

§ 171.60

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

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

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

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determination. The final determination will be made within 30 days (excluding Saturdays, Sundays, and legal public holidays), unless for good cause shown, the Chairperson of the Appeals Review Panels extends such determination beyond the 30-day period.

(d) When the final determination is that the record should be amended in accordance with the individual's request, the Chairperson of the Appeals Review Panels shall direct the office responsible for the record to comply. A responsible official of the Department shall then:

(1) Amend the records as directed;

(2) If any accounting of the disclosure has been made, advise all previous recipients of the record of the amendment and its substance;

(3) So advise the individual in writing.

(e) When the final decision is that the request of the individual to amend the record is refused, the Chairperson of the Panels shall advise the individual:

(1) Of the refusal and the reasons for it;

(2) Of her and his right to file a concise statement of the reasons for disagreeing with the decision of the Department;

(3) Of the procedures for filing the statement of disagreement;

(4) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Department, a brief statement by the Department summarizing its reasons for refusing to amend the record;

(5) That prior recipients of the disputed record will be provided a copy of any statement of dispute to the extent that an accounting of disclosures was maintained; and

(6) Of her/his right to seek judicial review of the Department's refusal to amend the record.

(f) When the final determination is to refuse to amend a record and the individual has filed a statement under paragraph (e) of this section, the Department will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently have access to, use, or disclose it. When information that is

the subject of a statement of dispute filed by an individual is subsequently disclosed, the Department will note that the information is disputed and provide a copy of the individual's statement. The Department may also include a brief summary of the reasons for not making a correction when disclosing disputed information. Such statements will normally be limited to the reasons given to the individual for not amending the record. Copies of the Department's statement shall be treated as part of the individual's record for granting access; however, it will not be subject to amendment by the individual under these regulations.

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

Subpart H—Other Agency Material

§ 171.70 Referral.

While processing a request for access, the Department may locate in its files documents originated by other Federal agencies. The Department shall refer the documents to the originating agency for review and possible declassification and release to the requester. The originating agency is then responsible for contacting the requester directly concerning the release of the material and for notifying the Department of its determination. The Department of State will notify the requester of the referral unless the association of the reviewing agency with the information requires protection in the interest of national security.

§ 171.71 Concurrence.

While processing a request for access, the Department may locate Department of State documents containing information originated by or of substantive interest to other Federal agencies. The Department shall refer these documents or portions thereof to the originating or interested agency for review, possible declassification and concurrence regarding the documents' release. The other agency will then return the documents to the Department so that it may contact the requester regarding the material.