

records. As an alternative, the bureau may refer the request along with the records to that bureau for direct response. It will notify you of the referral in writing and provide the name of a contact in the other bureau(s) to which the referral was made. Such a referral does not restart the statutory time limit for responding to your request.

(b) *Consultations/referrals with agencies outside DOI.* (1) If a bureau receives a request for records not in its possession, but which the bureau believes may be in the possession of another Federal agency, the bureau will return your request and advise you to submit it directly to the other agency. If you still believe that the records exist within DOI, you should notify the bureau FOIA contact of any additional information which leads you to believe the records exist and where they might be found. Alternatively, you may treat such a response as a denial of records and file an appeal.

(2) If, in response to a request, a bureau locates documents that originated with another Federal agency, it will refer the request, along with any responsive document(s), to that agency for a release determination and direct response. If the bureau refers the documents to another agency, it will notify you of the referral in writing and provide the name of a contact at the other agency. However, in the following situations, the bureau will make the release determination, after consulting with the originating agency:

(i) When the record is of primary interest to DOI (a record is of primary interest to DOI if it was developed or prepared according to DOI regulations or directives, or in response to a DOI request);

(ii) If DOI is in a better position than the originating agency to assess whether the record is exempt from disclosure;

(iii) If the originating agency is not subject to the FOIA; or

(iv) When it is more efficient or practical depending on the circumstances.

(3) If a bureau receives a request for records which have been classified by another agency under Executive Order 12958, Classified National Security Information, or superseding Executive

order, it must refer the request to that agency for response.

**§ 2.23 How will a bureau handle a request for commercial or financial information that it has obtained from a person or entity outside the Federal Government?**

(a) If a bureau receives a FOIA request for records containing commercial or financial information submitted by a person or entity outside the Federal Government, under Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, or superseding Executive order, the bureau must provide the submitter with prompt written notice of the request, except as provided in paragraph (h) of this section, whenever:

(1) The submitter has designated the information as confidential commercial or financial information, or

(2) The bureau has reason to believe that the information may be protected under exemption (4).

(b) The notice to the submitter will—

(1) Include a copy of the FOIA request.

(2) Describe the information requested or include copies of the pertinent records.

(3) Advise the submitter of the procedures for objecting to the release of the requested material and specify the time limit for responding.

(4) Give the submitter no less than 10 workdays, from receipt (or publication as set forth in paragraph (c) of this section) of the bureau's notice, to object to the release and to explain the basis for the objection, if any.

(5) Advise the submitter that:

(i) Information contained in his/her objections may be subject to disclosure under the FOIA if the bureau receives a FOIA request for it; and

(ii) If the submitter's objections contain commercial or financial information and a requester asks for the objections under the FOIA, the notification procedures of this subsection will apply.

(6) Advise the submitter that it is the bureau, rather than the submitter, that is responsible for deciding whether the information will be released or withheld.

(7) If the submitter designated the material as confidential commercial or

## § 2.23

financial information 10 or more years before the request, request the submitter's views on whether he/she still considers the information to be confidential.

(c) Where a large number of submitters is involved, the bureau may, rather than providing written notice to each submitter, publish a notice in a manner reasonably calculated to reach the attention of the submitters (e.g., in newspapers/newsletters, the bureau's Web site, or the FEDERAL REGISTER).

(d) Whenever a bureau notifies a submitter that he/she may be required to disclose information in response to a FOIA request, it also will notify you that it is giving the submitter an opportunity to review and comment on the material.

(e) If the submitter has any objection to disclosure he/she must submit a detailed written statement including the following:

(1) The justification for withholding any portion of the information under any exemption of the FOIA. In the case of exemption (4), there must be a specific and detailed discussion of:

(i) Whether the Government required the information in question to be submitted, and if so, how substantial competitive or other business harm would likely result from release; or

(ii) Whether the submitter provided the information voluntarily and, if so, how the information in question fits into a category of information that the submitter customarily does not release to the public.

(2) A certification that the information is confidential, has not been disclosed to the public by the submitter, and is essentially non-public because it is not routinely available to the public from other sources.

(3) If not already provided, a telephone number (where the submitter can be reached during normal business hours, an e-mail address and a fax number (if available)). This information is very important to help the bureau or Department communicate with the submitter.

(f) The bureau will review and consider all objections to release that are received within the time specified in the notice to the submitter. However, it is the bureau, rather than the sub-

## 43 CFR Subtitle A (10-1-03 Edition)

mitter, that is responsible for deciding whether the information should be released or withheld. If a submitter fails to respond to the bureau within the time limits specified in the notice, the bureau will presume that the submitter has no objection to disclosure of the information.

(g) If the bureau decides to release records over the submitter's objections, it will inform the submitter and you in writing. The notice to the submitter will be sent by certified mail, return receipt requested, to the submitter's last known address and will include copies of the records the bureau intends to release and the bureau's reasons for deciding to release them. The notice also will inform the submitter that it intends to release the records 10 workdays after receipt of the notice by the submitter.

(h) The bureau will not consult with the submitter if:

(1) The bureau responsible for the decision determines that the information is exempt from disclosure;

(2) The information has been lawfully published or otherwise made available to the public, such as in response to an earlier FOIA request or if the submitter has made the information public;

(3) Disclosure of the information is required by statute (other than the FOIA) or regulation (other than this subpart);

(4) Disclosure of the information is prohibited by statute; or

(5) The designation of confidentiality made by the submitter appears obviously frivolous. However, the bureau will notify the submitter of any final decision to disclose the information 15 workdays prior to releasing it.

(i) The bureau will inform the submitter within 10 workdays of the Department's receipt of a court complaint if you file a lawsuit for access to any of the withheld records. Similarly, the bureau will notify you within 10 workdays of the Department's receipt of a court complaint if the submitter files a lawsuit to prohibit the bureau from disclosing the records.

(j) If the bureau determines that the requested information is protected from release by exemption (4) of the FOIA, the bureau has no discretion to

## Office of the Secretary, Interior

## § 2.27

release the information as doing so would violate the Trade Secrets Act, a criminal provision found at 18 U.S.C. 1905.

### **§ 2.24 Is a submitter required to designate information that is commercially or financially sensitive?**

No. If in the course of responding to a FOIA request, a bureau cannot readily determine whether the information obtained from a person is commercially or financially sensitive information, the bureau will obtain and consider the views of the submitter of the information and provide the submitter an opportunity to object to any decision to disclose the information.

### **§ 2.25 How will a bureau handle a request for Federally-funded research data in the possession of a private entity?**

When published research findings are produced under a grant or other Federal assistance, and the findings are used by a bureau in developing an agency action, *e.g.*, a policy or regulation, research data related to such findings are considered agency records even if they are in the possession of the recipient of the Federal financial assistance (recipient).

(a) If you submit a FOIA request for such research data, the bureau will require the recipient to provide the information to it within a reasonable amount of time, so the bureau can consider the data for release to the public under the FOIA.

(b) The bureau will notify you that it may charge you for any additional fees incurred as a result of obtaining the research data from the recipient. This fee is in addition to any fees the bureau may charge to process your request under the FOIA.

(c) The bureau will forward a copy of the request to the recipient, who is responsible for searching for and reviewing the requested information in accordance with DOI's FOIA regulations (43 CFR part 2). The recipient will forward a copy of any responsive records that are located, along with his/her recommendations concerning the releasability of the data, and the total cost incurred in searching for, reviewing, and providing the data to the appropriate bureau FOIA contact.

(d) The bureau will review and consider the recommendations of the recipient regarding the releasability of the requested data. However, it is the bureau, rather than the recipient, that is responsible for deciding whether the information will be released or withheld.

### **§ 2.26 Does the bureau provide multitrack processing of FOIA requests?**

(a) A bureau may use two or more processing tracks to distinguish between simple and complex requests based on the amount of work and/or time needed to process the request, including the number of pages involved.

(b) If a bureau uses multitrack processing, it will advise requesters in its slower track(s) of the criteria of its faster track(s). For example, a bureau using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the bureau's faster track(s). A bureau doing so will contact the requester by telephone or in writing, whichever is more efficient in each case.

### **§ 2.27 How will a bureau handle a request for information that is contained in a Privacy Act system of records? (See DOI's Privacy Act regulations (Subpart G of this part) for additional information.)**

(a) When you request information pertaining to yourself that is contained in a Privacy Act system of records applicable to you (*i.e.*, the information contained in the system of records is retrieved by the bureau using your name or other personal identifier), the request will be processed under both the FOIA and the Privacy Act. If you request information about yourself, you must submit certain identifying information, usually an original signature (see the appropriate Privacy Act system notice and, Subpart G of this part) before the bureau will process your request. (Note: If you request information about yourself that is not covered by the Privacy Act, *e.g.*, the information may be filed under another