

Small Business Administration

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a FOIA request or administrative appeal that seeks its business information whenever SBA intends to release that information. The notice will either describe the business information or include copies of the records in the form SBA proposes to release them. SBA will also advise the requester that the submitter is being given the opportunity to object to any proposed disclosure. When notification of a voluminous number of submitters is required, SBA may post or publish such a notice in a place reasonably likely to accomplish notice.

(e) *Opportunity to object to disclosure.* SBA will give the submitter ten working days from the date of the written notice to submit a detailed written statement specifying all grounds upon which disclosure is opposed. A reasonable extension of time may be granted by the correct office upon good cause shown by the submitter. The submitter's statement must demonstrate why it believes information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to timely respond to the notice, such failure will be deemed a waiver by the submitter of any objection to the disclosure of the information. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* SBA will consider a submitter's objections and specific grounds for nondisclosure in accordance with paragraph (e) of this section in deciding whether to disclose business information. If SBA decides to disclose business information despite the objection of a submitter, SBA will give the submitter written notice, advising the submitter what will be disclosed, and that such disclosure will occur within 10 working days from the date of the notice.

§ 102.8 Appeals.

(a) If you are dissatisfied with SBA's response to your request, you may appeal an adverse determination denying your request, in any respect, to the Chief, FOI/PA Office, 409 Third St., SW., Washington, DC 20416.

(b) The Chief must receive your signed, written appeal within 60 cal-

endar days of the date of the SBA determination from which you are appealing.

(c) You should include as much information as possible, *i.e.*, identifying the records not disclosed, the reason(s) a fee should be waived, or the reason(s) a request should be expedited. You must identify the deciding official and his/her office location.

(d) The Chief will decide your appeal unless the Chief originally made the determination you are appealing. In that case, the Assistant Administrator for Hearings and Appeals will decide your appeal.

(e) If SBA upholds the initial adverse determination, SBA will tell you why the decision has been upheld and tell you how to obtain judicial review of the decision.

§ 102.9 Public Index.

(a) The Public Index is a document that provides identifying information about official documents that SBA has issued.

(b) SBA has administratively determined, as permitted by FOIA, that periodic publication and distribution of the Public Index is unnecessary and impracticable.

(c) The Public Index is an appendix to SBA Standard Operating Procedure 40 03. You can obtain the latest edition of SOP 40 03 from SBA's Online Reading Room at <http://www.sba.gov/library> or by requesting it from any SBA office.

§ 102.10 What happens if I subpoena records or testimony of employees in connection with a civil lawsuit, criminal proceeding or administrative proceeding to which SBA is not a party?

(a) The person to whom the subpoena is directed must consult with SBA counsel in the relevant SBA office, who will seek approval for compliance from the Associate General Counsel for Litigation. Except where the subpoena requires the testimony of an employee of the Inspector General's office, or records within the possession of the Inspector General, the Associate General Counsel may delegate the authorization for appropriate production of documents or testimony to local SBA counsel.

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(b) If SBA counsel approves compliance with the subpoena, SBA will comply.

(c) If SBA counsel disapproves compliance with the subpoena, SBA will not comply, and will base such non-compliance on an appropriate legal basis such as privilege or a statute.

(d) SBA counsel must provide a copy of any subpoena relating to a criminal matter to SBA's Inspector General prior to its return date.

[69 FR 21952, Apr. 23, 2004]

Subpart B—The Privacy Act

§ 102.20 What privacy rights does this subpart regulate?

This subpart establishes SBA's policy and procedures safeguarding an individual against an invasion of personal privacy.

(a) Except as otherwise provided by law or regulation, SBA will permit you to do the following:

(1) Determine what records pertaining to you are collected, maintained, used, or disseminated by SBA;

(2) Object when records pertaining to you are obtained by SBA for a particular purpose and are proposed to be used or made available for another purpose without your consent; and

(3) Gain access to information pertaining to you in records, have a copy made of all or any portion of those records, and correct or amend such records as appropriate.

(b) SBA will collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(c) SBA will permit exemptions from the requirements of 5 U.S.C. 552a (Privacy Act of 1974) ("PA") only where an important public policy need for such exemption has been determined pursuant to or under specific statutory authority.

§ 102.21 How will SBA maintain records?

SBA records will:

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(a) Contain only such information about an individual as is relevant and necessary to accomplish a purpose required of SBA by statute, regulation, or by Executive Order of the President.

(b) Be comprised, to the maximum practical extent, of an individual's own statements when the information may result in an adverse determination about an individual's rights, benefits, or privileges under a Federal program.

§ 102.22 When will SBA disclose records?

SBA will not disclose to anyone any record which is contained in a system of records, except that it will disclose a record:

(a) To the person about whom the record is maintained, or to that person's agent, within the limits discussed in this subpart;

(b) To those SBA employees who have a need for the record to perform their duties;

(c) When required under 5 U.S.C. 552 (FOIA);

(d) For a routine use of the record compatible with the purpose for which it was collected;

(e) To the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activity pursuant to Title 13, United States Code;

(f) 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, where the record is transferred in a form that is not individually identifiable;

(g) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his or her designee to determine whether the record has such value;

(h) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if:

(1) The activity is authorized by law; and

(2) The head of the agency or instrumentality has made a written request