

§ 265.7

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(Required Format Referenced at Paragraph 265.6(d)(6))

(AGENCY LETTERHEAD)

To: Postmaster

Agency Control No. \_\_\_\_\_

Date: \_\_\_\_\_

ADDRESS INFORMATION REQUEST

Please furnish this agency with the new address, if available, for the following individual or verify whether or not the address given below is one at which mail for this individual is currently being delivered. If the following address is a post office box, please furnish the street address as recorded on the boxholder's application form.

Name: \_\_\_\_\_

Last Known Address: \_\_\_\_\_

I certify that the address information for this individual is required for the performance of this agency's official duties.

(Signature of Agency Official)

(Title)

FOR POST OFFICE USE ONLY

[ ] MAIL IS DELIVERED TO ADDRESS GIVEN NEW ADDRESS \_\_\_\_\_

[ ] NOT KNOWN AT ADDRESS GIVEN \_\_\_\_\_

[ ] MOVED, LEFT NO FORWARDING ADDRESS \_\_\_\_\_

[ ] NO SUCH ADDRESS BOXHOLDER'S STREET ADDRESS \_\_\_\_\_

[ ] OTHER (SPECIFY): \_\_\_\_\_

Agency return address

Postmark/Date Stamp

[40 FR 7331, Feb. 19, 1975, as amended at 41 FR 52052, Nov. 26, 1976; 42 FR 59085, Nov. 15, 1977; 45 FR 44270, July 1, 1980; 47 FR 20304, May 12, 1982; 47 FR 21248, May 18, 1982; 48 FR 1969, Jan. 17, 1983; 51 FR 8825, Mar. 14, 1986; 51 FR 26386, July 23, 1986; 52 FR 13668, Apr. 24, 1987; 52 FR 22778, June 16, 1987; 53 FR 49983, Dec. 13, 1988; 54 FR 3558, Jan. 24, 1989; 59 FR 11550, Mar. 11, 1994; 59 FR 22757, May 3, 1994; 59 FR 62324, Dec. 5, 1994; 59 FR 67225, 67226, 67227, Dec. 29, 1994; 60 FR 57345, Nov. 15, 1995; 62 FR 64282, Dec. 5, 1997; 63 FR 6481, Feb. 9, 1998; 64 FR 41290, July 30, 1999; 65 FR 3859, Jan. 25, 2000; 67 FR 46393, July 15, 2002]

§ 265.7 Procedure for inspection and copying of records.

(a) Submission of requests—(1) Form and content of request. To permit expeditious handling and timely response in accordance with the provisions of this part, a request to inspect or to obtain a copy of an identifiable Postal Service record shall be in writing and bear the caption "Freedom of Information Act Request" or otherwise be clearly and prominently identified as a request for records pursuant to the Freedom of Information Act. A request shall be clearly and prominently identified as such on the envelope or other cover. Other requests for information will be considered informal requests and will be handled as expeditiously as practicable but not necessarily within the time limitations set forth in § 265.7(b). An informal request will be granted or denied according to the substantive rules in § 265.6, if found to be a request for a record. A Freedom of Information Act request shall identify the record sought as completely as possible, by name, description, or subject matter, and be sufficient to permit the custodian to locate it with a reasonable amount of effort. The request may state the maximum amount of fees for which the requester is willing to accept liability without prior notice. See paragraph (f)(2) of § 265.8. If no amount is stated, the requester will be deemed willing to accept liability for fees not to exceed \$25.

