

only indicate the record to which access is sought, provide the USPTO control number assigned to the request, and sign and date the request. If the request is not preceded by an inquiry under §102.23, the procedures of this section should be followed.

(d) The requirements for identification of individuals seeking access to records are as follows:

(1) *In person.* Each individual making a request in person shall be required to present satisfactory proof of identity. The means of proof, in the order of preference and priority, are:

(i) A document bearing the individual's photograph (for example, driver's license, passport or military or civilian identification card);

(ii) A document, preferably issued for participation in a federally sponsored program, bearing the individual's signature (for example, unemployment insurance book, employer's identification card, national credit card, and professional, craft or union membership card); and

(iii) A document bearing neither the photograph nor the signature of the individual, preferably issued for participation in a federally sponsored program (for example, Medicaid card). In the event the individual can provide no suitable documentation of identity, USPTO will require a signed statement asserting the individual's identity and stipulating that the individual understands the penalty provision of 5 U.S.C. 552a(i)(3) recited in §102.32(a). In order to avoid any unwarranted disclosure of an individual's records, USPTO reserves the right to determine the adequacy of proof of identity offered by any individual, particularly when the request involves a sensitive record.

(2) *Not in person.* If the individual making a request does not appear in person before the Privacy Officer or other employee authorized to determine identity, a certification of a notary public or equivalent officer empowered to administer oaths must accompany the request under the circumstances prescribed in §102.23(b)(9). The certification in or attached to the letter must be substantially in accordance with the following text:

City of _____
 County of _____ :ss

(Name of individual), who affixed (his) (her) signature below in my presence, came before me, a (title), in and for the aforesaid County and State, this _____ day of _____, 20____, and established (his) (her) identity to my satisfaction.

My commission expires _____.
 (Signature)

(3) *Parents of minors and legal guardians.* An individual acting as the parent of a minor or the legal guardian of the individual to whom a record pertains shall establish his or her personal identity in the same manner prescribed in either paragraph (d)(1) or (d)(2) of this section. In addition, such other individual shall establish his or her identity in the representative capacity of parent or legal guardian. In the case of the parent of a minor, the proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the court's order. For purposes of the Act, a parent or legal guardian may represent only a living individual, not a decedent. A parent or legal guardian may be accompanied during personal access to a record by another individual, provided the provisions of §102.25(f) are satisfied.

(e) When the provisions of this subpart are alleged to impede an individual in exercising his or her right to access, USPTO will consider, from an individual making a request, alternative suggestions regarding proof of identity and access to records.

(f) An individual shall not be required to state a reason or otherwise justify his or her request for access to a record.

§ 102.25 Disclosure of requested records to individuals.

(a)(1) The Privacy Officer shall act promptly upon each request. Every effort will be made to respond within ten working days (i.e., excluding Saturdays, Sundays, and legal public holidays) of the date of receipt. If a response cannot be made within ten working days due to unusual circumstances, the Privacy Officer shall send an acknowledgment during that

period providing information on the status of the request and asking for any further information that may be necessary to process the request. “Unusual circumstances” shall include circumstances in which

(i) A search for and collection of requested records from inactive storage, field facilities or other establishments is required;

(ii) A voluminous amount of data is involved;

(iii) Information on other individuals must be separated or expunged from the particular record; or

(iv) Consultations with other agencies having a substantial interest in the determination of the request are necessary.

(2) If the Privacy Officer fails to send an acknowledgment within ten working days, as provided above in paragraph (a) of this section, the requester may ask the General Counsel to take corrective action. No failure of the Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(b) *Grant of access*—(1) *Notification*. An individual shall be granted access to a record pertaining to him or her, except where the provisions of paragraph (g)(1) of this section apply. The Privacy Officer will notify the individual of a determination to grant access, and provide the following information:

(i) The methods of access, as set forth in paragraph (b)(2) of this section;

(ii) The place at which the record may be inspected;

(iii) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection. In no event shall the earliest date be later than thirty calendar days from the date of notification;

(iv) The estimated date by which a copy of the record could be mailed and the estimate of fees pursuant to §102.31. In no event shall the estimated date be later than thirty calendar days from the date of notification;

(v) The fact that the individual, if he or she wishes, may be accompanied by another individual during personal access, subject to the procedures set forth in paragraph (f) of this section; and,

(vi) Any additional requirements needed to grant access to a specific record.

