

## Administrative Conference of the U.S.

## § 304.1

The Chairman may request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law.

### PARTS 302–303 [RESERVED]

### PART 304—DISCLOSURE OF RECORDS OR INFORMATION

#### Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.

- 304.1 General provisions.
- 304.2 Proactive disclosures.
- 304.3 Requirements for making requests.
- 304.4 Responsibility for responding to requests.
- 304.5 Timing of responses to requests.
- 304.6 Responses to requests.
- 304.7 Business information.
- 304.8 Appeals.
- 304.9 Fees.
- 304.10 Preservation of records.
- 304.11 Other rights and services.

#### Subpart B—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

- 304.20 General provisions.
- 304.21 Requests for access to records.
- 304.22 Responsibility for responding to requests for access to records.
- 304.23 Responses to requests for access to records.
- 304.24 Appeals from denials of requests for access to records.
- 304.25 Requests for amendment or correction of records.
- 304.26 Requests for an accounting of record disclosures.
- 304.27 Fees.
- 304.28 Notice of court-ordered and emergency disclosures.
- 304.29 Security of systems of records.
- 304.30 Contracts for the operation of record systems.
- 304.31 Use and collection of social security numbers and other information.
- 304.32 Employee standards of conduct.
- 304.33 Preservation of records.
- 304.34 Other rights and services.

SOURCE: 76 FR 18635, Apr. 5, 2011, unless otherwise noted.

#### Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

AUTHORITY: 5 U.S.C. 552, 591–96.

##### § 304.1 General provisions.

(a) This subpart contains the rules that the Administrative Conference of the United States (“ACUS” or “the agency”) follows in processing requests for disclosure of records under the Freedom of Information Act (“FOIA” or “the Act”), 5 U.S.C. 552, as amended, and in meeting its responsibilities under the Act. Note that electronic records are treated as records for the purposes of the FOIA. These rules should be read together with the text of the FOIA itself and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Guidelines). They also may be read in conjunction with the agency’s “Freedom of Information Act Reference Guide,” which provides basic information about use of the Act in relation to the agency’s records. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with the agency’s Privacy Act regulations as well as under this subpart.

(b) The agency will withhold records or information only when it reasonably foresees that disclosure would harm an interest protected by an exemption of the FOIA or when disclosure is prohibited by law. Where full disclosure is not possible, the agency will consider whether partial disclosure is possible and, if so, will take reasonable steps to segregate and release nonexempt information. These policies do not create any right enforceable in court.

(c) The agency has designated its General Counsel as its Chief FOIA Officer, who has agency-wide responsibility for efficient and appropriate compliance with the FOIA and these implementing regulations. The Chief FOIA Officer has designated the agency’s FOIA Public Liaison, who can assist individuals in locating and obtaining particular agency records. Contact information for the Chief FOIA Officer and

## § 304.2

the FOIA Public Liaison are clearly indicated on the agency's Web site at <https://www.acus.gov/foia>.

[82 FR 7632, Jan. 23, 2017]

### § 304.2 Proactive disclosures.

(a) Records that the FOIA requires ACUS to make regularly available for public inspection in an electronic format, including any records that have been requested three or more times, or were previously released and are likely to become the subject of subsequent requests or appear to be of general interest, may be accessed through the agency's Web site at <https://www.acus.gov>. A subject matter index of such records (or comparable tool) may also be accessed through the agency's Web site and will be updated on an ongoing basis.

(b) Information routinely provided to the public as part of a regular agency activity, including information posted on the agency's Web site (for example, press releases or recommendations adopted by the Conference pursuant to the Administrative Conference Act, 5 U.S.C. 591 *et seq.*), may be provided to the public without following this subpart.

(c) Any requester needing assistance in locating proactively disclosed or other agency records may contact the agency's FOIA Public Liaison at (202) 480-2080.