(2) To whom submitted. A request shall be submitted to the custodian of the requested record. If the location of the record is not known, inquiry should be directed to the USPS Freedom of Information/Privacy Acts Officer, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-5202, telephone

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(202) 268-2608. If a request is submitted to a facility other than that at which the record is maintained, it shall be promptly transmitted to the appropriate custodian with a copy of the transmittal furnished to the requester. A request which is not initially submitted to the appropriate custodian shall be deemed to have been received by the Postal Service for purposes of computing the time for response in accordance with § 265.7(b) at the time that it is actually received by the appropriate custodian. If a request seeks records maintained at two or more facilities, the custodian shall be deemed to be the next senior common supervisor of the heads of the facilities, e.g., district manager, area vice president. The office of Administration and FOIA is deemed to be the custodian, for purposes of this part, in all instances in which a request is for a listing of postal employees. See § 265.6(a)(6).

(3) *Reasons for request.* In view of the possibility that some or all of the records may be exempt from mandatory disclosure, the requester may state any reasons why the record should nevertheless be made available to him even if exempt.

(4) *Request for waiver of fees.* The requester may ask that fees or the advance payment of fees be waived in whole or in part. A fee waiver request shall indicate how the information will be used; to whom it will be provided; whether the requester intends to use the information for resale at a fee above actual cost; any personal or commercial benefit that the requester expects as a result of disclosure; in what manner the general public will benefit from disclosure; and information as to the intended user's identity, qualifications, expertise in the subject area, and ability and intention to disseminate the information to the public. (See § 265.8(g)(3).)

(5) *Categorical requests.* A request for all or substantially all of the records within a specific category will be deemed a reasonable description of those records only if it is possible, without further information, to determine which particular records are sought. See paragraph (b)(3) of this section concerning the providing of additional information.

(6) *Request for records located at numerous facilities.* A request for records which are, or may be, located at all or a substantial number of post offices or other postal facilities will be deemed to be a reasonable description only of such of those records as are maintained at the post office or other facility to which the request is submitted, and of those records maintained at any other post offices or facilities specifically identified in the request. See paragraph (a)(2) of this section concerning the custodian of records of two or more facilities.

(b) *Responsibilities of the custodian.* (1) The custodian of the requested record is the person responsible for determining whether to comply with or to deny the request. A custodian who is not an Officer as defined in § 221.8 of this chapter, however, should not deny a request until he has obtained the advice of Chief Field Counsel. If denial of a request appears necessary, the custodian should seek advice as soon as possible after receipt of the request so as to provide adequate time for legal review. Denial must be made in accordance with paragraph (d) of this section.

(2) The custodian shall make the determination whether to release or deny the record(s) within 20 working days (i.e., exclusive of Saturdays, Sundays, and holidays) of receiving the request, and more rapidly if feasible. The custodian and the requester may, by mutual agreement, preferably in writing, establish a different response period.

(3) If a requested record cannot be located from the information supplied, the requester should be given an opportunity to supply additional information and, if feasible, to confer with the custodian or his/her representative, in an attempt to provide a reasonable description of the records sought. If additional information is furnished, the request will be deemed to have been received by the custodian when sufficient additional information to identify and locate the record with a reasonable amount of effort has been received.

(4) The custodian shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the automated information system.

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(5) The 20 working day response period allowed in paragraph (b)(2) of this section may be extended by the custodian, after consultation with Chief Field Counsel or with the General Counsel if the custodian is at Headquarters, for a period not to exceed an additional 10 working days, except as provided in paragraph (b)(7) of this section, when, and to the extent, reasonably necessary to permit the proper processing of a particular request, under one or more of the following unusual circumstances:

(i) The request requires a search for and collection of records from a facility other than that processing the request.

(ii) The request requires the search for, and collection and appropriate examination of, a voluminous amount of separate and distinct records.

(iii) The request requires consultation:

(A) With another agency having a substantial interest in the determination of whether to comply with the request or

(B) Among two or more components of the Postal Service having substantial subject matter interest in the determination of whether to comply with the request.

(6) When the custodian finds that the additional time is required, he shall acknowledge the request in writing within the initial 20-day response period, state the reason for the delay, and indicate the date on which a decision as to disclosure is expected.

