

Office of the Secretary of Labor

§ 70.26

whole or in part shall so notify the requester in writing. The notice must be signed by the disclosure officer or his designee, and shall include:

(1) The name and title or position of the disclosure officer and if applicable, of the designee.

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions which the component has relied upon in denying the request.

(3) A statement that the denial may be appealed under § 70.22 and a description of the requirements of that subsection.

(c) *Record cannot be located or has been destroyed.* If a requested record cannot be located from the information supplied, or is known or believed to have been destroyed or otherwise disposed of, the component shall so notify the requester in writing.

§ 70.22 Appeals from denial of requests.

When a request for access to records or for a waiver of fees has been denied in whole or in part, where a requester disputes matters relating to the assessment of fees, or when a component fails to respond to a request within the time limits set forth in the FOIA, the requester may appeal the denial of the request to the Solicitor of Labor. The appeal must be filed within 90 days of:

(a) The denial, actual or constructive, of the request, including a denial of a request for a fee waiver,

(b) An agency's response on a dispute of matters relating to the assessment of fees, or

(c) In the case of a partial denial, 90 days from the date the material was received by the requester.

The appeal shall state, in writing, the grounds for appeal, including any supporting statements or arguments. To facilitate processing, the appeal should include copies of the initial request and the response of the disclosure officer. The appeal shall be addressed to the Solicitor of Labor, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Both the envelope and the letter of appeal itself must

be clearly marked: "Freedom of Information Act Appeal."

[54 FR 23144, May 30, 1989; 54 FR 25204, June 13, 1989]

§ 70.23 Action on appeals.

The Solicitor of Labor, or his designee, shall review the appellant's supporting papers and make a determination de novo whether the denial specified in § 70.22 was proper and in accord with the applicable law.

§ 70.24 Form and content of action on appeals.

The disposition of an appeal shall be in writing. A decision affirming in whole or in part the denial of a request shall include a brief statement of the reason or reasons for the affirmance, including each FOIA exemption relied upon and its relation to each record withheld, and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If it is determined on appeal that a record should be disclosed, the record should be provided promptly in accordance with the decision on appeal.

§ 70.25 Time limits and order in which requests and appeals shall be processed.

Components of the Department of Labor shall comply with the time limits required by the FOIA for responding to and processing requests and appeals, unless there are exceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(C). A component shall notify a requester whenever the component is unable to respond to or process the request or appeal within the time limits established by the FOIA.

§ 70.26 Predisclosure notification to submitters of confidential commercial information.

(a) *In general.* FOIA requests for confidential commercial information provided to the Department by business submitters shall be processed in accordance with this section.