[82 FR 7632, Jan. 23, 2017]

### § 304.3 Requirements for making requests.

(a) *How made and addressed.* You may make a request for records by using the FOIA Request form on the ACUS Web site at <https://www.acus.gov/foia>. You may also send a written request letter to the agency either by mail addressed to FOIA Public Liaison, Administrative Conference of the United States, 1120 20th Street NW., Suite 706 South, Washington, DC 20036, or by fax delivery to (202) 386-7190. For the quickest possible handling of a mail request, you should mark both your request letter and the envelope "Freedom of Information Act Request." (You may find the agency's "Freedom of Information Act Reference Guide"—which is available in electronic format on its Web

## 1 CFR Ch. III (1-1-19 Edition)

site and in paper form—helpful in making your request.) If you are making a request for records about yourself, see § 304.21(d) for additional requirements. If you are making a request for records about another individual, then either a written authorization signed by that individual permitting disclosure of those records to you or proof that that individual is deceased (for example, a copy of a death certificate or an obituary notice) will help the processing of your request. Your request will be considered received as of the date upon which it is logged in as received by the agency's FOIA Public Liaison.

(b) *Description of records sought.* (1) You must describe the records that you seek in enough detail to enable agency personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. If known, you should include any file designations or similar descriptions for the records that you want. As a general rule, the more specific you are about the records or type of records that you want, the more likely that the agency will be able to locate those records in response to your request. Before submitting your request, you may contact the agency's FOIA Public Liaison at (202) 480-2080 for assistance in describing the records.

(2) If the agency determines that your request does not reasonably describe records, then it will tell you either what additional information is needed or why your request is otherwise insufficient. It also will give you an opportunity to discuss your request by telephone so that you may modify it to meet the requirements of this section. Additionally, if your request does not reasonably describe the records you seek, the agency's response to it may be delayed as an initial matter.

(c) *Format of records sought.* Requests may specify the preferred form or format (including electronic formats) for the records you seek. The agency will accommodate your request if the record is readily reproducible in that form or format.

## Administrative Conference of the U.S.

## § 304.5

(d) *Agreement to pay fees.* When you make a FOIA request, it will be considered to be an agreement by you to pay all applicable fees charged under § 304.9, up to \$50.00, unless you specifically request a waiver of fees. The agency ordinarily will confirm this agreement in an acknowledgment letter. When making a request, you may specify a willingness to pay a greater or lesser amount. Your agreement will not prejudice your ability to seek a waiver or reduction of any applicable fee at a later time.

[82 FR 7632, Jan. 23, 2017]

### § 304.4 Responsibility for responding to requests.

(a) *In general.* The agency will be responsible for responding to a request in all respects, except in the case of a referral to another agency as is described in paragraphs (b), (c), and (d) of this section. In determining which records are responsive to a request, the agency ordinarily will include only records in its possession and control as of the date upon which it begins its search for them. If any other date is used, the agency will inform the requester of that date.

(b) *Consultations and referrals.* When the agency receives a request for a record in its possession and control, it will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be disclosed as a matter of administrative discretion. If the agency determines that it is best able to process the record in response to the request, then it will do so. If the agency determines that it is not best able to process the record, then it will either:

(1) Respond to the request regarding that record, after consulting with the agency that is best able to determine whether to disclose it and with any other agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to another agency that originated the record (but only if that agency is subject to the FOIA). Ordinarily, the agency that originated a record

will be presumed to be best able to determine whether to disclose it.

(c) *Notice of referral.* When the agency refers all or any part of the responsibility for responding to a request to another agency, it ordinarily will notify the requester of the referral and inform the requester of the name of the agency to which the request has been referred and of the part of the request that has been referred.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals will be handled according to the date upon which the FOIA request initially was received by the first agency, and not any later date.

(e) *Agreements regarding consultations and referrals.* The agency may make agreements with other agencies designed to eliminate the need for consultations or referrals regarding particular types of records.

### § 304.5 Timing of responses to requests.

(a) *In general.* The agency ordinarily will respond to requests according to their order of receipt.

(b) *Multi-track processing.* The agency generally uses two processing tracks that distinguish between simple and complex requests. In determining the appropriate track for a request, the agency considers, among other factors, the number of records requested, the number of pages involved in processing the request and the need for consultations or referrals. When a request is placed on the complex track, the agency will provide the requester with an opportunity to narrow or modify the request so that it can be placed on the simple track. The agency will contact the requester by telephone, email or letter, whichever is most efficient, in each case.

