

LEGAL SERVICES CORPORATION

[45 CFR Part 1602]

FREEDOM OF INFORMATION ACT**Procedures for Disclosure or Production
of Information**

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996f ("the Act"). Section 1005(g) of the Act, 42 U.S.C. § 2996d(g) provides that the Corporation shall be subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 552.

Pursuant to Section 1008(e) of the Act, the Corporation hereby notices and publishes for comment the following proposed regulations. Public comment will be received by the Corporation at its temporary office, Room 413, 1725 K Street, NW., Washington, D.C. 20006, on or before October 11, 1975. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen at the above offices during business hours, Monday through Friday.

Final regulations will be issued by the Corporation after the Board of Directors has reviewed and considered public comment received pursuant to this notice.

It is proposed to add Part 1602 as follows:

PART 1602—PROCEDURES FOR DISCLOSURE OR PRODUCTION OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

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AUTHORITY: Sec. 1005(g) of the Legal Services Corporation Act of 1974 (42 U.S.C. § 2996d(g)).

Subpart A—General

§ 1602.1 Purpose.

These regulations provide information concerning the procedures by which records of the Legal Services Corporation may be made available pursuant to Section 1005(g) of the Legal Services Corporation Act, 42 U.S.C. § 2996d(g), and the Freedom of Information Act, as amended in 1974, 5 U.S.C. § 552.

§ 1602.2 Definitions.

As used in this Part—

(a) "Act" means the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-29961;

(b) "Corporation" means the Legal Services Corporation;

(c) "FOIA" means the Freedom of Information Act, as amended in 1974, 5 U.S.C. § 552;

(d) "President" means the President of the Legal Services Corporation;

(e) "records" means books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved or appropriate for preservation by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation or because of the informational value of data in them. The term does not include books, magazines or other materials acquired solely for library purposes and available through any officially designated library of the Corporation.

§ 1602.3 Policy.

(a) It is and will be the policy of the Corporation to maximize the extent to which records concerning its operations, activities and business will be available to the public. Records will be withheld from the public only in accordance with

the FOIA and these implementing regulations. All records not exempt from disclosure will be made available. The Corporation will interpret exemptions restrictively, resolving doubts concerning the applicability or meaning of an exemption in favor of disclosure. Records which may be exempted from disclosure will generally be made available as a matter of discretion when disclosure is not prohibited by law and it does not appear adverse to legitimate public or personal interests.

(b) The Corporation will attempt to provide the fullest assistance to requesting parties, including information as to how and where the request may be submitted. The Corporation will provide the most timely possible action on requests for records.

Subpart B—Maintenance of Records

§ 1602.4 Index of records.

The Corporation will maintain a current index identifying any matter within the scope of § 1602.5(b)(1)-(3) which has been issued, adopted, or promulgated by the Corporation, and other information published or made publicly available. The index will be maintained and made available for public inspection and copying at the Corporation's headquarters in Washington, D.C., and at each regional office. The Corporation will publish copies of each index or supplement thereto at least once each quarter and shall distribute such copies on request, at a cost not to exceed the direct cost of duplication.

§ 1602.5 Central records room.

(a) The Corporation will maintain a central records room at its headquarters in Washington, D.C. This room will be supervised by a Records Officer, and will be open during regular business hours of the Corporation for the convenience of members of the public in inspecting and copying records made available pursuant to this Part. Certain records, as described in paragraph (b) of this section, will be regularly maintained in or in close proximity to the records room, to facilitate access thereto by any member of the public.

(b) Subject to the limitation state in paragraph (c) of this section, there will be available in the central records room the following:

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

(2) Statements of policy and interpretations adopted by the Corporation;

(3) Administrative staff manuals and instructions to the staff which affect the public;

(4) To the extent feasible, guidelines, forms, published regulations, notices, program descriptions, and other records considered to be of general interest to members of the public in understanding activities of the Corporation or in dealing with the Corporation in connection with those activities;

(5) The current index required in § 1602.4.

(c) Certain types of staff manuals or instructions, such as instructions to auditors or inspection staff, or instructions covering certain phases of contract negotiation, which deal with the performance of functions that would automatically be rendered ineffective by general awareness of the Corporation's techniques or procedures, may be exempt from mandatory disclosure even though they affect or may affect the public. These records will not be maintained in the central records room.

(d) Certain records maintained in the records room or otherwise made available pursuant to this Part may be "edited" by the deletion of identifying details concerning individuals, to prevent a clearly unwarranted invasion of personal privacy. In such cases, the records shall have attached to it a full explanation of the deletion.

§ 1602.6 Regional records rooms.

Each regional office shall have either a specially designated records room similar to the central records room described in § 1602.5 or, if that is not feasible, a designated area within the office, a principal function of which is to serve the public in accordance with this Part. The Corporation will endeavor to maintain and have readily available in its regional offices the records described in § 1602.5(b), and will designate a Records Officer in each regional office to receive and process requests submitted pursuant to this Part.

Subpart C—Procedure

§ 1602.7 Use of records rooms.

