

## Department of Energy

## § 1008.13

(H) Legal Files (Claims, Litigation, Criminal Violations, Patents, and other Legal Files) (DOE-41);

(I) Personnel Security Clearance Index (Automated) (DOE-42);

(J) Special Access Authorization for Categories of Classified Information (DOE-44);

(K) DOE Personnel: Supervisor-Maintained Personnel Records (DOE-2);

(L) Applications for DOE Employment (DOE-4);

(M) Administrative and Analytical Records and Reports (DOE-81);

(N) Law Enforcement Investigative Records (DOE-84).

(O) Allegation-Based Inspections Files of the Office of Inspector General (DOE-83).

(4) *Testing or examination material.* (i) Subsection (k)(6) permits exemption of systems of records that include testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(ii) The DOE systems of records listed below have been exempted to the extent they contain testing or examination material in order to protect the integrity of the personnel testing and evaluation process and to avoid providing individuals with unfair advantage, by premature or unfair disclosure of testing or rating information. Systems exempted under subsection (k)(6) are:

(A) (DOE-2) DOE Personnel: Supervisor-Maintained Personnel Records.

(B) (DOE-4) Applications for DOE Employment.

(C) (DOE-1) DOE Personnel and General Employment Records.

(c) *Application of exemptions to particular requests.* (1) The Privacy Act Officer, consistent with the recommendation of the System Manager and with concurrence of the appropriate General Counsel, may make available records which the DOE is authorized to withhold under this section.

(2) With respect to records containing material or information that would reveal the identity of a source who was given an assurance of confidentiality, a determination to make records available pursuant to paragraph (c)(1) of this section shall be made only if the

source consents to the release of such information to the individual, or if it is determined that the material or information is not adverse or detrimental to the individual, or for good cause shown. The exercise of discretion with respect to waiver of the exemption shall be final.

(3) Prior to making a determination to deny access to a record in a system of records covered by exemption (k)(1) for classified material (see paragraph (b)(1) of this section), the System Manager shall consult with the Director, Division of Classification, to verify the current classification status of the information in the requested record.

[45 FR 61577, Sept. 16, 1980, as amended at 60 FR 35836, July 12, 1995; 62 FR 67519, Dec. 24, 1997]

### § 1008.13 Fees.

(a) The only fees to be charged to or collected from an individual under the provisions of this part are for copying records at the request of the individual. The fee charged shall be consistent with the fee schedule set forth in paragraph (b) of this section.

(1) No fees shall be charged or collected for the following: Search for and retrieval of records; review of records; copying by the DOE incident to granting access; copying at the initiative of the DOE without a request from the individual; copying when the aggregate of fees for copying is \$25 or less; time spent providing copies; transportation of records and personnel; and first class postage.

(2) It is the policy of the DOE to provide an individual with one copy of each record corrected or amended pursuant to request without charge.

(3) As required by the Office of Personnel Management in its published regulations implementing the Act, the DOE will charge no fee for a single copy of a personnel record covered by that Commission's Government-wide published notice of systems of records.

(b) The schedule of fees is as follows:

(1) \$.10 per copy of each page.

(2) For other forms of copying and other forms of materials (e.g., cassettes, computer materials), the direct cost of the materials, personnel, and equipment shall be charged, but only

## § 1008.14

with prior specific approval of the person making the request, when such charges would be in excess of \$25.

(c) The Privacy Act Officer may, upon application by an individual, furnish any records without charge or at a reduced rate, if the Privacy Act Officer determines that such waiver or reduction of fees is in the public interest.

(d) Payment shall be made by check or money order payable to the United States Department of Energy.

(e) Advance payment of all or part of the fees may be required at the discretion of the Privacy Act Officer. Unless the individual requesting the copies specifically states that he is willing to pay whatever fees are assessed for meeting the request or, alternatively, specifies an amount in excess of \$25 that he is willing to pay and which in fact covers the anticipated fees for meeting the request, a request that is expected to involve assessed fees in excess of \$25 shall not be deemed to have been received, for purposes of the time periods specified in §§1008.7 and 1008.10 until the individual making the request is notified of the anticipated cost, agrees to bear it, and makes any advance deposit required. Such notification shall be made by the Privacy Act Officer as promptly as possible after receipt of the request.

### § 1008.14 Requests under false pretenses.

Subsection (i)(3) of the Act provides that any person who knowingly and willingly requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

### § 1008.15 Civil remedies.

Subsection (g) of the Act provides that an individual may bring suit against the DOE for a violation of the Privacy Act, as follows:

(a) If the DOE refuses to grant a request for access to an individual's records, the court may order the DOE to provide the individual with access to his or her records and award reasonable litigation costs and attorney's fees.

(b) If the DOE refuses to amend a record or fails to review an amendment request as required by subsection (d)(3)

## 10 CFR Ch. X (1-1-02 Edition)

of the Act, the court may order the DOE to make the amendment and award reasonable litigation costs and attorney's fees.

(c) If the DOE makes an adverse determination based on a record which is not maintained in an accurate, timely, relevant, and complete manner, the individual may be awarded actual damages of at least \$1,000. In order to prevail, the individual must show that:

(1) The DOE's action was willful and intentional; and

(2) The adverse determination was based on the faulty record.

(d) If the DOE fails to comply with any other provision of the Privacy Act or agency rule promulgated under the Act, in such a way as to have an adverse effect on the individual, the court may award actual damages of at least \$1,000. In order to prevail, the individual must show that:

(1) The DOE's action was willful and intentional; and

(2) The agency's action had an adverse effect on the individual; and

(3) The adverse effect was causally related to the DOE's action.

## Subpart C—Disclosure to Third Parties

### § 1008.16 Prohibition against disclosure.

Except as provided in §1008.17, the DOE shall not disclose any record which is contained in a system of records, by any means of communication, to any agency or to any person other than the individual who is the subject of the record.

### § 1008.17 Conditions of disclosure.

(a) Notwithstanding the prohibition contained in §1008.16, the DOE may disclose records covered by this part (1) to the individual to whom the record pertains or to an agency or (2) to a person other than the individual where he has given his prior written consent to the disclosure or has made a written request for such disclosure.

(b) Notwithstanding the prohibition contained in §1008.16 the DOE may also disclose records covered by this part whenever the disclosure is: