

§ 16.10

24 CFR Subtitle A (4-1-06 Edition)

verify the evidence which the individual submits.

(e) Correction or amendment of a record requested by an individual will be denied only upon a determination by the Privacy Act Officer that:

(1) There has been a failure to establish, by the evidence presented, the propriety of the correction or amendment in light of the criteria set forth in paragraph (c) of this section;

(2) The record sought to be corrected or amended was compiled in a terminated judicial, quasi-judicial, legislative or quasi-legislative proceeding to which the individual was a party or participant;

(3) The information in the record sought to be corrected or amended, or the record sought to be corrected or amended, is the subject of a pending judicial, quasi-judicial or quasi-legislative proceeding to which the individual is a party or participant;

(4) The correction or amendment would violate a duly enacted statute or promulgated regulation; or,

(5) The individual unreasonably has failed to comply with the procedural requirements of this part.

(f) If a request is partially granted and partially denied, the Privacy Act Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 16.10 Appeal of initial adverse agency determination on correction or amendment.

(a) Appeal shall be available only from a written denial of a request for correction or amendment of a record issued under § 16.9, and only if a written appeal is filed within thirty calendar days after the issuance of the written denial.

(b) Each appeal shall be addressed to the Privacy Appeals Officer identified in the written denial. The envelope containing the appeal and the letter itself should both clearly indicate that the subject is PRIVACY ACT APPEAL.

(c) When an appeal is misdirected by the requester, or not addressed as specified in paragraph (b) of this section, the Department official receiving same shall promptly refer it to the appropriate Privacy Appeals Officer and the

time of receipt for processing purposes will be the time when it is received by the appropriate official.

(d) When an appeal fails to provide the necessary information as set forth in paragraph (e) of this section, the requester shall be advised that the time for receipt for processing purposes will be the time when the additional necessary information is received by the appropriate official.

(e) The individual's appeal papers shall include the following: A copy of the original request for correction or amendment; a copy of the initial denial; and a statement of the reasons why the initial denial is believed to be in error. The appeal shall be signed by the individual. The record which the individual requests be corrected or amended will be supplied by the Privacy Act Officer who issued the initial denial. While the foregoing normally will comprise the entire record on appeal, the Privacy Appeals Officer may seek additional information necessary to assure that the final determination is fair and equitable and, in such instances, the additional information will be disclosed to the individual to the greatest extent possible and an opportunity provided for comment thereon.

(f) No hearing on appeal will be allowed.

(g) The Privacy Appeals Officer shall act upon the appeal and issue a final Department determination in writing not later than thirty days (excluding Saturdays, Sundays and holidays) from the date on which the appeal is received; provided, that the Privacy Appeals Officer may extend the thirty days upon deciding that a fair and equitable review cannot be made within that period, but only if the individual is advised in writing of the reason for the extension and the estimated date by which a final determination will issue (which estimated date should not be later than the sixtieth day (excluding Saturdays, Sundays and holidays) after receipt of the appeal unless unusual circumstances, as described in § 16.5(a), are met).

(h) If the appeal is determined in favor of the individual, the final determination shall include the specific corrections or amendments to be made

and a copy thereof shall be transmitted promptly both to the individual and to the Privacy Act Officer who issued the initial denial. Upon receipt of such final determination, the Privacy Act Officer promptly shall take the actions set forth in § 16.9(a)(2)(i) and § 16.9(b).

(i) If the appeal is denied, the final determination shall be transmitted promptly to the individual and shall state the reasons for the denial. The notice of final determination also shall inform the individual of the following information:

(1) The right of the individual to file a concise statement of reasons for disagreeing with the final determination. The statement ordinarily should not exceed one page and the Department reserves the right to reject a statement of excessive length. Such a statement shall be filed with the Privacy Appeals Officer. It should identify the date of the final determination and be signed by the individual. The Privacy Appeals Officer shall acknowledge receipt of such statement and inform the individual of the date on which it was received;

(2) The fact that any such disagreement statement filed by the individual will be noted in the disputed record and that a copy of the statement will be provided to persons and agencies to which the record is disclosed subsequent to the date of receipt of such statement;

(3) The fact that prior recipients of the disputed record will be provided a copy of any statement of the dispute to the extent that an accounting of disclosures, as required by the Act, was made;

(4) The fact that the Department will append to any such disagreement statement filed by the individual, a copy of the final determination or summary thereof which also will be provided to persons and agencies to which the disagreement statement is disclosed; and,

(5) The right of the individual to judicial review of the final determination under 5 U.S.C. 552a(g)(1)(A), as limited by 5 U.S.C. 552a(g)(5).

(j) In making the final determination, the Privacy Appeals Officer shall employ the criteria set forth in paragraph 16.9(c) and shall deny an appeal

only on the grounds set forth in § 16.9(e).

(k) If an appeal is partially granted and partially denied, the Privacy Appeals Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

(l) Although a copy of the final determination or a summary thereof will be treated as part of the individual's record for purposes of disclosure in instances where the individual has filed a disagreement statement, it will not be subject to correction or amendment by the individual.

(m) The provisions of § 16.3(b) (2) and (3) apply to the information obtained under paragraphs (e) and (i)(1) of this section.

§ 16.11 Disclosure of record to person other than the individual to whom it pertains.

(a) The Department may disclose a record pertaining to an individual to a person other than the individual only in the following instances:

(1) Upon written request by the individual, including authorization under § 16.5(e);

(2) With the prior written consent of the individual;

(3) To a parent or legal guardian under 5 U.S.C. 552a(h); and,

(4) When required by the Act and not covered explicitly by the provisions of 5 U.S.C. 552a(b); and,

(5) When permitted under 5 U.S.C. 552a(b) (1) through (11), which read as follows:

(1) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) Required under section 552 of this title;

(3) For a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;