

Social Security Administration

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integrity of internal processes. In addition, we recognize the legitimate interests of organizations or persons who have submitted records to SSA or who would otherwise be affected by release of records. For example, we have no discretion to release certain records, such as trade secrets and confidential commercial information, prohibited from release by law. This policy calls for the fullest responsible disclosure consistent with those requirements of administrative necessity and confidentiality which are recognized in the FOIA.

§ 402.15 Relationship between the FOIA and the Privacy Act of 1974.

(a) *Coverage.* The FOIA and the rules in this part apply to all SSA records. The Privacy Act, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records. "Individuals" and "system of records" are defined in the Privacy Act and in 20 CFR 401.25.

(b) *Requesting your own records.* If you are an individual and request records, then to the extent you are requesting your own records in a system of records, we will handle your request under the Privacy Act. If there is any record that we need not release to you under those provisions, we will also consider your request under the FOIA and this rule, and we will release the record to you if the FOIA requires it.

(c) *Requesting another individual's record.* Whether or not you are an individual, if you request records that are about an individual (other than yourself) and that are in a system of records, we will handle your request under the FOIA and the rules in this part. However, if our disclosure in response to your request would be permitted by the Privacy Act's disclosure provision, (5 U.S.C. 552a(b)), for reasons other than the requirements of the FOIA, and if we decide to make the disclosure, then we will not handle your request under the FOIA and the rules in this part. For example, when we make routine use disclosures pursuant to requests, we do not handle them under the FOIA and the rules in this part. ("Routine use" is defined in the Privacy Act and in 20 CFR 401.25.) If we handle your request under the FOIA

and the rules in this part and the FOIA does not require releasing the record to you, then the Privacy Act may prohibit the release and remove our discretion to release.

§ 402.20 Requests not handled under the FOIA.

(a) We will not handle your request under the FOIA and the regulations in this part to the extent it asks for records that are currently available, either from SSA or from another part of the Federal Government, under a separate statute that provides specific activity for charging fees for those records. For example, we will not handle your request under the FOIA and the regulations in this part to the extent it asks for detailed earnings statements under the Social Security program.

(b) We will not handle your request under the FOIA and the regulations in this part if you are seeking a record that is distributed by SSA as part of its regular program activity, for example, public information leaflets distributed by SSA.

§ 402.25 Referral of requests outside of SSA.

If you request records that were created by, or provided to us by, another Federal agency, and if that agency asserts control over the records, we may refer the records and your request to that agency. We may likewise refer requests for classified records to the agency that classified them. In these cases, the other agency will process and respond to your request, to the extent it concerns those records, under that agency's regulation, and you need not make a separate request to that agency. We will notify you when we refer your request to another agency.

§ 402.30 Definitions.

As used in this part,

Agency means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. A private organization is not an agency even if it is performing work under contract

with the Government or is receiving Federal financial assistance. Grantee and contractor records are not subject to the FOIA unless they are in the possession or under the control of SSA or its agents. Solely for the purpose of disclosure under the FOIA, we consider records of individual beneficiaries located in the State Disability Determination Services (DDS) to be agency records.

Commercial use means, when referring to a request, that the request is from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put. The identity of the requester (individual, non-profit corporation, for-profit corporation) and the nature of the records, while in some cases indicative of that purpose or use, are not necessarily determinative. When a request is from a representative of the news media, a purpose or use supporting the requester's news dissemination function is not a commercial use.

Duplication means the process of making a copy of a record and sending it to the requester, to the extent necessary to respond to the request. Such copies include paper copy, microfilm, audio-visual materials, and magnetic tapes, cards, and discs.

Educational institution means a pre-school, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program of scholarly research.

Freedom of Information Act or FOIA means 5 U.S.C. 552.

Freedom of Information Officer means an SSA official who has been delegated the authority to authorize disclosure of or withhold records and assess, waive, or reduce fees in response to FOIA requests.

Non-commercial scientific institution means an institution that is not operated substantially for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting

scientific research whose results are not intended to promote any particular product or industry.

