

the request, may appeal such an adverse initial determination to the Administrator, or, for records as specified in §1206.504, to the Inspector General under the procedures of this section.

(b) The Appeal must:

(1) Be in writing;

(2) Be addressed to the Administrator, NASA Headquarters, Washington, DC 20546, or, for records as specified in §1206.504, to the Inspector General, NASA Headquarters, Washington, DC 20546;

(3) Be identified clearly on the envelope and in the letter as an "Appeal under the Freedom of Information Act";

(4) Include a copy of the request for the Agency record and a copy of the adverse initial determination;

(5) To the extent possible, state the reasons why the requester believes the adverse initial determination should be reversed; and

(6) Be sent to the Administrator or the Inspector General, as appropriate, within 30 calendar days of the date of receipt of the initial determination.

(c) An official authorized to make a final determination may waive any of the requirements of paragraph (b) of this section, in which case the time limit for the final determination (see §1206.607(a)) shall run from the date of such waiver.

§1206.606 Request for additional records.

If, upon receipt of a record (or portions thereof) following an initial determination to comply with a request, the requester believes that the materials received do not comply with the request, the requester may elect either to request additional records under the procedures of §1206.601 or §1206.602, or to file an appeal under the procedures of §1206.605, in which case the appeal must be sent to the Administrator, or to the Inspector General, in the case of records as specified in §1206.504, within 30 days of receipt of the record (or portions thereof), unless good cause is shown for any additional delay.

§1206.607 Actions on appeals.

(a) Except as provided in §1206.608, the Administrator or designee, or in the case of records as specified in

§1206.504, the Inspector General or designee, shall make a final determination on an appeal and notify the requester thereof, within 20 working days after the receipt of the appeal.

(b) If the final determination reverses in whole or in part the initial determination, the record requested (or portions thereof) shall be made available promptly to the requester, as provided in the final determination.

(c) If the final determination sustains in whole or in part an adverse initial determination, the notification of the final determination shall:

(1) Explain the basis on which the record (or portions thereof) will not be made available;

(2) Include the name and title of the person making the final determination;

(3) Include a statement that the final determination is subject to judicial review under 5 U.S.C. 552(a)(4); and

(4) Enclose a copy of 5 U.S.C. 552(a)(4).

§1206.608 Time extensions in unusual circumstances.

(a) In "unusual circumstances" as that term is defined in §1206.101(f), the time limits for an initial determination (see §1206.603 and §1206.604) and for a final determination (see §1206.607) may be extended, but not to exceed a total of 10 working days in the aggregate in the processing of any specific request for an Agency record.

(b) If an extension of time under this section would be required, the requester shall be promptly notified of the reasons therefor and the date when a determination will be sent.

(c) If a record described in a request cannot be located within the 20-working-day time limit for an initial determination, after consultation with a professional NASA employee who is familiar with the subject area of the request, that fact normally will justify an initial determination that the record requested cannot be identified or located, rather than a decision that an extension of time under this section would be appropriate.

(d) In exceptional circumstances, if it would be impossible to complete a search for or review of Agency records within the 20-working-day period for an

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initial determination, an official authorized to make an initial determination or the designee may seek an extension of time from the requester. If such an extension of time can be agreed upon, that fact should be clearly documented and the initial determination made within the extended time period; if not, an initial determination that the record cannot be identified or located, or reviewed, within the 20-working-day time limit shall be made under § 1206.603. "Exceptional circumstances" do not include a delay that results from a predictable Agency workload of requests unless the Agency demonstrates reasonable progress in reducing its backlog of pending requests. Refusal by the requester to reasonably modify the scope of a request or arrange an alternative time frame for processing the request shall be considered as a factor in determining whether exceptional circumstances exist.

§ 1206.609 Litigation.

In any instance in which a requester brings suit concerning a request for an Agency record under this part, the matter shall promptly be referred to the General Counsel together with a report on the details and status of the request. In such a case, if a final determination with respect to the request has not been made, such a determination shall be made as soon as possible, under procedures prescribed by the General Counsel in each case.

§ 1206.610 Notice to submitters of commercial information.

(a) General policy. Upon receipt of a request for commercial information pursuant to the Freedom of Information Act, NASA shall provide the submitter with notice of the request in accordance with the requirements of this section.

(b) Notice to submitters. Except as provided in paragraph (g) or (h) of this section, the Agency shall make a good faith effort to provide a submitter with prompt notice of a request appearing to encompass its commercial information whenever required under paragraph (c) of this section. Such notice shall identify the commercial information requested and shall inform the submitter

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of the opportunity to object to its disclosure in accordance with paragraph (d) of this section. If the submitter would not otherwise have access to the document that contains the information, upon the request of the submitter, the Agency shall provide access to, or copies of, the records or portions thereof containing the commercial information. This notice shall be provided in writing upon the request of the submitter. Whenever the Agency provides notice pursuant to this section, the Agency shall advise the requester that notice and opportunity to comment are being provided to the submitter.

(c) When notice is required. Notice shall be given to a submitter whenever the information has been designated by the submitter as information deemed protected from disclosure under Exemption 4 of the Act, or the Agency otherwise has reason to believe that the information may be protected from disclosure under Exemption 4.

(d) Opportunity to object to disclosure. Through the notice described in paragraph (b) of this section, the Agency shall afford a submitter a reasonable period within which to provide the Agency with a detailed statement of any objection to disclosure. This period shall not exceed 10 working days from the date after which the Agency can reasonably assume receipt of notice by the submitter, unless the submitter provides a reasonable explanation justifying additional time to respond. If the Agency does not receive a response from the submitter within this period, the Agency shall proceed with its review of the information and initial determination. The submitter's response shall include all bases, factual or legal, for withholding any of the information pursuant to Exemption 4. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA. Submitters will not be provided additional opportunities to object to disclosure, and, therefore, should provide a complete explanation of any and all bases for withholding any information from disclosure.

(e) Notice of intent to disclose. The Agency shall carefully consider any objections of the submitter in the course