(a) Any member of the public who wishes to inspect or copy records regularly maintained in a records room may secure access to these records by presenting himself or herself at the central records room or at a regional records room during business hours. No advance notice or appointment is required, although persons wishing to make extended use of regional office facilities should take account of the possible limitations in these facilities.

(b) The records rooms will also be available to any member of the public to inspect and copy records which are not regularly maintained in the records rooms. To obtain such records, a person should present his or her request identifying the records to the Records Officer. Because it will sometimes be impossible to produce these records or copies of them on short notice, a person who wishes to use records room facilities to inspect or copy such records is advised to arrange a time in advance, by telephone or letter request made to the Records Officer of the facility which he or she desires to use. Persons submitting requests by telephone will be advised by the Records Officer or another designated employee whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Persons submitting written requests should identify the records sought in the manner provided in subsection

1602.8(b) and should indicate whether they wish to use the records room facilities on a specific date. The Records Officer will endeavor to advise the requesting party as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

§ 1602.8 Availability of records on request.

(a) In addition to the records made available through the records rooms, the Corporation will make such records available to any person in accordance with paragraphs (b) and (c) of this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9 of these regulations.

(b) *Requests.* (1) A request will be acceptable if it identifies a record with sufficient particularity to enable officials of the Corporation to locate the record with a reasonable amount of effort. Requests seeking records within a reasonably specific category will be deemed to conform to the statutory requirement of a request which "reasonably describes" such records if professional employees of the Corporation who are familiar with the subject area of the request would be able, with a reasonable amount of effort, to determine which particular records are encompassed within the scope of the request, and to search for, locate, and collect the records without unduly burdening or materially interfering with operations because of the staff time consumed or the resulting disruption of files. If it is determined that a request does not reasonably describe the records sought as specified in this paragraph, the response denying the request on that ground shall specify the reasons why the request failed to meet the requirements of this paragraph and shall extend to the requester an opportunity to confer with Corporation personnel in order to attempt to reformulate the request in a manner which will meet the needs of the requester and the requirements of this paragraph.

(2) To facilitate the location of records by the Corporation, a requesting party should try to provide the following kinds of information: (i) The specific event or action, if known, to which the record refers; (ii) the unit or program of the Corporation which may be responsible for or may have produced the record; (iii) the date of the record or the date or period to which it refers or relates, if known; (iv) the type of record, such as an application, a grant, a contract, or a report; (v) personnel of the Corporation who may have prepared or have knowledge of the record; (vi) citations to newspapers or publications which are known to have referred to the record. (3) The Corporation is not required to create a record to satisfy a request for information. When the information requested exists in the form of several records at several locations, the requesting party should be referred to those sources only if gathering the information would unduly burden or materially interfere with operations of the Corporation.

(4) All requests for records under this section shall be made in writing, with the envelope and the letter clearly marked: "FREEDOM OF INFORMATION REQUEST." All such requests shall be addressed to the Records Officer at the headquarters of the Corporation in Washington, D.C., or at any regional records office. Any request not marked and addressed as specified in this subparagraph will be so marked by Corporation personnel as soon as it is properly identified, and forwarded immediately to the Records Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (c) of this section until forwarding to the appropriate office has been effected, or until such forwarding would have been effected with the exercise of due diligence by Corporation personnel. On receipt of an improperly addressed request, the Records Officer shall notify the requesting party of the date on which the time period commenced to run.

(5) A person desiring to secure copies of records by mail should write to the Records Officer at the headquarters in Washington, D.C. The request should identify the records of which copies are sought and should indicate the number of copies desired. As indicated in § 1602.13, fees may be required in some cases, in which event they must be paid in advance. The requesting party will be advised of the estimated fee, if any, as promptly as possible. If a waiver of fees is requested, the grounds for such request should be included in the letter.

(c) The Records Officer, upon request for any records made in accordance with this Part, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requesting party within ten days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such request, except for unusual circumstances in which case the time limit may be extended for not more than ten working days by written notice to the requesting party setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. In determining whether to issue a notice of extension of time for a response to a request beyond the ten-day period, Corporation officials shall consult with the Office of the General Counsel. As used herein, "unusual circumstances" are limited to the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(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 the Corporation having substantial subject matter interest therein.

(d) If no determination has been dispatched at the end of the ten-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal in accordance with § 1602.12. When no determination can be dispatched within the applicable time limit, the Records Officer shall nevertheless continue to process the request; on expiration of the time limit, he shall inform the requesting party of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the President in accordance with § 1602.12; and he may ask the requesting party to forego appeal until a determination is made.

§ 1602.9 Invoking exemptions to withhold a requested record.

