

National Science Foundation

§612.6

(b) *Time for response.* The Foundation will seek to take appropriate agency action within 20 days of when a request is received or is perfected (excluding the date of receipt, weekends, and legal holidays), whichever is later. A request which otherwise meets the requirements of §612.3 is perfected when you have reasonably described the records sought under §612.3(d), and agreed to pay fees under §612.3(c), or otherwise met the fee requirements under §612.10.

(c) *Unusual circumstances.* (1) Where the time limits for processing a request cannot be met because of unusual circumstances, as defined in the FOIA, the FOIA Officer will notify the requester as soon as practicable in writing of the unusual circumstances and may extend the response period for up to ten working days.

(2) Where the extension is for more than ten working days, the FOIA Officer will provide the requester with an opportunity either to modify the request so that it may be processed within the ten day extension period or to arrange an agreed upon alternative time period with the FOIA Officer for processing the request or a modified request.

(d) *Expedited processing.* (1) If you want to receive expedited processing you must submit a statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail the basis for requesting expedited processing.

(2)(i) Requests and appeals will be given expedited treatment whenever it is determined that a requester has demonstrated compelling need by presenting:

(A) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(B) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person primarily engaged in disseminating information.

(ii) For example, a requester who is not a full-time member of the news media must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his

or her sole occupation. Such requester also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally, and that the information sought has particular value that would be lost if not disseminated quickly.

(3) Within ten calendar days of receipt of a request for expedited processing, the FOIA Officer or OIG will decide whether to grant it, and will notify the requester of the decision orally or in writing. If a request for expedited treatment is granted, the request will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§612.6 Responses to requests.

(a) *Acknowledgment of requests.* The FOIA Officer will ordinarily send an acknowledgment of a FOIA request only if it is anticipated that a determination on release will not be possible within 20 working days.

(b) *Grants of requests.* Once the Foundation makes a determination to grant a request in whole or in part, it will notify the requester in writing. The Foundation will inform the requester in the notice of any applicable fee and will disclose records to the requester promptly on payment of applicable fees. Records disclosed in part will be marked or annotated to show both the amount and the location of the information deleted where practicable.

(c) *Denials of requests.* (1) Denials of FOIA requests will be made by the Office of the General Counsel, the Office of the Inspector General, or such other office as may be designated by the Director. The response letter will briefly set forth the reasons for the denial, including any FOIA exemption(s) applied by the Foundation in denying the request. It will also provide the name and title or position of the person responsible for the denial, will inform the requester of the right to appeal, and will, where appropriate, include an estimate of the volume of any requested materials withheld. An estimate need not be provided when the volume is otherwise indicated through deletions on records

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disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

(2) Requesters can appeal an agency determination to withhold all or part of any requested record; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Act; a disapproval of a fee category claim by a requester; denial of a fee waiver or reduction; or a denial of a request for expedited treatment (see § 612.9).

§ 612.7 Exemptions.

(a) *Exemptions from disclosure.* The following types of records or information may be withholdable as exempt in full or in part from mandatory public disclosure:

(1) *Exemption 1–5 U.S.C. 552(b)(1).* Records specifically authorized and properly classified pursuant to Executive Order to be kept secret in the interest of national defense or foreign policy. NSF does not have classifying authority and normally does not deal with classified materials.

(2) *Exemption 2–5 U.S.C. 552(b)(2).* Records related solely to the internal personnel rules and practices of NSF. This exemption primarily protects information that if released would allow the recipient to circumvent a statute or agency regulation. Administrative information such as rules relating to the work hours, leave, and working conditions of NSF personnel, or similar matters, can be disclosed to the extent that no harm would be caused to the functions to which the information pertains. Examples of records normally exempt from disclosure include, but are not limited to:

(i) Operating rules, guidelines, manuals on internal procedure, schedules and methods utilized by NSF investigators, inspectors, auditors and examiners.

(ii) Negotiating positions or limits at least until the execution of a contract (including a grant or cooperative agreement) or the completion of the action to which the negotiating positions were applicable. They may also be exempt pursuant to other provisions of this section.

(iii) Information relating to position management and manpower utilization, such as internal staffing plans, authorizations or controls, or involved in determination of the qualifications of candidates for employment, advancement, or promotion including examination questions and answers.

(iv) Computer software, the release of which would allow circumvention of a statute or NSF rules, regulations, orders, manuals, directives, instructions, or procedures; or the integrity and security of data systems.

(3) *Exemption 3–5 U.S.C. 552(b)(3).* Records specifically exempted from disclosure by another statute that either requires that the information be withheld in a such way that the agency has no discretion in the matter; or establishes particular criteria for withholding or refers to particular types of information to be withheld. Examples of records exempt from disclosure include, but are not limited to:

(i) Records that disclose any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license), 35 U.S.C. 205;

(ii) Contractor proposals not specifically set forth or incorporated by reference into a contract, 41 U.S.C. 253b(m);

(iii) Information protected by the Procurement Integrity Act, 41 U.S.C. 423.

(4) *Exemption 4–5 U.S.C. 552(b)(4).* Trade secrets and commercial or financial information obtained from a person, and privileged or confidential. Information subject to this exemption is that customarily held in confidence by the originator(s), including nonprofit organizations and their employees. Release of such information is likely to cause substantial harm to the competitive position of the originator or submitter, or impair the Foundation's ability to obtain such information in the future. NSF will process information potentially exempted from disclosure by Exemption 4 under § 612.8. Examples of records or information normally exempt from disclosure include, but are not limited to: