

§ 1206.100

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Subpart 1—Basic Policy

§ 1206.100 Scope of part.

This Part 1206 establishes the policies, responsibilities, and procedures for the release of Agency records which are under the jurisdiction of the National Aeronautics and Space Administration, hereinafter NASA, to members of the public. This part applies to information and Agency records located at NASA Headquarters, at NASA Centers, and at NASA Component, as defined in Part 1201 of this chapter.

§ 1206.101 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) The term *Agency records* or *records* means any information that would be an Agency record subject to the requirements of the Freedom of Information Act (FOIA) when maintained by NASA in any format, including an electronic format. Such information includes all books, papers, maps, photographs, or other documentary materials made or received by NASA in pursuance of Federal law or in connection with the transaction of public business and preserved by NASA as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities or because of the informational value of data contained therein. It does not include tangible objects or articles, such as structures, furniture, paintings, sculptures, exhibits, models, vehicles or equipment; library or museum material made or acquired and preserved solely for reference or exhibition purposes; or records of another agency, a copy of which may be in NASA's possession.

(b) The term *initial determination* means a decision by a NASA official, in response to a request by a member of the public for an Agency record, on whether the record described in the request can be identified and located after a reasonable search and, if so,

whether the record (or portions thereof) will be made available under this part or will be withheld from disclosure under Subpart 3 of this part.

(c) The term *appeal* means a request by a member of the public, hereinafter requester, to the Administrator or designee, or, in the case of records as specified in §1206.504, to the Inspector General or designee for reversal of any adverse initial determination the requester has received in response to a request for an Agency record.

(d) The term *final determination* means a decision by the Administrator or designee, or, in the case of records as specified in §1206.504, by the Inspector General or designee on an appeal.

(e) The term *working days* means all days except Saturdays, Sundays, and Federal holidays.

(f) As used in §1206.608, the term *unusual circumstance* means, but only to the extent reasonably necessary to the proper processing of a particular request for Agency records—

(1) The need to search for and collect the requested records from NASA Centers or other establishments that are separate from the NASA Information Center processing the request (see Subpart 6 of this part for procedures for processing a request for Agency records);

(2) 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

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of NASA having substantial subject-matter interest therein.

(g) A *statute specifically providing for setting the level of fees for particular types of records* (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that specifically requires a government agency to set the level of fees for particular types of records in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that both groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate, to the maximum extent possible an information dissemination activity on a self-sustaining basis (to the maximum extent possible); or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

(h) The term *direct costs* means those expenditures that NASA actually incurs in searching for, duplicating, and downloading computer files and documents in response to a FOIA request. Direct costs include, for example, the salary of the employee who would ordinarily perform the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Direct costs do not include overhead expenses such as costs of space, heating, or lighting in the records storage facility.

(i) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. A search for Agency records that are responsive to the request may be accomplished by manual or automated means. NASA will make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of NASA's automated information systems. NASA will ensure that searching for material is done in the most efficient, least expensive manner so as to minimize costs for both the Agency and the requester and will only utilize line-by-line, page-by-page search when consistent with this policy. *Search* should be distinguished, however, from *review* of material in order to determine whether the material is exempt from disclosure (see paragraph (k) of this section).

(j) The term *duplication* means the process of making a copy of a document in order to respond to a FOIA request. Such copies can take the form of

paper copy, electronic forms, microfilm, audio-visual materials, or machine-readable documentation (e.g., magnetic tape on disk), among others.

(k) The term *review* means the process of examining documents located in response to a request (see paragraph (l) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(l) The term *commercial use request* means a request from or on behalf of one whom seeks information for a use or purpose that furthers the commercial, trade, or profit interests of either the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, NASA will look first to the use to which a requester will put the documents requested. When NASA has reasonable cause to doubt the use to which a requester will put the records sought or when the use is not clear from the request itself, NASA will ask the requester to further clarify the immediate use for the requested records. A request from a corporation (not a *news media* corporation) may be presumed to be for commercial use unless the requester demonstrates that it qualifies for a different fee category.

(m) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, operating a program or programs of scholarly research.

(n) The term *noncommercial scientific institution* refers to an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (l) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(o) The term *representative of the news media* means any person actively gathering news for an entity that publishes, broadcasts, or makes news available to the public. The term *news* means information about events that would be of interest to the public. Examples of news media include, but are not limited to, television or radio stations broadcasting to the public at large, publishers of periodicals who make their products available for purchase or subscription by the general public (but only in those instances when they can qualify as disseminators of *news*), and entities that disseminate news to the general public through telephone, computer or other telecommunications methods. 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 solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but NASA may also look to the past publication record of a requester in making this determination.

(p) The term *commercial information* means, for the purpose of applying the notice requirements of §1206.610, information provided by a submitter and in the possession of NASA, that may arguably be exempt from disclosure under the provisions of Exemption 4 of the FOIA (5 U.S.C. 552(b)(4)). The meaning ascribed to this term for the purpose of this notice requirement is separate and should not be confused with use of this or similar terms in determining whether information satisfies one of the elements of Exemption 4.

(q) The term *submitter* means a person or entity that is the source of commercial information in the possession of NASA. The term *submitter* includes, but is not limited to, corporations, state governments, and foreign governments. It does not include other Federal Government agencies or departments.

(r) The term *compelling need* means:

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

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal government activity.

(s) The term *electronic reading room* means a World Wide Web site from which members of the public can access information regarding activities, missions, organizations, publications, or other material related to NASA's congressional mandate.

§ 1206.102 General policy.

(a) In accordance with section 203(a)(3) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(a)(3)), it has been and continues to be NASA policy to provide for the "widest practicable and appropriate dissemination of information concerning its activities and the results thereof."

(b) In compliance with the Freedom of Information Act, as amended (5 U.S.C. 552), a positive and continuing obligation exists for NASA to make available to the fullest extent practicable upon request by members of the public all Agency records under its jurisdiction, as described in Subpart 2 of this part, except to the extent that they may be exempt from disclosure under Subpart 3 of this part.

Subpart 2—Records Available

§ 1206.200 Types of records to be made available.

(a) Records required to be published in the FEDERAL REGISTER. The following records are required to be published in the FEDERAL REGISTER, for codification in Title 14, Chapter V, of the CFR.

(1) Description of NASA Headquarters and NASA Centers and the established places at which, the employees from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which NASA's functions

are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions regarding the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by NASA;

(5) Each amendment, revision, or repeal of the foregoing.

(b) Agency opinions, orders, statements, and manuals.

(1) Unless they are exempt from disclosure under Subpart 3 of this part, or unless they are promptly published and copies offered for sale, NASA shall make available the following records for public inspection and copying or purchase:

(i) All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of cases;

(ii) Those statements of NASA policy and interpretations which have been adopted by NASA and are not published in the FEDERAL REGISTER;

(iii) Administrative staff manuals (or similar issuances) and instructions to staff that affect a member of the public;

(iv) Copies of all records, regardless of form or format, which have been released to any person under subpart 6 herein and which, because of the nature of their subject matter, the Agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(v) A general index of records referred to under paragraph (b)(1)(iv) of this section.

(2) (i) For records created after November 1, 1997, which are covered by paragraph (b)(1)(i) through (b)(1)(v) of this section, such records shall be available electronically, through an electronic reading room and in electronic forms or formats.