

### § 1120.33

### 36 CFR Ch. XI (7-1-05 Edition)

the Freedom of Information officer immediately.

(e) An initial determination to disclose documents must provide the requested documents or provide the opportunity to inspect and/or obtain copies of the documents.

#### § 1120.33 Time allowed for initial action on requests.

(a) Except as otherwise provided in this section, as soon as possible and not later than the tenth working day after the day on which the Freedom of Information Officer receives a request for records, the A&TBCB office responsible for responding to the request must issue a written determination to the requestor stating which of the requested records, will, and which will not, be released and the reason for any denial of a request.

(b) The period of 10 working days is measured from the date the request is first received and logged in by the Freedom of Information Officer.

(c) There is excluded from the period of 10 working days (or any extension) any time which elapses between the date that a requestor is notified by the A&TBCB under § 1120.26 that his or her request does not reasonably identify the records sought, and the date that the requestor furnishes a reasonable identification.

(d) There is excluded from the period of 10 working days (or any extension) any time which elapses between the date that a requestor is notified by an A&TBCB office under § 1120.53(b) that prepayment of fees is required, and the date that the requestor pays (or makes suitable arrangements to pay) the charges.

(e) The A&TBCB office taking action under § 1120.31 may extend the basic 10-day period established under paragraph (a) of this section by a period not to exceed 10 additional working days if—

(1) The office notifies the Freedom of Information Officer;

(2) The office notifies the requestor in writing within the basic 10-day period stating the reasons for the extension and the date by which the office expects to be able to issue a determination;

(3) The extension is reasonably necessary to properly process the particular request; and

(4) One or more of the following unusual circumstances require the extension:

(i) There is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) There is a need to search for, collect, and/or appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) There is need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the A&TBCB. The office must conduct the consultation with all practicable speed.

(f) Should the A&TBCB fail to issue a determination within the 10-day period or any authorized extension as to an initial request, or during the period for consideration of an appeal, the requestor shall be deemed to have exhausted his or her administrative remedies with respect to such.

In the latter situation, the requestor may commence an action in an appropriate Federal district court to obtain the records.

#### § 1120.34 Initial denials of requests.

(a) An initial denial of a request may be issued only for the following reasons:

(1) The record is not under the A&TBCB's control;

(2) The record has been published in the FEDERAL REGISTER or is otherwise published and available for sale;

(3) A statutory provision, provision of this part, or court order requires that the information not be disclosed;

(4) The record is exempt from mandatory disclosure under 5 U.S.C. 552(b) and the responding office has decided not to disclose it under §§ 1120.41 and 1120.42;

(5) The record is believed to be in the A&TBCB's custody but has not yet been located. (See paragraph (f) of this section.)

(b) Each initial denial of a request shall—

- (1) Be written, signed, and dated;
  - (2) Contain a reference to the Request Identification Number;
  - (3) Identify the records that are being withheld (individually or, if the denial covers a large number of similar records, by described category); and
  - (4) State the basis for denial of each record of category of records or any reasonably segregable portion(s) thereof being withheld.
- (c) If the issuance of the determination to deny a request was directed by some A&TBCB officer or employee other than the person signing the determination letter, that other person's identity and position must be stated in the determination letter.
- (d) Each initial determination which denies, in whole or in part, a request for one or more existing, located A&TBCB records must state that the requestor may appeal the initial denial by sending a written appeal to the address shown in §1120.23 within 30 days of receipt of the determination. (See §1120.36.)
- (e) A determination is deemed issued on the date the determination letter is placed in A&TBCB mailing channels for first class mailing to the requestor, delivered to the U.S. Postal Service for mailing, or personally delivered to the requestor, whichever date first occurs.
- (f) When a request must be denied because the record has not yet been located (although it is believed to be in the A&TBCB's possession), the A&TBCB office responsible for maintaining the record must continue to search diligently until it is located or it appears that the record does not exist or is not in the A&TBCB's possession, and must periodically inform the requestor of the office's progress.

**§ 1120.36 Appeals from initial denials.**

- (a) Any person whose request has been denied in whole or in part by an initial determination may appeal that denial by addressing a written appeal to the address shown in §1120.23.
- (b) Any appeal must be mailed or filed in person at the address shown in §1120.23—
  - (1) In the case of a denial of an entire request, generally not later than 30 calendar days after the date the requestor

- received the initial determination on the request; or
  - (2) In the case of a partial denial, generally not later than 30 calendar days after the requestor receives all records being made available pursuant to the initial determination.
- An appeal which does not meet the requirements of this paragraph may be treated either as a timely appeal or as a new request, at the option of the Freedom of Information Officer.
- (c) The appeal letter must contain—
    - (1) A reference to the Request Identification Number (RIN);
    - (2) The date of the initial determination;
    - (3) The name and address of the person who issued the initial denial;
    - (4) A statement of which of the records to which access was denied are the subjects of the appeal; and
    - (5) If the applicant wishes, such facts and legal or other authorities as he or she considers appropriate.

**§ 1120.37 A&TBCB action on appeals.**

- (a) The General Counsel must make one of the following legal determinations in connection with every appeal from the initial denial of a request for an existing, located record:
  - (1) The record must be disclosed;
  - (2) The record must not be disclosed because a statute or a provision of this part so requires; or
  - (3) The record is exempt from mandatory disclosure but legally may be disclosed as a matter of agency discretion.
- (b) Whenever the General Counsel has determined under paragraph (a)(3) of this section that a record is exempt from mandatory disclosure but legally may be disclosed, the matter must be referred to the Executive Director. If the Executive Director determines that an important purpose would be served by withholding the record, the General Counsel shall issue a determination denying the appeal. If the Executive Director determines that no important purpose would be served by withholding the record, the General Counsel must disclose the record.
- (c) The General Counsel may delegate his or her authority under this section to any other attorney employed by the A&TBCB in connection