(c) *Unusual circumstances.* (1) Where the statutory time limit of 20 days for processing a request cannot be met because of “unusual circumstances,” as defined in the FOIA, and the agency extends the time limits on that basis, it will, before expiration of the 20-day period, notify the requester in writing of the unusual circumstances and of the date by which the agency estimates

## § 304.6

## 1 CFR Ch. III (1–1–19 Edition)

processing of the request can be expected to be completed. Where the extension is likely to exceed ten working days, the agency will provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. In such instances, the agency's FOIA Public Liaison will contact the requester, and the requester will be informed of the mediation services offered by the Office of Government Information Services ("OGIS")—see <https://www.archives.gov/ogis>.

(2) Where the agency reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

(d) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public concerning actual or alleged federal government activity, if made by a person primarily engaged in disseminating information; or

(iii) Other circumstances as determined by the agency.

(2) A request for expedited processing may be made at the time of the initial request for records (i.e., as part of the initial request) or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. That re-

quester also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived by the agency as a matter of administrative discretion.

(4) Within ten calendar days of its receipt of a request for expedited processing, the agency will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, then the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, then any appeal of that decision will be acted on expeditiously.

[76 FR 18635, Apr. 5, 2011, as amended at 82 FR 7632, Jan. 23, 2017]

### § 304.6 Responses to requests.

(a) *Acknowledgments of requests.* On receipt of a request, if the agency cannot provide the requested information within two working days, then an acknowledgment letter or email message will be sent to the requester that will confirm the requester's agreement to pay fees under § 304.3(d) and will provide a request tracking number for further reference. Requesters may use this tracking number to determine the status of their request—including the date of its receipt and the estimated date on which action on it will be completed—by calling the agency's FOIA Public Liaison at (202) 480–2080. In some cases, the agency may seek further information or clarification from the requester.

(b) *Grants of requests.* Ordinarily, the agency will have 20 working days from when a request is received to determine whether to grant or deny the request. Once the agency makes such a determination, it will immediately notify the requester in writing. The agency will inform the requester in the notice of any fee charged under § 304.9 and will disclose records to the requester promptly upon payment of any applicable fee. The agency will also inform the requester of the availability of its FOIA Public Liaison to offer assistance.

(c) *Adverse determinations of requests.* Whenever the agency makes an adverse determination denying a request in any respect, it will notify the requester of that determination 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 a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited treatment. The denial letter will include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any FOIA exemption(s) applied by the agency in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) An indication on the released portion of a record of each exemption applied, at the place at which it was applied, if technically feasible.

(5) A statement that the denial may be appealed under §304.8(a) and a description of the requirements of §304.8(a).

(6) A statement notifying the requester of the assistance available from the agency's FOIA Public Liaison and the dispute resolution services offered by OGIS.

(d) *Markings on released documents.* Records disclosed in part will be marked or annotated to show the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also will be indicated on the record, if technically feasible.

[82 FR 7633, Jan. 23, 2017]

#### § 304.7 Business information.

(a) *In general.* Business information obtained by the agency will be disclosed under the FOIA only under this section and in accordance with Executive Order 12,600, 3 CFR part 235 (1988).

(b) *Definitions.* For purposes of this section:

(1) "Business information" means privileged or confidential commercial or financial information obtained by the agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) "Submitter" means any person or entity from whom the agency obtains business information, either directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any and all portion(s) of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* The agency will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice will either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* Notice will be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

## § 304.8

## 1 CFR Ch. III (1–1–19 Edition)

(2) The agency has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* The agency will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by the agency until after its disclosure decision has been made will not be considered by the agency. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The agency will consider a submitter's objections and specific grounds for non-disclosure in deciding whether to disclose business information. Whenever the agency decides to disclose business information over the objection of a submitter, it will give the submitter written notice, which will include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which will be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section will not apply if:

(1) The agency determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the

FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12,600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, the agency will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the agency will promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever the agency provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, it will also notify the requester(s). Whenever the agency notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, it will also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the agency will notify the requester(s).

### § 304.8 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with the response to your request, you may appeal an adverse determination denying your request, in any respect, to the Chairman of the agency. You must make your appeal in writing, by email or letter, and it must be received by the agency within 90 calendar days of the date of the agency's response denying your request. Your appeal should provide reasons and supporting information as to why the initial determination was incorrect. The appeal should clearly identify the particular determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling of a mail request, you should mark your appeal "Freedom of Information Act Appeal." The Chairman or his or her designee will act on the appeal, except that an appeal ordinarily will not be acted on if the request becomes a matter of FOIA litigation.

(b) *Responses to appeals.* The decision on your appeal will be communicated

to you by email or letter, ordinarily within 20 working days of receipt of your appeal. A decision affirming an adverse determination in whole or in part will contain a statement of the reason(s) for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. The decision will also inform you of the mediation services offered by OGIS as a non-exclusive alternative to FOIA litigation. If the adverse determination is reversed or modified on appeal, in whole or in part, then you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *Engaging in dispute resolution services provided by OGIS.* Mediation is a voluntary process. If the agency agrees to participate in the mediation services provided by OGIS, it will actively engage in the process in an attempt to resolve the dispute.

(d) *When appeal is required.* As a general rule, if you wish to seek review by a court of any adverse determination, you must first appeal it in a timely fashion under this section.

[82 FR 7633, Jan. 23, 2017]

#### § 304.9 Fees.

(a) *In general.* The agency will charge for processing requests under the FOIA in accordance with paragraph (c) of this section and with the OMB Guidelines. The agency ordinarily will collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) “Commercial use request” means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, including furthering those interests through litigation. The agency will determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because the agency has reasonable cause to

doubt a requester’s stated use, the agency will provide the requester a reasonable opportunity to submit further clarification.

(2) “Direct costs” means those expenses that an agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) “Duplication” means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others. The agency will honor a requester’s specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) “Educational institution” means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To qualify under this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(5) “Noncommercial scientific institution” means an institution that is not operated on a “commercial” basis, as that term is defined in paragraph (b)(1) of this section, 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. To qualify under this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and

## § 304.9

## 1 CFR Ch. III (1–1–19 Edition)

that the records are not sought for a commercial use but are sought to further scientific research.

(6) “Representative of the news media,” or “news-media requester,” means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. For this purpose, the term “news” means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “news”) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the agency may also consider the past publication record of the requester in making such a determination. To qualify under this category, a requester must not be seeking the requested records for a commercial use. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use.

(7) “Review” means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure—for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure

made by a business submitter under §304.7 but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) “Search” means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The agency will conduct searches in the most efficient and least expensive manner reasonably possible. For example, it will not search on a line-by-line basis where duplicating an entire document would be quicker and less expensive.

(c) *Fees charged.* In responding to FOIA requests, the agency will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section:

(1) *Search.* (i) Search fees will be charged for all requests (other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media) subject to the limitations of paragraph (d) of this section. The agency may charge for time spent searching even if it does not locate any responsive record or if it withholds the record(s) located as entirely exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee will be \$5.00. Where a search and retrieval cannot be performed entirely by clerical personnel (for example, where the identification of records within the scope of a request requires the use of professional personnel) the fee will be \$10.00 for each quarter hour of search time spent by professional personnel. Where the time of managerial personnel is required, the fee will be \$15.00 for each quarter hour of time spent by those personnel.

(iii) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in

paragraph (d)(3) of this section) will be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs will include the costs of operator/programmer salary apportionable to the search.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee will be ten cents per page. For copies produced by computer, such as tapes, disks, or printouts, the agency will charge the direct costs, including operator time, of producing the copy. For other forms of duplication, the agency will charge the direct costs of that duplication.

(3) *Review.* Review fees will be charged to requesters who make a commercial use request. Review fees will be charged only for the initial record review, when the agency determines whether an exemption applies to a particular record or record portion at the initial request level. No charge will be made for review at the administrative appeal level regarding an exemption already applied. However, records or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable where it is made necessary by such a change of circumstances. Review fees will be charged at the same rates as those used for a search under paragraph (c)(1)(ii) of this section.

(d) *Limitations on charging fees.* (1) No search fee will be charged for requests by educational institutions, non-commercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, the agency will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(4) Whenever a total fee calculated under paragraph (c) of this section is

\$20.00 or less for any request, no fee will be charged.

(5) The provisions of paragraphs (d)(3) and (4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than \$20.00.

(6) (i) If the agency fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees, except as described in (d)(6)(ii)-(iv).

(ii) If the agency has determined that unusual circumstances as defined by the FOIA apply and the agency provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit will be excused for an additional 10 working days.

(iii) If the agency has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, the agency may charge search fees, or, in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees, if the following steps are taken. The agency must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the agency must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the agency may charge all applicable fees incurred in the processing of this request.

