

§ 701.13

decision to withhold the information under the statute, and shall contain a concise description of the scope of the information withheld.

(vi) The response shall advise the requester of the right to judicial review.

(1) *Time limits/requirements.* (1) A FOIA appeal has been received by a DON activity when it reaches the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(2) The requester shall be advised to file an appeal so that it is postmarked no later than 60 calendar days after the date of the initial denial letter. If no appeal is received, or if the appeal is postmarked after the conclusion of the 60 day period, the case may be considered closed. However, exceptions may be considered on a case-by-case basis.

(3) In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the date of the final response. Requests and responsive records that are denied shall be retained for a period of 6 years to meet the statute of limitations requirement.

(4) Final determinations on appeals normally shall be made within 20 working days after receipt. When a DON appellate authority has a significant number of appeals preventing a response determination within 20 working days, the appeals shall be processed in a multitrack processing system, based at a minimum on the three processing tracks established for initial requests. (See § 701.8(f)).

(5) If additional time is needed due to unusual circumstances, the final decision may be delayed for the number of working days (not to exceed 10) that were not used as additional time for responding to the initial request.

(6) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual cir-

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cumstances, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The appellate authority shall continue to process the case expeditiously.

(m) *FOIA litigation.* The appellate authority is responsible for providing CNO (N09B30) with a copy of any FOIA litigation filed against the DON and any subsequent status of the case. CNO (N09B30) will, in turn, forward a copy of the complaint to DFOISR for their review.

Subpart B—FOIA Definitions and Terms

§ 701.13 5 U.S.C. 552(a)(1) materials.

Section (a)(1) of the FOIA requires publication in the FEDERAL REGISTER of descriptions of agency organizations, functions, substantive rules, and statements of general policy.

§ 701.14 5 U.S.C. 552(a)(2) materials.

Section (a)(2) of the FOIA requires that certain materials routinely be made available for public inspection and copying. The (a)(2) materials are commonly referred to as “reading room” materials and are required to be indexed to facilitate public inspection. (a)(2) materials consist of:

(a) *5 U.S.C. 552(a)(2)(A) records.* Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(b) *5 U.S.C. 552(a)(2)(B) records.* Statements of policy and interpretations that have been adopted by the agency and are not published in the FEDERAL REGISTER.

(c) *5 U.S.C. 552(a)(2)(C) records.* Administrative staff manuals and instructions, or portions thereof, that establish DON policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DON activity. Examples of manuals