(7) If a request cannot be processed within the additional time provided by paragraph (b)(5) of this section, in spite of the exercise of due diligence, the custodian shall notify the requester of the exceptional circumstances preventing timely compliance and of the date by which it is expected that the determination will be made. The custodian also shall provide the requester an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange with the custodian an alternative time frame for processing the request or a modified request. The custodian shall nonetheless make a determination on the request as promptly as possible.

(8) If a requested record is known to have been destroyed, disposed of, or otherwise not to exist, the requester shall be so notified.

(c) *Compliance with request upon affirmative determination by custodian.* (1) When a requested record has been identified and is to be disclosed in whole or in part, the custodian shall ensure that the record is made available promptly and shall immediately notify the requester where and when and under what reasonable conditions, if any, including the payment of fees, the record will be available for inspection or copies will be available. Postal Service records will normally be available for inspection and copying during regular business hours at the postal facilities at which they are maintained. The custodian may, however, designate other reasonable locations and times for inspection and copying of some or all of the records within his custody.

(2) Any fees authorized or required to be paid in advance by § 265.9(f)(3) shall be paid by the requester before the record is made available or a copy is furnished unless payment is waived or deferred pursuant to § 265.9(g).

(3) A custodian complying with a request may designate a representative to monitor any inspection or copying.

(d) *Denial of request.* (1) A reply denying a request in whole or in part shall be in writing, signed by the custodian or his designee, and shall include:

(i) A statement of the reason for, or justification of, the denial (e.g., records personal in nature), including, if applicable, a reference to the provision or provisions of § 265.6 authorizing the withholding of the record and a brief explanation of how each provision applies to the records requested.

(ii) If entire records or pages are withheld, a reasonable estimate of the number of records or pages, unless providing such estimate would harm an interest protected by the exemption relied upon.

(iii) The name and title or position of the person responsible for the denial of the request (see paragraph (d)(2) of this section).

(iv) A statement of the right to appeal and of the appeal procedure within the Postal Service (described in paragraph (e) of this section).

(2) The custodian is ordinarily the person responsible for the denial of the request. If the denial of a particular request has been directed by higher authority, however, the name and title or position of the person directing the denial shall be given in the reply to the requester in place of the custodian as the person responsible for the denial, and a copy of the denial shall be sent to that person.

(3) When information is deleted from a record that is disclosed in part, the custodian shall indicate, on the released portion of the record, the amount of information deleted, unless including that indication would harm an interest protected by the exemption relied on. The indication must appear, if technically feasible, at the place in the record where such deletion is made.

(e) *Appeal procedure.* (1) If a request to inspect or to copy a record, or a request for expedited processing of the request, is denied, in whole or in part, if no determination is made within the period prescribed by this section, or if a request for waiver of fees is not granted, the requester may appeal to the General Counsel, U.S. Postal Service, Washington, DC 20260-1100.

(2) The requester shall submit his appeal in writing within 30 days of the date of the denial or of the other action complained of, or within a reasonable time if the appeal is from a failure of the custodian to act. The General Counsel may, in his discretion, consider late appeals.

(3) In the event of the denial of a request or of other action or failure to act on the part of a custodian from which no appeal is taken, the General Counsel may, if he considers that there is doubt as to the correctness of the custodian's action or failure to act, review the action or failure to act as though an appeal pursuant to this section had been taken.

(4) A letter of appeal should include, as applicable:

(i) A copy of the request, of any notification of denial or other action, and of any other related correspondence;

(ii) A statement of the action, or failure to act, from which the appeal is taken;

(iii) A statement of the reasons why the requester believes the action or failure to act is erroneous; and

(iv) A statement of the relief sought.

(f) *Action on appeals.* (1) The decision of the General Counsel or his designee constitutes the final decision of the Postal Service on the right of the requester to inspect or copy a record, or to expedited processing of the request, as appropriate. The General Counsel will give prompt consideration to an appeal for expedited processing of a request. All other decisions normally will be made within 20 working days from the time of the receipt by the General Counsel. The 20-day response period may be extended by the General Counsel or his designee for a period not to exceed an additional 10 working days when reasonably necessary to permit the proper consideration of an appeal, under one or more of the unusual circumstances set forth in paragraph (b)(5) of this section. The aggregate number of additional working days utilized pursuant to this paragraph (f)(1) and paragraph (b) of this section, however, may not exceed 10.

(2) The decision on the appeal shall be in writing. If the decision sustains a denial of a record, in whole or in part, or if it denies expedited processing, it shall state the justification therefor and shall inform the requester of his right to judicial review. In the case of records withheld, the decision also shall specify any exemption or exemptions relied on and the manner in which they apply to the record, or portion thereof, withheld.

(3) If not prohibited by or under law, the General Counsel or his designee may direct the disclosure of a record even though its disclosure is not required by law or regulation.

(g) *Expedited processing.* (1) *Criteria.* A request for expedited processing of a request for records shall be granted when the requester demonstrates compelling need. For purposes of this paragraph, "compelling need" exists if:

(i) Failure of the requester to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or;

(ii) In the case of a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged federal government activity.

(2) *Request.* A request for expedited processing shall be directed in writing to the records custodian. The requester must provide information in sufficient detail to demonstrate compelling need for the records and certify this statement to be true and correct to the best of the requester's knowledge and belief. The custodian may waive the formality of certification when deemed appropriate.

(3) *Determination.* The records custodian shall make a determination of whether to provide expedited processing and notify the requester within ten days after the date of the request for expedited processing. If the request is granted, the records custodian shall process the request for records as soon as practicable. If the request for expedited processing is denied, the written response will include the procedures at paragraph (d) of this section for appealing the denial.

[40 FR 7331, Feb. 19, 1975, as amended at 45 FR 44271, July 1, 1980; 47 FR 20304, May 12, 1982; 51 FR 26386, July 23, 1986; 52 FR 13668, Apr. 24, 1987; 60 FR 57345, Nov. 15, 1995; 62 FR 64282, Dec. 5, 1997; 63 FR 6482, Feb. 9, 1998; 64 FR 41290, July 30, 1999]

**§ 265.8 Business information; procedures for predisclosure notification to submitters.**

(a) *In general.* This section provides a procedure by which persons submitting business information to the Postal Service can request that the information not be disclosed pursuant to a request under the Freedom of Information Act. This section does not affect the Postal Service's right, authority, or obligation to disclose information in any other context, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Postal Service, its officers, or any person. Existing rights of submitters are also unaffected. For purposes of this section, the following definitions apply:

(1) *Business information* means commercial or financial information pro-

vided directly or indirectly to the Postal Service by a submitter that arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), which is restated in § 265.6(b)(2).

(2) *Submitter* means any person or entity who provides business information, directly or indirectly, to the Postal Service. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitters.* (1) The custodian shall, to the extent permitted by law, provide a submitter with prompt written notice of a Freedom of Information Act request for the submitter's business information whenever required under paragraph (c) of this section, except as provided in paragraph (d) of this section, in order to afford the submitter an opportunity to object to disclosure pursuant to paragraph (f) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information. In the case of an administrative appeal, the General Counsel shall be responsible for providing such notification as may be appropriate under this section.

(2) When notice is given to a submitter under paragraph (b)(1) of this section, the requester also shall be notified that notice and an opportunity to object are being provided to the submitter pursuant to this section.

(c) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The submitter has in good faith designated the information as information deemed protected from disclosure under Exemption 4, in accordance with the procedure described in paragraph (e) of this section; or

(2) In the opinion of the custodian, or of the General Counsel in the case of an administrative appeal, it is likely that disclosure of the information would result in competitive harm to the submitter.

(d) *Exceptions to notice requirements.* The notice requirements of paragraph (b) of this section shall not apply if:

(1) The Postal Service determines without reference to the submitter