

Department of State

§ 171.50

purpose of the agency and shall incorporate the criteria of accuracy, relevance, timeliness, and completeness of the record in that review.

(e) If the office responsible for the record agrees with an individual's request to amend a record, it shall:

(1) Advise the individual in writing;

(2) Amend the record accordingly; and

(3) If an accounting of disclosure has been made, advise all previous recipients of the record of the amendment and its substance.

(f) If the office responsible for the record, after an initial review of a request to amend a record disagrees with all or any portion of the requested amendment, an officer at the Deputy Assistant Secretary level or equivalent, shall:

(1) Advise the individual of its refusal and the reasons for it; and

(2) Inform the individual that she or he may request a further review in accordance with subpart G.

Subpart E—Ethics in Government Provisions

§ 171.40 Covered employees.

(a) Officers and employees, including special government employees, whose positions are classified at grades GS-16 and above or at any equivalent rate under another pay schedule;

(b) Officers or employees in a position determined by the Director of the Office of Government Ethics to be of equal classification to GS-16;

(c) Employees in the excepted service in positions which are of a confidential or policy-making nature unless an employee or groups of employees are exempted by the Director of the Office of Government Ethics;

(d) The designated agency official who acts as the Department's Ethics Officer; and

(e) Individuals who are nominated for positions requiring Senate confirmation by the President but who are *not* subsequently confirmed by the Senate.

§ 171.41 Identifying information.

(a) The name and/or position title of the Department of State official who is subject of the request,

(b) The time period covered by the report requested, and

(c) Completion of an Ethics Request Form.

§ 171.42 Time limits.

(a) Reports shall be made available to the public within fifteen (15) days after receipt by the Department.

(b) Reports shall be retained by the Department and made available to the public for a period of six (6) years. The exceptions are those reports which are filed by individuals who are nominated for office by the President and are not confirmed by the Senate; those reports will be retained and made available for a one-year period.

§ 171.43 Access to, and use of, reports.

The Attorney General is authorized to bring a civil action against any person who obtains or uses a financial disclosure report:

(a) For any unlawful purpose;

(b) For any commercial purpose, other than for news or community dissemination to the general public;

(c) For determining or establishing the credit rating of any individual; or

(d) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

The court may assess a civil penalty not to exceed \$5,000 against any person who obtains or uses the reports for these prohibited purposes; an additional remedy as available under statutory or common law may also be assessed at the discretion of the court.

Subpart F—Denial Procedures

§ 171.50 Denials of access or of amendment.

The decision to deny an individual access to records, or to deny an amendment request under Privacy Act provisions shall be made by: (a) The Department official of a rank not below the Deputy Assistant Secretary or equivalent level who is responsible for the system of records involved, (b) the Deputy Assistant Secretary for the Classification/Declassification Center, or her/his designees, (c) the Director/Deputy Director of Mandatory Review and the Director of Systematic Review in A/CDC, and (d) officials designated by the

§ 171.60

Under Secretary for Management/Chairman of the Oversight Committee for E.O. 12065. When an authorized official denies access to a record or portion thereof, the official will advise the individual in writing of the denial and the specific reasons therefor. The denial letter will also advise the individual of her/his right to seek administrative review of the Department's decision.

Subpart G—Appeals Procedures

§ 171.60 Appeal of denial of access to records.

(a) Review of an initial denial of access to a record under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or Executive Order 12065 may be requested by the individual who submitted the initial request for access. The request for review (hereinafter referred to as the appeal) must be in writing and should be sent by certified mail to the Assistant Secretary for Public Affairs, Chairperson, Appeals Review Panels, Department of State, 2201 C Street, NW., Washington, DC 20520. The appeal should be received within 60 days of the date of receipt by the appellant of the Department's refusal to grant access to a record in whole or in part.

(b) The time for decision on the appeal begins on the date the appeal is received by the Chairperson, Appeals Review Panels. The appeal of a denial of access to records shall include any documentation, information and statements to support the individual's request for access and to refute the use of the exemption(s) cited in the Department's justification concerning the denial of access.

(c) The Chairperson of the Appeals Panels or her/his designee and at least two other members chosen by her/him from a list of senior officers designated for this purpose by the various bureaus of the Department shall constitute a panel to consider and decide the appeal. There shall be a written record of the reasons for the final determination. The final determination will be made within 30 working days for executive order and Privacy Act appeals, and within 20 working days (excluding Saturdays, Sundays, and holidays) for

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

FOIA appeals. For good cause shown, the Chairperson of the Appeals Review Panels may extend such determination beyond the 30-day period in Privacy Act cases.

(d) The Chairperson shall then notify the requester in writing of the panel's decision to grant access and of the Department's regulations concerning access.

(e) When the final decision of the Panel is to refuse to grant an individual access to a record, the Chairperson of the Panel shall advise the individual in writing:

(1) Of the refusal to grant the appeal and the reasons therefor including the exemptions of the Freedom of Information Act, the Privacy Act of 1974, and/or Executive Order 12065 under which access is denied;

(2) Of her/his right to seek judicial review of the Department's decision, where applicable.

[45 FR 58108, Sept. 2, 1980, as amended at 49 FR 16990, Apr. 23, 1984]

§ 171.61 Appeal of refusal to amend records.

(a) Review of an initial refusal to amend a record under the Privacy Act of 1974 may be requested by the individual who submitted the initial request for amendment. The review (hereinafter referred to as the appeal) should be requested in writing within 60 days of the date the individual is informed of the Department's refusal to amend a record in whole or in part. The appeal must be in writing and should be sent by certified mail to the Assistant Secretary for Public Affairs, Chairperson, Appeals Review Panels, Department of State, 2201 C Street, NW. Washington, DC 20520.

(b) The time for decision on the appeal begins on the date the appeal is received by the Chairperson, Appeals Review Panels. The appeal should include any documentation, information or statements advanced for the amendment of the record.

(c) The Chairperson of the Appeals Review Panels and two other members of the Panels designated by him shall constitute a panel to consider and decide the appeal; there shall be a written record of the reasons for the final