

### § 404.3

### 12 CFR Ch. IV (1–1–05 Edition)

other preparation for release. Review does not include time spent resolving general legal and policy issues regarding the application of exemptions.

*Search*—The process of identifying and collecting records pursuant to a request.

*Trade secrets*—All forms and types of financial, business, scientific, technical, economic or engineering information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes.

*Unusual circumstances*—The need to search for and collect requested records from facilities that are separate from Ex-Im Bank headquarters; the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or the need for consultation with another agency a person that has a substantial interest in the determination of the request.

*Working days*—All calendar days excluding Saturdays, Sundays, and Federal Government holidays.

#### § 404.3 Public reference facilities.

Ex-Im Bank maintains a public reading room which contains the Ex-Im Bank records that the FOIA requires to be made available for public inspection and copying. The records available under this section include copies of records released pursuant to the FOIA that Ex-Im Bank determines have, or are likely to, become the subject of subsequent requests for substantially the same records. Requesters shall be responsible for the cost of duplicating such material in accordance with the provisions of § 404.9(e). Persons desiring to use the reading room should contact the Ex-Im Bank Freedom of Information and Privacy Office, either in writing at the address at § 404.1(f) or by telephone at (202) 565-3946 or (800) 565-3946, to arrange a time to inspect the available records.

#### § 404.4 Request requirements.

(a) *Form*. Requests must be made in writing and must be signed by, or on behalf of, the requester. Requests should be addressed to the Freedom of Information and Privacy Office at the

address in § 404.1(f) and should contain both the return address and telephone number of the requester.

(b) *Description of records requested*. Each request must describe the records sought in sufficient detail so as to enable a professional employee of Ex-Im Bank familiar with the subject matter of the request to locate the record with a reasonable amount of effort. A request shall not be deemed to have been received until such time as the request adequately identifies the records sought. To the extent practicable, a description should include relevant dates, format, subject matter, and the name of any person to whom the record is known to relate. A general request for records with no accompanying date restriction, either express or implied, shall be deemed to be a request for records created within the preceding twelve months.

(c) *Fee statement*. The request must contain a statement expressing willingness to pay fees for the requested records or a request for a fee waiver (see § 404.10) before the request shall be deemed to have been received. A fee statement may specify the maximum amount a requester is willing to pay for processing the request.

(1) Whenever a requester submits a FOIA request that does not contain a fee statement or a request for a fee waiver, Ex-Im Bank shall advise the requester of the requirements of this paragraph. If the requester fails to respond within ten working days of such notification, then the Freedom of Information and Privacy Office shall notify the requester, in writing, that Ex-Im Bank will not process the request.

(2) A general statement by the requester expressing willingness to pay all applicable fees under § 404.9 shall be deemed an agreement to pay up to \$50.00. If Ex-Im Bank estimates that the fees for a request will exceed \$50.00, then Ex-Im Bank shall offer the requester the opportunity to agree, in writing, either to pay a greater fee or to modify the request as a means of limiting the cost.

(d) *Written notice of amendment*. The requester should provide any amendment to the original request in writing to Ex-Im Bank.

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(e) *Requester assistance.* Ex-Im Bank shall make reasonable efforts to assist a requester in complying with the requirements of this section.

### § 404.5 Time for processing.

(a) *General.* Ex-Im Bank shall respond to requests within twenty working days of the date of receipt of the request unless unusual circumstances exist. Ex-Im Bank shall provide written notice to the requester whenever such unusual circumstances necessitate an extension. If the extension is expected to exceed ten working days, then Ex-Im Bank shall offer the requester the opportunity to:

(1) Alter the request so that it may be processed within the time limit; or  
(2) Propose an alternative, feasible time frame for processing the request.

(b) *Date of receipt.* A request shall be deemed to have been received on the date that the request is received in the Freedom of Information and Privacy Office, provided that the requester has met all the requirements of § 404.4. Ex-Im Bank shall notify the requester of the date on which a request was officially received.

(c) *Order of processing.* Ex-Im Bank ordinarily shall process requests according to their order of receipt.

(d) *Expedited processing.* A request for expedited processing must be included in the original request for records and may be granted at the discretion of Ex-Im Bank based upon the requester's demonstration of:

(1) An imminent threat to the life or physical safety of an individual; or

(2) In the case of a requester who is a representative of the news media, an urgency to inform the public concerning actual or alleged Federal Government activity. Ex-Im Bank shall provide notice of its determination on expedited processing to the requester. A requester may file an administrative appeal, as set forth at § 404.11, based on a denial of a request for expedited processing. Ex-Im Bank shall grant expeditious consideration to any such appeal.

### § 404.6 Release of records under the Freedom of Information Act.

(a) *Creation of records.* A reasonable request for material not in existence may be honored at Ex-Im Bank's dis-

cretion when tabulation or compilation will not significantly burden Ex-Im Bank, its programs or its activities.

(b) *Discretionary release.* Consistent with federal government policy, material technically qualifying for exemption from disclosure under 5 U.S.C. 552(b)(5) may be made available when disclosure would not adversely affect legitimate public or private interests, violate law or impose an unreasonable burden on Ex-Im Bank. This policy does not, however, create any right enforceable in a court of law.

(c) *Segregable records.* Whenever it is determined that a portion of a record is exempt from disclosure, any reasonably segregable portion of the record shall be provided to the requester after redaction of the exempt material. If segregation would render the document meaningless, Ex-Im Bank shall withhold the entire record.

(d) *Date for determining responsive records.* Only those records within Ex-Im Bank's possession and control as of the date of receipt of a request shall be deemed to be responsive to a request.

### § 404.7 Confidential business information.

(a) *Scope.* This section applies to all business information, as defined in § 404.2. Such information shall only be disclosed pursuant to a FOIA request in accordance with this section.

(b) *Submitter designation.* All business submitters should designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portion of any submission that they consider to be exempt from disclosure under 5 U.S.C. 552(b)(4).

(c) *Pre-disclosure notice to the business submitter.* Whenever Ex-Im Bank receives a FOIA request seeking disclosure of business information, Ex-Im Bank shall provide prompt written notice to the submitter of such information. This notice shall include a description or a copy of the records containing the business information. Such notice shall not be required, however, if:

(1) Ex-Im Bank determines that the records shall not be disclosed;

(2) The records have been published or otherwise made available to the public; or