

Department of State

§ 171.11

are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of “freelance” journalists, they may be regarded as working for a news organization if they can demonstrate a likelihood of publication through that organization, even though not actually employed by it. Likelihood of publication can be demonstrated through, for example, a publication contract or past publication record. Similarly, the absence of a publication record, especially where the requester has previously received records from the Department as a “representative of the news media” will be taken into account in determining the likelihood of publication.

[45 FR 58108, Sept. 2, 1980, as amended at 52 FR 32124, Aug. 26, 1987]

§ 171.11 Exemptions.

(a) The following categories of records maintained by the Department of State may be exempted from disclosure:

(1) Records specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and in fact properly classified pursuant to such executive order.

(2) Records related solely to the internal personnel rules and practices of an agency.

(3) Records specifically exempted from disclosure by statute. Included in this category are records relating to the officers and employees of the Foreign Service, including efficiency records (sec. 612 of the Foreign Service Act of 1946, as amended, 22 U.S.C. 986), the records of the Department of State or of diplomatic and consular officers of the United States pertaining to the issuance or refusal of visas or permits to enter the United States (sec. 222(f), of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1202(f)), “Restricted Data” under section 224 of the Atomic Energy Act (42 U.S.C. 2274), records of expenditures certified under 22 U.S.C. 2671 and 31 U.S.C. 107, records subject to section

102(d) of the National Security Act of 1947 (61 Stat. 498) and records subject to section 501 of the U.S. Information and Educational Exchange Act of 1948 (22 U.S.C. 1461, as amended).

(4) Records of trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Records which are inter-agency or intra-agency memorandums, letters, telegrams, or airgrams which would not be available by law to a party other than an agency in litigation with the agency.

(6) Records such as personnel and medical files and similar files the public disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

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

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

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

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

(iv) 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 which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

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

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

§ 171.12

22 CFR Ch. I (4-1-04 Edition)

(8) Records contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

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

(b) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under paragraph (a) of this section. Normally a portion of a record shall be considered reasonably segregable when segregation can produce an intelligible record which is not distorted out of context and does not contradict the record being withheld.

[45 FR 58108, Sept. 2, 1980, as amended at 52 FR 32124, Aug. 26, 1987; 64 FR 54539, Oct. 7, 1999]

§ 171.12 Time limits/expedited processing.

(a) Whenever possible, the Department will furnish the requested records within 20 days (excluding Saturdays, Sundays, and legal public holidays), except as cited in §171.4.

(b) A separate queue shall be established for requests meeting the test for expeditious processing. Requests for expedited processing shall be granted to the requester after the requester has demonstrated that a compelling need exists. A notice of the determination as to whether to grant expedited processing shall be provided to the requester within ten (10) days of the date of the request. The request for expedited processing shall set forth with specificity the relevant facts upon which the requester relies and demonstrate to the Department that substantive records relevant to the stated needs may exist and be deemed releasable.

(c) A “compelling need” is deemed to exist where the requester can demonstrate one of the following:

(1) Failure to obtain requested information on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) The information is urgently needed by an individual primarily engaged

in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. News media requesters would normally qualify; however, other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public, not just a particular segment or group.

(i) *Urgently needed.* The information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the newsbreaking nature of the information;

(ii) *Actual or alleged Federal Government activity.* The information concerns some actions taken, contemplated, or alleged by or about the government of the United States, or one of its components or agencies, including the Congress;

(3) Substantial due process rights of the requester would be impaired by the failure to process immediately; or

(4) Substantial humanitarian concerns would be harmed by the failure to process immediately.

(d) A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the ten (10) days required for decisions on expedited access.

(e)(1) The Department’s decision to deny expedition may be appealed to the Chief of the Requester Liaison Division, Room 1512, Department of State, 2201 C Street, NW., Washington, D.C. 20520. Appeals should contain as much information and documentation as possible to support the request for expedited processing in accordance with the criteria set forth in paragraph (c) of this section.

(2) The Requester Liaison Division Chief will issue a final decision in writing within ten (10) days from the date