

### Subpart D—Procedures for Appealing Decisions Not To Disclose Records and/or Waive Fees

#### § 7.21 General.

(a) Each officer or employee of DOT who, upon a request by a member of the public for a record under this part, makes a determination that the record is not to be disclosed, either because it is subject to an exemption or not in DOT's custody and control, will give a written statement of the reasons for that determination to the person making the request; and indicate the names and titles or positions of each person responsible for the initial determination not to comply with such request, and the availability of an appeal within DOT. The denial letter will include an estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption. Records disclosed in part will be marked or annotated to show both the amount and the location of the information deleted whenever practicable.

(b) When a request for a waiver of fees pursuant to § 7.44 has been denied in whole or in part, the requestor may appeal the denial.

(c) Any person to whom a record has not been made available within the time limits established by § 7.31 and any person who has been given a determination pursuant to paragraph (a) of this section that a record will not be disclosed may appeal to the responsible DOT official. Any person who has not received an initial determination on his or her request within the time limits established by § 7.31 can seek immediate judicial review, which may be sought without the need first to submit an administrative appeal. Judicial review may be sought in the United States District Court for the judicial district in which the requestor resides or has his or her principal place of business, the judicial district in which the records are located, or in the Dis-

trict of Columbia. A determination that a record will not be disclosed and/or that a request for a fee waiver or reduction will not be granted does not constitute final agency action for the purposes of judicial review unless:

(1) It was made by the responsible DOT official; or

(2) The applicable time limit has passed without a determination on the initial request or the appeal, as the case may be, having been made.

(d) Each appeal must be made in writing within thirty days from the date of receipt of the original denial and should include the DOT file or reference number assigned to the request and all information and arguments relied upon by the person making the request. (Appeals may be submitted via facsimile and conventional mail, but not via electronic mail.) Such letter should indicate that it is an appeal from a denial of a request made under FOIA. The envelope in which a mailed appeal is sent should be prominently marked: "FOIA Appeal." If these requirements are not met, the twenty-day limit described in § 7.32 will not begin to run until the appeal has been identified, or would have been identified with the exercise of due diligence, by a DOT employee as an appeal under FOIA, and has been received by the appropriate office.

(e) Whenever the responsible DOT official determines it necessary, he/she may require the requestor to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances; in any case in which a request or order is made, DOT's time for responding ceases to count while the requestor responds to the request or order. The decision of the responsible DOT official as to the availability of the record or the appropriateness of a fee waiver or reduction constitutes final agency action for the purpose of judicial review.

(f) The decision of the responsible DOT official not to disclose a record under this part or not to grant a request for a fee waiver or reduction is considered to be a denial by the Secretary for the purpose of 5 U.S.C. 552(a)(4)(B).

## § 7.31

(g) Any final determination by the head of an DOT component not to disclose a record under this part, or not to grant a request for a fee waiver or reduction, is subject to concurrence by a representative of the General Counsel.

(h) Upon a determination that an appeal will be denied, the requestor will be informed in writing of the reasons for the denial of the request and the names and titles or positions of each person responsible for the determination, and that judicial review of the determination is available in the United States District Court for the judicial district in which the requestor resides or has his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia.

### Subpart E—Time Limits

#### § 7.31 Initial determinations.

An initial determination whether to release a record requested pursuant to subpart C of this part will be made within twenty Federal working days after the request is received by the appropriate office in accordance with § 7.14, except that this time limit may be extended by up to ten Federal working days in accordance with § 7.33. The person making the request will be notified immediately of such determination. If the determination is to grant the request, the desired record will be made available as promptly as possible. If the determination is to deny the request, the person making the request will be notified in writing, at the same time he or she is notified of such determination, of the reason for the determination, the right of such person to appeal the determination, and the name and title of each person responsible for the initial determination to deny the request.

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) A component may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, or on the number of pages involved.

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(2) A component using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the component's faster track(s). A component doing so will contact the requestor either by telephone, letter, facsimile, or electronic mail, whichever is most efficient in each case.

(c) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever a compelling need is demonstrated and it is determined that the compelling need involves:

(i) 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;

(ii) Requests made by a person primarily engaged in disseminating information, with an urgency to inform the public of actual or alleged Federal Government activity.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be received by the proper component. Requests must be submitted to the component that maintains the records requested.

(3) A requestor who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requestor within the category in paragraph (c)(1)(ii) of this section, if 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. A requestor within the category in paragraph (c)(1)(ii) of this section 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. The formality of certification may be waived as a matter of discretion.