

§ 2.84

§ 2.84 What information must I put in my *Touhy* Request?

Your *Touhy* Request must:

- (a) Identify the employee or record;
- (b) Describe the relevance of the desired testimony or records to your proceeding and provide a copy of the pleadings underlying your request;
- (c) Identify the parties to your proceeding and any known relationships they have to the Department's mission or programs;
- (d) Show that the desired testimony or records are not reasonably available from any other source;
- (e) Show that no record could be provided and used in lieu of employee testimony;
- (f) Provide the substance of the testimony expected of the employee; and
- (g) Explain why you believe your *Touhy* Request complies with § 2.88.

§ 2.85 How much will I be charged?

We will charge you the costs, including travel expenses, for employees to testify under the relevant substantive and procedural laws and regulations. You must pay costs for record production under 43 CFR Part 2, Appendix A. Costs must be paid by check or money order payable to the Department of the Interior.

§ 2.86 Can I get an authenticated copy of a Department record?

Yes. We may provide an authenticated copy of a Department record, for purposes of admissibility under Federal, State or Tribal law. We will do this only if the record has been officially released or would otherwise be released under § 2.13 or this Subpart.

RESPONSIBILITY OF THE DEPARTMENT

§ 2.87 How will the Department process my *Touhy* Request?

(a) The appropriate Department official will decide whether to grant or deny your *Touhy* Request. Our Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, may negotiate with you or your attorney to refine or limit both the timing and content of your *Touhy* Request. When necessary, the Solicitor's Office or, in the case of the Office of Inspector General, its General Counsel, also will

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coordinate with the Department of Justice to file appropriate motions, including motions to remove the matter to Federal court, to quash, or to obtain a protective order.

(b) We will limit our decision to allow employee testimony to the scope of your *Touhy* Request.

(c) If you fail to follow the requirements of this Subpart, we will not allow the testimony or produce the records.

(d) If your *Touhy* Request is complete, we will consider the request under § 2.88.

§ 2.88 What criteria will the Department consider in responding to my *Touhy* Request?

In deciding whether to grant your *Touhy* Request, the appropriate Department official will consider:

- (a) Your ability to obtain the testimony or records from another source;
- (b) The appropriateness of the employee testimony and record production under the relevant regulations of procedure and substantive law, including the FOIA or the Privacy Act; and
- (c) Our ability to:
 - (1) Conduct our official business unimpeded;
 - (2) Maintain impartiality in conducting our business;
 - (3) Minimize the possibility that we will become involved in issues that are not related to our mission or programs;
 - (4) Avoid spending public employee's time for private purposes;
 - (5) Avoid the negative cumulative effect of granting similar requests;
 - (6) Ensure that privileged or protected matters remain confidential; and
 - (7) Avoid undue burden on us.

RESPONSIBILITIES OF EMPLOYEES

§ 2.89 What must I, as an employee, do upon receiving a request?

(a) If you receive a request or subpoena that does not include a *Touhy* Request, you must immediately notify your supervisor and the Solicitor's Office, or the General Counsel of the Office of the Inspector General, as applicable, for assistance in issuing the proper response.