) *Charges for unsuccessful search*. Charges may be assessed for time spent searching for requested records, even if the search fails to locate responsive records or the records are determined, after review, to be exempt from disclosure.

(ii) *Aggregating requests to avoid fees*. Multiple requests shall be aggregated when the General Counsel reasonably determines that a requester or group of requesters is attempting to break down a request into a series of requests to evade fees.

(iii) *Debt Collection Improvement Act of 1996*. The Debt Collection Improvement Act of 1996 (Pub. L. 104-134), including disclosure to consumer reporting agencies and use of collection agencies, will be used to encourage payment where appropriate.

(f) *Exemptions* (5 U.S.C. 552(b))—(1) *General*. The Commission may exempt from disclosure matters that are:

(i)(A) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and

(B) Are in fact properly classified pursuant to such Executive Order.

(ii) Related solely to the internal personnel rules and practices of an agency;

(iii) Specifically exempted from disclosure by statute;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) Could reasonably be expected to interfere with enforcement proceedings;

(B) Could deprive a person of a right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution that furnished information on a confidential basis;

(E) Could disclose techniques and procedures for all enforcement investigations or prosecutions, or could disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(F) Could reasonably be expected to endanger the life or physical safety of any individual;

(viii) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and

(ix) Geological and geophysical information and data, including maps, concerning wells.

(2) Investigatory records or information. (5 U.S.C. 552(b)(7)).

(i) Among the documents exempt from disclosure pursuant to paragraph (f)(1)(vii) of this section shall be records or information reflecting investigations that either are conducted for the purpose of determining whether a violation(s) of legal right has taken place, or have disclosed that a violation(s) of legal right has taken place, but only to the extent that production of such records or information would fall within the classifications established in paragraphs (f)(1)(vii)(B) through (F) of this section.

(ii) Among the documents exempt from disclosure under paragraphs (f)(1)(vii)(D) and (f)(2)(i) of this section concerning confidential sources shall be documents that disclose the fact or the substance of a communication made to the Commission in confidence relating to an allegation or support of an allegation of wrongdoing by certain persons. It is sufficient under this section to indicate the confidentiality of the source if the substance of the communication or the circumstances of the communication indicate that investigative effectiveness could reasonably be expected to be inhibited by disclosure.

(iii) Whenever a request is made that involves access to records described in paragraph (f)(1)(vii)(A) of this section and the investigation or proceeding involves a possible violation of criminal law and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Commission may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this section.

(3) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions that are exempt under this section.

(g) *Administrative appeals.* (1) These procedures apply whenever a requester is denied records under paragraph (d)(2)(i) of this section.

(2) Parties may appeal decisions under paragraph (d)(2)(i) of this section within 90 days of the date of such decision by filing a written request for review addressed to the Staff Director, U.S. Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425, by certified mail, including a copy of the written denial, and may include a statement of the circumstances, reasons

or arguments advanced in support of disclosure. Review will be made by the Staff Director on the basis of the written record.

(3) The decision on review of any appeal filed under this section shall be in writing over the signature of the Staff Director will be promptly communicated to the person requesting review and will constitute the final action of the Commission.

(4) Determinations of appeals filed under this section shall be made within 20 working days after the receipt of such appeal. If, on appeal, denial of records is in whole or part upheld, the Staff Director shall notify the persons making such request of the provisions for judicial review of that determination under 5 U.S.C. 552(a)(6).

(5) An extension of time may be granted under this section pursuant to criteria established in paragraph (d)(3)(ii) (A) through (C) of this section, except that such extension together with any extension, which may have been granted pursuant to paragraph (d)(3)(ii) of this section, may not exceed a total of 10 working days.