

## § 16.44

## 28 CFR Ch. I (7–1–05 Edition)

(c) *Adverse determinations of requests for access.* A component making an adverse determination denying a request for access in any respect shall 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 shall be signed by the head of the component, or the component head's designee, and shall 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 by the component in denying the request; and

(3) A statement that the denial may be appealed under § 16.45(a) and a description of the requirements of § 16.45(a).

### § 16.44 Classified information.

In processing a request for access to a record containing information that is classified under Executive Order 12958 or any other executive order, the originating component shall review the information to determine whether it should remain classified. Information determined to no longer require classification shall not be withheld from a requester on the basis of Exemption (k)(1) of the Privacy Act. On receipt of any appeal involving classified information, the Office of Information and Privacy shall take appropriate action to ensure compliance with part 17 of this title.

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

(a) *Appeals.* If you are dissatisfied with a component's response to your request for access to records, you may appeal an adverse determination denying your request in any respect to the Office of Information and Privacy, U.S. Department of Justice, Flag Building, Suite 570, Washington, DC 20530-0001. You must make your appeal in writing

and it must be received by the Office of Information and Privacy within 60 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the component determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling, you should mark both your appeal letter and the envelope "Privacy Act Appeal." Unless the Attorney General directs otherwise, a Director of the Office of Information and Privacy will act on behalf of the Attorney General on all appeals under this section, except that:

(1) In the case of an adverse determination by the Deputy Attorney General or the Associate Attorney General, the Attorney General or the Attorney General's designee will act on the appeal;

(2) An adverse determination by the Attorney General will be the final action of the Department; and

(3) An appeal ordinarily will not be acted on if the request becomes a matter of 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 Privacy Act 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, 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.* 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.

### § 16.46 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 a Department of Justice record about

yourself by writing directly to the Department component that maintains the record, following the procedures in § 16.41. Your request should identify each particular record in question, state the amendment or correction that you 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 in more than one system of records, you should state that and address your request to each component that maintains a system of records containing the record.

(b) *Component responses.* Within ten working days of receiving your request for amendment or correction of records, a component shall send you a written acknowledgment of its receipt of your request, and it shall promptly notify you whether your request is granted or denied. If the component grants your request in whole or in part, it shall describe the amendment or correction made and shall advise you of your right to obtain a copy of the corrected or amended record, in disclosable form. If the component denies your request in whole or in part, it shall send you a letter signed by the head of the component, or the component head's designee, that shall 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 to the Office of Information and Privacy in the same manner as a denial of a request for access to records (see § 16.45) and the same procedures shall be followed. If your appeal is denied, you shall 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 Department'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. Your Statement of Disagreement must be sent to the component involved, which shall place it in the system of records in which the disputed record is maintained and shall mark the disputed record to indicate that a Statement of Disagreement has been filed and where in the system of records it may be found.

(e) *Notification of amendment/correction or disagreement.* Within 30 working days of the amendment or correction of a record, the component that maintains the record shall 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 component shall 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;
- (3) Presentence records that originated with the courts; and
- (4) Records in systems of records that have been exempted from amendment and correction under Privacy Act, 5 U.S.C. 552a(j) or (k) by notice published in the FEDERAL REGISTER.

**§ 16.47 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