(iv) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits will be excused for the length of time provided by the court order.

(e) *Notice of anticipated fees in excess of \$50.00.* (1) When the agency determines or estimates that the fees to be

charged under this section will amount to more than \$50.00, it will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the agency will advise the requester that the estimated fee might be only a portion of the total fee. In cases in which a requester has been notified that actual or estimated fees amount to more than \$50.00, the request will not be considered received and further work will not be done on it until the requester agrees to pay the total anticipated fee. Any such agreement should be memorialized in writing. A notice under this paragraph will offer the requester an opportunity to discuss the matter with agency personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(2) If the requester has indicated a willingness to pay some designated amount of fees, but the agency estimates that the total fee will exceed that amount, the agency will suspend the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The agency will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(3) The agency will make its FOIA Public Liaison available to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, when the agency chooses as a matter of administrative discretion to provide a special service—such as certifying that records are true copies or sending them by other than ordinary mail—the direct costs of providing the service ordinarily will be charged.

(g) *Charging interest.* The agency may charge interest on any unpaid bill starting on the 31st day following the date of the billing of the requester. Interest charges will be assessed at the

rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the agency. The agency will follow the provisions of the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749, as amended, and regulations pursuant thereto.

(h) *Aggregating requests.* Wherever the agency reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, it may aggregate those requests and charge accordingly. In so doing, it will presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, the agency will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) and (i)(3) of this section, the agency will not require the requester to make an advance payment—in other words, a payment made before work is begun or continued on a request. Payment owed for work already completed (i.e., a prepayment before copies are sent to a requester) is not an advance payment.

(2) Where the agency determines or estimates that a total fee to be charged under this section will be more than \$250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to the agency within 30 calendar days of the date of billing, the agency may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before it begins to process a new request or continues to process a pending request from that requester.

(4) In cases in which the agency requires advance payment or payment due under paragraph (i)(2) or (i)(3) of this section, the request will not be considered received and further work will not be done on it until the required payment is received.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In cases in which records responsive to requests are maintained for distribution by another agency under such a statutorily based fee schedule program, ACUS will inform the requesters of the steps for obtaining records from those sources so that they may do so most economically.

(k) *Requirements for waiver or reduction of fees.* (1) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested 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.

(2) The agency will furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the factors described in paragraphs (k)(2)(i) through (iii) of this section are satisfied:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the requested records must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substan-

tially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to convey information effectively to the public will be considered. The agency will presume that a representative of the news media satisfies this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the agency will consider the following criteria:

(A) Whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters will be given an opportunity to provide explanatory information regarding this consideration.

(B) Whether any identified commercial interest is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (k)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. The agency ordinarily will presume that when a news media requester has satisfied factors in paragraphs (k)(2)(i) and (ii) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed primarily to serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted for those records.

(4) Requests for a waiver or reduction of fees should ordinarily be made when the request is first submitted to the agency and should address the criteria

## § 304.10

referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester must pay any costs incurred up to the date the fee waiver request was received.

[76 FR 18635, Apr. 5, 2011, as amended at 82 FR 7633, Jan. 23, 2017]

### § 304.10 Preservation of records.

(a) The agency will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 4.2. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(b) In the event that the agency contracts with another agency, entity, or person to maintain records for the agency for the purposes of records management, it will promptly identify such records in its "Freedom of Information Reference Guide" and specify the particular means by which request for such records can be made.

[76 FR 18635, Apr. 5, 2011, as amended at 82 FR 7633, Jan. 23, 2017]

### § 304.11 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

## Subpart B—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

AUTHORITY: 5 U.S.C. 552a, 591–96.

### § 304.20 General provisions.

(a) *Purpose and scope.* This subpart contains the rules that the Administrative Conference of the United States ("ACUS" or "the agency") follows

## 1 CFR Ch. III (1–1–19 Edition)

under the Privacy Act of 1974 ("the Privacy Act"), 5 U.S.C. 552a, as amended, regarding the protection of, and individual access to, certain records about individuals. These rules should be read together with and are governed by the Privacy Act itself, which provides additional information about records maintained on individuals. The rules in this subpart apply to all records in Privacy Act systems of records maintained by the agency, which are retrieved by an individual's name or personal identifier. They describe 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 the agency. In addition, the agency processes all Privacy Act requests for access to records under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, as amended, following the rules contained in subpart A of this part. Thus, all Privacy Act requests will be subject to exemptions for access to records only applicable under both FOIA and the Privacy Act.

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

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

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

(3) "Request for an accounting" means a request made under Privacy Act, 5 U.S.C. 552a(c)(3).

(4) "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.

### § 304.21 Requests for access to records.

(a) *How made and addressed.* You may make a request for access to a record about yourself by appearing in person or by sending an e-mail message addressed to [info@acus.gov](mailto:info@acus.gov). You may also send a written request letter to the agency either by mail addressed to 1120 20th Street, NW., South Lobby, Suite 706, Washington, DC 20036, or by fax delivery to (202) 386-7190. For the

quickest possible handling of a mail request, you should mark both your request letter and the envelope "Privacy Act Request."

(b) *Description of records sought.* You must describe the records that you want in enough detail to enable agency personnel to locate the system of records containing them with a reasonable amount of effort. Whenever possible, your request should describe the records sought, the time periods in which you believe they were compiled, and the name or identifying number of each system of records in which you believe they are kept. The agency publishes a notice in the FEDERAL REGISTER that describes its systems of records.

(c) *Agreement to pay fees.* If you make a Privacy Act request for access to records, it will be considered an agreement by you to pay all applicable fees charged under §304.27, up to \$50.00. Duplication fees in excess of \$50.00 are subject to the requirements of §304.27 of this subpart and the notification requirements in §304.9 of subpart A. The agency ordinarily will confirm this agreement in an acknowledgment letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

(d) *Verification of identity.* When you make a request for access to records about yourself, you must verify your identity. You must state your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In order to help the identification and location of requested records, you may also, entirely at your option, include the last four digits of your social security number.

**§ 304.22 Responsibility for responding to requests for access to records.**

(a) *In general.* The agency will be responsible for responding to a request in all respects, except in the case of a referral to another agency as is described in paragraphs (b), (c), and (d) of this section. In determining which records are responsive to a request, the agency

ordinarily will include only records in its possession and control as of the date upon which it begins its search for them. If any other date is used, the agency will inform the requester of that date.

(b) *Consultations and referrals.* When the agency receives a request for access to a record in its possession and control, it will determine whether another agency of the Federal Government, is better able to determine whether the record is exempt from access under the Privacy Act. If the agency determines that it is the agency best able to process the record in response to the request, then it will do so. If it determines that it is not best able to process the record, then it will either:

(1) Respond to the request regarding that record, after consulting with the agency that is best able to determine whether the record is exempt from access and with any other agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the agency that is best able to determine whether it is exempt from access, or to another agency that originated the record (but only if that agency is subject to the Privacy Act). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether it is exempt from access.

(c) *Notice of referral.* When the agency refers all or any part of the responsibility for responding to a request to another agency, it ordinarily will notify the requester of the referral and inform the requester of the name of the agency to which the request has been referred and of the part of the request that has been referred.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals will be handled according to the date upon which the Privacy Act access request was initially received by the first agency, not any later date.

(e) *Agreements regarding consultations and referrals.* The agency may make agreements with other agencies designed to eliminate the need for consultations or referrals for particular types of records.

## § 304.23

### § 304.23 Responses to requests for access to records.

(a) *Acknowledgments of requests.* On receipt of a request, the agency ordinarily will send an acknowledgment letter to the requester that will confirm the requester's agreement to pay fees under § 304.21(c) and provide an assigned request number for further reference. In some cases, the agency may seek further information or clarification from the requester.

(b) *Grants of requests for access.* Once the agency makes a determination to grant a request for access in whole or in part, it will notify the requester in writing. The agency will inform the requester in the notice of any fee charged under § 304.27 and will disclose records to the requester promptly on payment of any applicable fee. If a request is made in person, the agency may disclose records to the requester directly, in a manner not unreasonably disruptive of its operations, on payment of any applicable fee and with a written record made of the grant of the request. If a requester is accompanied by another person, the requester will be required to authorize in writing any discussion of the records in the presence of the other person.

(c) *Adverse determinations of requests for access.* Upon making an adverse determination denying a request for access in any respect, the agency will notify the requester of that determination 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; and a denial of a request for expedited treatment. The notification letter will include:

- (1) The name and title or position of the person responsible for the denial;
- (2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied in denying the request; and
- (3) A statement that the denial may be appealed under § 304.24(a) and a description of the requirements of § 304.24(a).

## 1 CFR Ch. III (1-1-19 Edition)

### § 304.24 Appeals from denials of requests for access to records.

(a) *Appeals.* If you are dissatisfied with the response to your request, you may appeal an adverse determination denying your request, in any respect, to the Chairman of the agency. You must make your appeal in writing, by e-mail or letter, and it must be received by the agency within 60 days of the date of the denial of your request. Your appeal letter should provide reasons and supporting information as to why the initial determination was incorrect. The appeal should clearly identify the particular determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling of a mail request, you should mark your appeal letter and the envelope "Privacy Act Appeal." The Chairman of the agency or his or her designee will act on the appeal, except that an appeal ordinarily will not be acted on if the request becomes a matter of FOIA or Privacy Act litigation.

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the affirmance, including any exemption applied, and will inform you of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed or modified on appeal in whole or in part, then you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* As a general rule, if you wish to seek review by a court of any adverse determination or denial of a request, you must first appeal it under this section.

### § 304.25 Requests for amendment or correction of records.

(a) *How made and addressed.* Unless the record is not subject to amendment or correction as stated in paragraph (f) of this section, you may make a request for amendment or correction of an ACUS record about yourself by following same procedures as in § 304.21. Your request should identify each particular record in question, state the amendment or correction that you

## Administrative Conference of the U.S.

## § 304.26

want, and state why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful. If you believe that the same record is maintained in more than one system of records, you should state that.

(b) *Agency responses.* Within ten business days of receiving your request for amendment or correction of records, the agency will send you a written acknowledgment of its receipt of your request. The agency will promptly notify you whether your request is granted or denied. If the agency grants your request in whole or in part, it will describe the amendment or correction made and will advise you of your right to obtain a copy of the corrected or amended record, in disclosable form. If the agency denies your request in whole or in part, it will send you a letter that will state:

- (1) The reason(s) for the denial; and
- (2) The procedure for appeal of the denial under paragraph (c) of this section, including the name and business address of the official who will act on your appeal.

(c) *Appeals.* You may appeal a denial of a request for amendment or correction in the same manner as a denial of a request for access to records (see § 304.24(a)) and the same procedures will be followed. The agency will ordinarily act on the appeal within 30 business days of receipt of the appeal, except that the Chairman of the agency may extend the time for response for good cause shown. If your appeal is denied, you will be advised of your right to file a Statement of Disagreement as described in paragraph (d) of this section and of your right under the Privacy Act for court review of the decision.

(d) *Statements of Disagreement.* If your appeal under this section is denied in whole or in part, you have the right to file a Statement of Disagreement that states your reason(s) for disagreeing with the agency's denial of your request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. The agency will place your Statement of Disagree-

ment in the system of records in which the disputed record is maintained and will mark the disputed record to indicate that a Statement of Disagreement has been filed and exactly where in the system of records it may be found.

(e) *Notification of amendment/correction or disagreement.* Within 30 business days of the amendment or correction of a record, the agency will notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. If an individual has filed a Statement of Disagreement, the agency will append a copy of it to the disputed record whenever the record is disclosed and may also append a concise statement of its reason(s) for denying the request to amend or correct the record.

(f) *Records not subject to amendment or correction.* The following records are not subject to amendment or correction:

- (1) Transcripts of testimony given under oath or written statements made under oath;
- (2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings; and
- (3) Any other record that originated with the courts.

### **§ 304.26 Requests for an accounting of record disclosures.**

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in paragraph (b) of this section), you may make a request for an accounting of any disclosure that has been made by the agency to another person, organization, or agency of any record about you. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Your request for an accounting should identify each particular record in question and should be made in writing to the agency, following the procedures in § 304.21.

(b) *Where accountings are not required.* The agency is not required to provide

### § 304.27

accountings to you where they relate to:

(1) Disclosures for which accountings are not required to be kept (i.e., disclosures that are made to officers and employees of the agency and disclosures required under the FOIA); or

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from a duly authorized representative of any such law enforcement agency specifying portion of the record desired and the law enforcement activity for which the record is sought.

(c) *Appeals.* You may appeal a denial of a request for an accounting in the same manner as a denial of a request for access to records (see § 304.24(a)) and the same procedures will be followed.

### § 304.27 Fees.

The agency will charge fees for duplication of records under the Privacy Act in the same way in which it charges duplication fees under § 304.9 of subpart A. No search or review fee may be charged for any record under the Privacy Act.

### § 304.28 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the agency will make reasonable efforts to provide notice of such order to the individual. Notice will be given within a reasonable time after the agency's receipt of the order, except that in a case in which the order is not a matter of public record, the notice will be given only after the order becomes public. This notice will be mailed to the individual's last known address and will contain a copy of the order and a description of the information disclosed.

(b) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the agency will notify that individual of the disclosure. This notice will be mailed to the individual's last known address and will state the nature of the information disclosed; the person, organization, or agency to which it was

### 1 CFR Ch. III (1-1-19 Edition)

disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure.

### § 304.29 Security of systems of records.

(a) *Administrative and physical controls.* The agency will have administrative and physical controls to prevent unauthorized access to its systems of records, to prevent unauthorized disclosure of records, and to prevent physical damage to or destruction of records. The stringency of these controls corresponds to the sensitivity of the records that the controls protect. At a minimum, these controls are designed to ensure that:

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours in order to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in oral, written or any other form.

(b) *Restrictive procedures.* The agency will implement practices and procedures that restrict access to records to only those individuals within the agency who must have access to those records in order to perform their duties and that prevent inadvertent disclosure of records.

### § 304.30 Contracts for the operation of record systems.

Any approved contract for the operation of a record system will contain appropriate requirements issued by the General Services Administration in order to ensure compliance with the requirements of the Privacy Act for that record system. The contracting officer of the agency will be responsible for ensuring that the contractor complies with these contract requirements.

### § 304.31 Use and collection of social security numbers and other information.

The agency will ensure that employees authorized to collect information are aware:

## Administrative Conference of the U.S.

## § 304.33

(a) That individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their social security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975;

(b) That individuals requested to provide their social security numbers, or any other information collected from them, must be informed, before providing such information, of:

(1) Whether providing social security numbers (or such other information) is mandatory or voluntary;

(2) Any statutory or regulatory authority that authorizes the collection of social security numbers (or such other information);

(3) The principal purpose(s) for which the information is intended to be used;

(4) The routine uses that may be made of the information; and

(5) The effects, in any, on the individual of not providing all or any part of the requested information; and

(c) That, where the information referred to above is requested on a form, the requirements for informing such individuals are set forth on the form used to collect the information, or on a separate form that can be retained by such individuals.

### § 304.32 Employee standards of conduct.

The agency will inform its employees of the provisions of the Privacy Act, including the scope of its restriction against disclosure of records maintained in a system of records without the prior written consent of the individual involved, and the Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, an employee of the agency will:

(a) Collect from individuals and maintain only the information that is relevant and necessary to discharge the agency's responsibilities;

(b) Collect information about an individual directly from that individual to the greatest extent practicable when the information may result in an adverse determination about an individual's rights, benefits, or privileges under Federal programs;

(c) Inform each individual from whom information is collected of the information set forth in § 304.31(b);

(d) Ensure that the agency maintains no system of records without public notice and also notify appropriate agency officials of the existence or development of any system of records that is not the subject of a current or planned public notice;

(e) Maintain all records that are used by it in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(f) Except as to disclosures made to an agency or made under the FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(g) Maintain no record describing how an individual exercises his or her First Amendment rights unless such maintenance is expressly authorized by statute or by the individual about whom the record is maintained or is pertinent to and within the scope of an authorized law enforcement activity;

(h) When required by the Privacy Act, maintain an accounting in the specified form of all disclosures of records by the agency to persons, organizations, or agencies;

(i) Maintain and use records with care in order to prevent the unauthorized or inadvertent disclosure of a record to anyone; and

(j) Notify the appropriate agency official of any record that contains information that the Privacy Act does not permit the agency to maintain.

### § 304.33 Preservation of records.

The agency will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the Act.

**§ 304.34**

**1 CFR Ch. III (1–1–19 Edition)**

**§ 304.34 Other rights and services.**

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclo-

sure of any record to which such person is not entitled under the Privacy Act.

**PARTS 305–399 [RESERVED]**