

§ 70.23

Services, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-2428, Washington, DC 20210. Appeals also may be submitted by e-mail to foiaappeal@dol.gov. Appeals submitted to any other e-mail address will not be accepted.

§ 70.23 Action on appeals.

The Solicitor of Labor, or designee, will review the appellant's appeal and make a determination *de novo* whether the action of the disclosure officer was proper and in accordance with the applicable law.

§ 70.24 Form and content of action on appeals.

The disposition of an appeal will be issued by the Solicitor of Labor or designee in writing. A decision affirming, in whole or in part, the decision below will include a brief statement of the reason or reasons for the affirmance, including the FOIA exemption or exemptions relied upon, and its relation to each record withheld, and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or maintains his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If it is determined on appeal that a record should be disclosed, the record should be provided in accordance with the decision on appeal. If it is determined that records should be denied in whole or in part, the appeal determination will include 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.

§ 70.25 Time limits and order in which requests must be processed.

(a) *Time limits.* Components of the Department of Labor will comply with the time limits required by the FOIA for responding to and processing requests and appeals, unless there are ex-

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ceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(C). A component will notify a requester whenever the component is unable to respond to or process the request or appeal within the time limits established by the FOIA.

(b) *Multitrack processing.* (1) A component may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including through limits based on the number of pages involved. If a component does so, it will advise requesters in its slower track(s) of the limits of its faster track(s).

(2) A component using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the component's faster track(s). A component doing so will contact the requester either by telephone or by letter, whichever is more efficient in each case.

(c) *Unusual circumstances.* (1) Where the statutory time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the component determines to extend the time limits on that basis, the component will as soon as practicable notify the requester in writing of the unusual circumstances and of the date by which processing of the request can be expected to be completed. Where the extension is for more than ten working days, the component will provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period with the component for processing the request or a modified request.

(2) Where a component 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 about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be received by the proper component. Requests based on the categories in paragraphs (d)(1)(i), (ii), (iii), and (iv) of this section must be submitted to the component that maintains the records requested.

(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. A requester within the category in paragraph (d)(1)(ii) of this section 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 as a matter of administrative discretion.

(4) Within ten calendar days of its receipt of a request for expedited processing, the proper component will decide whether to grant it and will notify

the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 70.26 Business information.

(a) *In general.* Confidential business information will be disclosed under the FOIA only in accordance with this section.

(b) *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 portions 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.

(c) *Notice to submitters.* A component will provide a submitter with prompt written notice of a FOIA request that seeks its business information whenever required under paragraph (d) of this section, except as provided in paragraph (g) of this section, in order to give the submitter an opportunity to object in writing to disclosure of any specified portion of that information under paragraph (e) 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 to a voluminous number of submitters is required, notification may be made by posting or publishing notice reasonably likely to accomplish such notification.

(d) *When notice is required.* Notice will be given to a submitter whenever:

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

(2) A component has reason to believe that the information requested under the FOIA may be protected from disclosure under Exemption 4.

(e) *Opportunity to object to disclosure.* A component will allow a submitter a