

appeal any ultimate denial of access or to appeal a failure to locate the records within the voluntary extension period.

[T.D. 81-168, 46 FR 32565, June 24, 1981, as amended by T.D. 96-36, 61 FR 19838, May 3, 1996]

**§ 103.7 Administrative appeal of initial determination.**

(a) *To whom appeals should be submitted.* A requester may submit an administrative appeal to the FOIA Appeals Officer at Headquarters, within 35 days after the date of notification described in §103.6 or the date of the letter transmitting the last records released, whichever is later. A requester shall mail or personally deliver an appeal to the United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

(b) *Form of appeal.* The Administrative appeal shall:

(1) Be in writing and signed by the requester,

(2) Have conspicuously printed on the face of the envelope the words “Freedom of Information Act Appeal”;

(3) Reasonably describe, in accordance with §103.5(e), the records to which the appeal relates;

(4) Set forth the address where the requester desires to be notified of the determination on appeal;

(5) Specify the date of the initial request and the date and control number of the letter denying the initial request; and

(6) Petition the FOIA Appeals Officer at Headquarters, to grant the request for records and state any arguments in support thereof.

(c) *Disposition of appeal.* The Customs officer or employee who receives an appeal shall stamp the date of receipt on the appeal and the stamped date is the date of receipt for purposes of the appeal. FOIA Appeals Officer at Headquarters, shall acknowledge and advise the appellant of the date of receipt and of the date that a response is due under this paragraph. The FOIA Appeals Officer shall affirm the initial denial (in whole or in part) or grant the request for records and notify the appellant of that determination by letter mailed within 20 days (exclusive of Saturdays, Sunday, and legal public holidays) after the date of receipt of the appeal,

unless extended pursuant to §103.8(a). The purpose of the letter of denial is to inform the appellant of the reason for the denial and the right to judicial review of that denial under 5 U.S.C. 552(a)(4)(B). If the FOIA Appeals Officer is unable to act on an appeal within the 20-day period (or any extension thereof pursuant to §103.8(a)), the FOIA Appeals Officer shall send written notice of that fact to the appellant. In those circumstances, an appellant is entitled to commence an action in a district court as provided in §103.9 despite any continuation in the processing of an appeal. However, the appellant may also be invited, in the alternative, to agree to a voluntary extension of time in which to decide the appeal. A voluntary extension does not waive the right of the appellant to ultimately commence an action in a United States district court on the appellant’s request.

[T.D. 81-168, 46 FR 32565, June 24, 1981, as amended by T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

**§ 103.8 Time extensions.**

(a) *Ten-day extension.* In unusual circumstances, the Customs officer who is responsible for deciding an initial request or an appeal may extend the time limitations set in §§103.6 and 103.7 after written notice to the requester or appellant. This notice must state the reason for the extension and the date on which the determination is expected to be dispatched. Any extension or extensions of time are limited to a cumulative total of not more than 10 additional working days. (For example, if an extension pursuant to this paragraph is invoked in connection with an initial determination, any unused days of the extension period may be invoked in connection with the determination on administrative appeal by written notice from the FOIA Appeals Officer, who is to make the appellate determination. If no extension is sought for the initial determination, an extension of 10 days may be added to the ordinary 20-day period for appellant review.) Generally, extensions will be invoked only to the extent reasonably necessary to properly respond to a request. As used in this paragraph, “unusual