(a) A requested record of the Corporation may be withheld from public disclosure only if one or more of the following categories exempted by the FOIA apply:

(1) Matter which is (i) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (ii) is in fact properly classified pursuant to such Executive Order;

(2) Matter which is related solely to the internal personnel rules and practices of the Corporation;

(3) Matter which is specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or inter-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Corporation;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right of a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life of physical safety or law enforcement personnel;

(8) Matter which is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible

for the regulation or supervision of financial institutions;

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) In the event that one or more of the above exemptions applies, any reasonably segregable portion of a record shall be provided to the requesting party after deletion of the portions which are exempt. In appropriate circumstances, subject to the discretion of Corporation officials, it may be possible to provide a requesting party with: (1) A summary of information in the exempt portion of a record or (2) an oral description of the exempt portion of a record. In determining whether any of the foregoing techniques should be employed or whether an exemption shall be waived, in accordance with this paragraph, Corporation officials shall consult with the Office of General Counsel. No requesting party shall have a right to insist that any or all of the foregoing techniques should be employed in order to satisfy a request.

(c) Records which may be exempted from disclosure pursuant to paragraph (a) of this section may be made available as a matter of discretion when disclosure is not prohibited by law, if it does not appear adverse to legitimate public or personal interests.

§ 1602.10 Officials authorized to grant or deny requests for records.

The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this Part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this Part by and within the Corporation. Other officials of the Corporation shall consult with the General Counsel before denying requests under this Part, or before granting requests for waiver or modified application of an exemption or for categories of documents which the General Counsel determines may present special or unusual problems. Subject to this authority, the General Counsel, the Records Officer, each Regional Director, and each Regional Records Officer are authorized to grant or deny requests under this Part.

§ 1602.11 Denials.

(a) A denial of a written request for a record issued by an official of the Corporation shall be in writing and shall include the following:

- (1) A reference to the applicable exemption or exemptions in § 1602.9(a) upon which the denial is based;
- (2) An explanation of how the exemption applies to the requested records;
- (3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;
- (4) The name and title of the person or persons responsible for denying the request; and
- (5) An explanation of the right to appeal the denial and of the procedures for submitting an appeal, including the address of the official to whom appeals should be submitted.

(b) Whenever the Corporation makes a record available subject to the deletion of a portion of the record, such action shall be deemed a denial of the record for purposes of paragraph (a) of this section.

(c) All denials shall be treated as opinions and shall be maintained and indexed accordingly, subject only to the necessity of deleting identifying details the release of which would constitute a clearly unwarranted invasion of personal privacy for a member of the public.

§ 1602.12 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within ninety days by writing to the President of the Corporation at the headquarters in Washington, D.C. The envelope and letter should be clearly marked: "FREEDOM OF INFORMATION APPEAL." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, by identifying the official who issued the denial, and by providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the President, or the President's specifically designated representative, for this purpose.

(c) The decision of the President on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requesting party, the matters described in § 1602.11(a)(1)-(5), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requesting party within twenty working days after receipt of the appeal, unless an additional period is justified pursuant to § 1602.8(c) and such period taken together with any earlier extension does not exceed ten days. The President's decision shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under § 1602.5(b).

§ 1602.13 Fees.

(a) Information provided routinely in the normal course of doing business will be provided at no charge.

(b) The Records Officer may waive or reduce fees where special circumstances, including but not limited to the benefit of the general public, warrant. The Records Officer shall waive fees where the requesting party is indigent unless the fees would exceed \$25 and may waive or reduce fees for the request of an indigent where the fees charged would exceed \$25. These provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.

(c) There shall be no fee charged for services rendered by the Corporation pursuant to this Part, unless the charges, as calculated in paragraph (e) of this

section, exceed the sum of \$6.50. Where the charges are calculated to exceed \$6.50, the fee shall be the difference between \$6.50 and the calculated charges.

(d) Ordinarily, no fee shall be levied where the records requested are not provided or made available. However, if the time expended in processing the request is substantial, and if the requesting party has been notified of the estimated cost pursuant to paragraph (f) of this section, and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.

(e) The schedule of charges for services regarding the production and disclosure of the Corporation's records is as follows:

- (1) Search for records—\$1.50 per quarter hour.
- (2) Computer Time:
 - Central Processing Unit—\$10.00 per minute.
 - Card Reader—0.60 per 1,000 cards.
 - Printer—0.60 per 333 cards.
 - Tape or Disk—0.60 per 100 lines; 0.75 per 1,000 number of reads or lines.
 - Minimum charge—\$1.50.
- (3) Reproduction, duplication, or copying of records—\$0.10 per page.
- (4) Reproduction, duplication or copying of microfilm:
 - Microfilm—\$0.75 per frame; Microfiche—\$1.45 per jacket.
- (5) Certification of true copies: \$1.00 each.

(f) Where it is anticipated that the fees chargeable under this Part will amount to more than \$25, and the requester has not indicated in advance his willingness to pay fees as high as anticipated, the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In such cases, a request will not be deemed to have been received until the requester is notified of the anticipated cost and agrees to bear it. Such a notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet his needs at a reduced cost.

(g) Where the anticipated fee chargeable under this Part exceeds \$25, an advance deposit of 25 percent of the anticipated fee may be required. Where a requester has previously failed to pay a required fee, an advance deposit of the full amount of the anticipated fee together with the fee then due and payable may be required.

(h) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requesting party, or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

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