(2) *Methods of access*. The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(i) Inspection in person may be had in a location specified by the Privacy Officer during business hours;

(ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the Privacy Officer determines that a suitable facility is available, that the individual’s access can be properly supervised at that facility, and that transmittal of the records to that facility will not unduly interfere with operations of USPTO or involve unreasonable costs, in terms of both money and manpower; and

(iii) Copies may be mailed at the request of the individual, subject to payment of the fees prescribed in §102.31. USPTO, on its own initiative, may elect to provide a copy by mail, in which case no fee will be charged the individual.

(c) Access to medical records is governed by the provisions of §102.26.

(d) USPTO will supply such other information and assistance at the time of access as to make the record intelligible to the individual.

(e) USPTO reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election would be appropriate, for example, when the record is in an automated data media such as tape or diskette, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example, 5 U.S.C. 552a(k)(2)). In no event shall original records of USPTO be made available to the individual except under the immediate supervision of the Privacy Officer or the Privacy Officer’s designee.

(f) Any individual who requests access to a record pertaining to that individual may be accompanied by another individual of his or her choice. “Accompanied” includes discussion of the record in the presence of the other individual. The individual to whom the record pertains shall authorize the

presence of the other individual in writing. The authorization shall include the name of the other individual, a specific description of the record to which access is sought, the USPTO control number assigned to the request, the date, and the signature of the individual to whom the record pertains. The other individual shall sign the authorization in the presence of the Privacy Officer. An individual shall not be required to state a reason or otherwise justify his or her decision to be accompanied by another individual during personal access to a record.

(g) *Initial denial of access*—(1) *Grounds.* Access by an individual to a record which pertains to that individual will be denied only upon a determination by the Privacy Officer that:

(i) The record is exempt under §102.33 or §102.34, or exempt by determination of another agency publishing notice of the system of records, as described in §102.23(f);

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of §102.26 pertaining to medical records temporarily have been invoked; or

(iv) The individual has unreasonably failed to comply with the procedural requirements of this part.

(2) *Notification.* The Privacy Officer shall give notice of denial of access to records to the individual in writing and shall include the following information:

(i) The Privacy Officer's name and title or position;

(ii) The date of the denial;

(iii) The reasons for the denial, including citation to the appropriate section of the Act and this part;

(iv) The individual's opportunities, if any, for further administrative consideration, including the identity and address of the responsible official. If no further administrative consideration within USPTO is available, the notice shall state that the denial is administratively final; and

(v) If stated to be administratively final within USPTO, the individual's right to judicial review provided under 5 U.S.C. 552a(g)(1), as limited by 5 U.S.C. 552a(g)(5).

(3) *Administrative review.* When an initial denial of a request is issued by the Privacy Officer, the individual's opportunities for further consideration shall be as follows:

(i) As to denial under paragraph (g)(1)(i) of this section, two opportunities for further consideration are available in the alternative:

(A) If the individual contests the application of the exemption to the records, review procedures in §102.25(g)(3)(ii) shall apply; or

(B) If the individual challenges the exemption itself, the procedure is a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e). If the exemption was determined by USPTO, such petition shall be filed with the General Counsel. If the exemption was determined by another agency (as described in §102.23(f)), USPTO will provide the individual with the name and address of the other agency and any relief sought by the individual shall be that provided by the regulations of the other agency. Within USPTO, no such denial is administratively final until such a petition has been filed by the individual and disposed of on the merits by the General Counsel.

(ii) As to denial under paragraphs (g)(1)(ii) of this section, (g)(1)(iv) of this section or (to the limited extent provided in paragraph (g)(3)(i)(A) of this section) paragraph (g)(1)(i) of this section, the individual may file for review with the General Counsel, as indicated in the Privacy Officer's initial denial notification. The procedures appearing in §102.28 shall be followed by both the individual and USPTO to the maximum extent practicable.

(iii) As to denial under paragraph (g)(1)(iii) of this section, no further administrative consideration within USPTO is available because the denial is not administratively final until expiration of the time period indicated in §102.26(a).

(h) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.