Records means any information maintained by an agency, regardless of forms or characteristics, that is made or received in connection with official business. This includes handwritten, typed, or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and material in other forms, such as punchcards; magnetic tapes; cards; computer discs or other electronic formats; paper tapes; audio or video recordings; maps; photographs; slides; microfilm; and motion pictures. It does not include objects or articles such as exhibits, models, equipment, and duplication machines, audiovisual processing materials, or computer software. It does not include personal records of an employee, or books, magazines, pamphlets, or other reference material in formally organized and officially designated SSA libraries, where such materials are available under the rules of the particular library.

Representative of the news media means a person actively gathering information for an entity organized and operated to publish or broadcast news to the public. News media entities include television and radio broadcasters, publishers of periodicals who distribute their products to the general public or who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media (e.g., electronic dissemination of text). We will treat freelance journalists as representatives of a news media entity if they can show a likelihood of publication through such an entity. A publication contract is such a basis, and the requester's past publication record may show such a basis.

Request means asking for records, whether or not you refer specifically to the FOIA. Requests from Federal agencies and court orders for documents are not included within this definition.

Review means, when used in connection with processing records for a commercial use request, examining the records to determine what portions, if any, may be withheld, and any other

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processing that is necessary to prepare the records for release. It includes only the examining and processing that are done the first time we analyze whether a specific exemption applies to a particular record or portion of a record. It does not include examination done in the appeal stage with respect to an exemption that was applied at the initial request stage. However, if we initially withhold a record under one exemption, and on appeal we determine that that exemption does not apply, then examining the record in the appeal stage for the purpose of determining whether a different exemption applies is included in *review*. It does not include the process of researching or resolving general legal or policy issues regarding exemptions.

Search means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also page-by-page and line-by-line examination to identify responsive portions of a document. However, it does not include line-by-line examination where merely duplicating the entire page would be a less expensive and quicker way to comply with the request.

[62 FR 4154, Jan. 29, 1997, as amended at 63 FR 35132, June 29, 1998, 66 FR 2809, Jan. 12, 2001]

§ 402.35 Publication.

(a) *Methods of publication.* Materials we are required to publish pursuant to the provisions of 5 U.S.C. 552 (a)(1) and (a)(2), we publish in one of the following ways:

(1) By publication in the FEDERAL REGISTER of Social Security Administration regulations, and by their subsequent inclusion in the Code of Federal Regulations;

(2) By publication in the FEDERAL REGISTER of appropriate general notices;

(3) By other forms of publication, when incorporated by reference in the FEDERAL REGISTER with the approval of the Director of the Federal Register; and

(4) By publication in the "Social Security Rulings" of indexes of precedential social security orders and opinions issued in the adjudication of claims, statements of policy and interpreta-

tions which have been adopted but have not been published in the FEDERAL REGISTER. The "Social Security Rulings" may be purchased through the Government Printing Office (See § 402.40).

(b) *Publication of rulings.* Although not required pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we publish the following rulings in the FEDERAL REGISTER as well as by other forms of publication:

(1) We publish Social Security Rulings in the FEDERAL REGISTER under the authority of the Commissioner of Social Security. They are binding on all components of the Social Security Administration. These rulings represent precedent final opinions and orders and statements of policy and interpretations that we have adopted.

(2) We publish Social Security Acquiescence Rulings in the FEDERAL REGISTER under the authority of the Commissioner of Social Security. They are binding on all components of the Social Security Administration, except with respect to claims subject to the relitigation procedures established in 20 CFR 404.984, 410.610, and 416.1484. For a description of Social Security Acquiescence Rulings, see 20 CFR 404.984(b), 410.610c(b), and 416.1484(b) of this title.

(c) *Availability for inspection.* To the extent practicable and to further assist the public, we make available for inspection at the address specified in § 402.135 those materials which are published in the FEDERAL REGISTER pursuant to 5 U.S.C. 552(a)(1).

(d) *Availability by Telecommunications.* To the extent practicable, we will make available by means of computer telecommunications the indices and other records that are available for inspection.

[62 FR 4154, Jan. 29, 1997, as amended at 63 FR 35132, June 29, 1998; 65 FR 16813, Mar. 30, 2000]

§ 402.40 Publications for sale.

The following publications containing information pertaining to the program, organization, functions, and procedures of the Social Security Administration may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402: