

## Merit Systems Protection Board

## § 1204.2

action it may order includes, but is not limited to, the following:

(1) Cancellation of any personnel action related to the prohibited personnel practice;

(2) Rescission of any action related to the cancelled personnel action;

(3) Removal of any reference, record, or document within an employee's official personnel folder that is related to the prohibited personnel practice;

(4) Award of back pay and benefits;

(5) Award of attorney fees;

(6) Other remedial measures to reverse the effects of a prohibited personnel practice; and

(7) The agency's submission of a verified report of its compliance with the Board's order.

### § 1203.22 Enforcement of order.

(a) Any party may ask the Board to enforce a final order it has issued under this part. The request may be made by filing a petition for enforcement with the Office of the Clerk of the Board and by serving a copy of the petition on each party to the regulation review. The request may be filed in electronic form, provided the requirements of § 1201.14 are satisfied. The petition must include specific reasons why the petitioning party believes that there has been a failure to comply with the Board's order.

(b) The Board will take all action necessary to determine whether there has been compliance with its final order. If it determines that there has been a failure to comply with the order, it will take actions necessary to obtain compliance.

(c) Where appropriate, the Board may initiate the enforcement procedures described in 5 CFR 1201.183(c).

[54 FR 23632, June 2, 1989, as amended at 68 FR 59864, Oct. 20, 2003; 69 FR 57631, Sept. 27, 2004]

## PART 1204—AVAILABILITY OF OFFICIAL INFORMATION

### Subpart A—Purpose and Scope

Sec.

1204.1 Purpose.

1204.2 Scope.

### Subpart B—Procedures for Obtaining Records Under the Freedom of Information Act

1204.11 Requests for access to Board records.

1204.12 Fees.

1204.13 Denials.

1204.14 Requests for access to confidential commercial information.

1204.15 Records of other agencies.

### Subpart C—Appeals

1204.21 Submission.

1204.22 Decision on appeal.

AUTHORITY: 5 U.S.C. 552 and 1204, Pub. L. 99-570, Pub. L. 104-231, and E.O. 12600.

SOURCE: 64 FR 51039, Sept. 21, 1999, unless otherwise noted.

### Subpart A—Purpose and Scope

#### § 1204.1 Purpose.

This part implements the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, by stating the procedures to follow when requesting information from the Board, and by stating the fees that will be charged for that information.

#### § 1204.2 Scope.

(a) For the purpose of this part, the term *record* and any other term used in reference to information includes any information that would be a Board record subject to the requirements of 5 U.S.C. 552 when maintained by the Board in any format including an electronic format. All written requests for information that are not processed under part 1205 of this chapter will be processed under this part. The Board may continue, without complying with this part, to furnish the public with the information it has furnished in the regular course of performing its official duties, unless furnishing the information would violate the Privacy Act of 1974, 5 U.S.C. 552a, or another law.

(b) When the subject of the record, or the subject's representative, requests a record from a Privacy Act system of records, as that term is defined by 5 U.S.C. 552a(a)(5), and the Board retrieves the record by the subject's name or other personal identifier, the Board will handle the request under

## § 1204.11

## 5 CFR Ch. II (1–1–08 Edition)

the procedures and fees shown in part 1205 of this chapter. When a third party requests access to those records, without the written consent of the subject of the record, the Board will handle the request under this part.

(c) When a party to an appeal requests a copy of a tape recording, video tape, or transcript (if one has been prepared) of a hearing that the Board or a judge held under part 1201 or part 1209 of this chapter, the Board will handle the request under § 1201.53 of this chapter. When someone other than a party to the appeal makes this request, the Board will handle the request under this part.

(d) In accordance with 5 U.S.C. 552(a)(2), the Board's final opinions and orders (including concurring and dissenting opinions), those statements of policy and interpretations adopted by the Board and that are not published in the FEDERAL REGISTER, administrative staff manuals and instructions to staff that affect a member of the public, and agency records processed and disclosed in response to a FOIA request that the Board determines have been or are likely to become the subject of additional requests for basically the same records and a general index of those records, are available for public review and copying in the Board's Headquarters' Library, 1615 M Street, NW., Washington, DC 20419-0001, and on the Board's World Wide Web site at <http://www.mspb.gov>.

[64 FR 51039, Sept. 21, 1999, as amended at 65 FR 48885, Aug. 10, 2000]

### Subpart B—Procedures for Obtaining Records Under the Freedom of Information Act

#### § 1204.11 Request for access to Board records.

(a) *Sending a request.* A person may request a Board record under this part by writing to the office that has the record. If the requester believes that the records are located in a regional or field office, the request must be sent to that office. A list of the addresses of the Board's regional and field offices are in appendix II of part 1201 of this chapter and on the Board's World Wide Web site at <http://www.mspb.gov>. Other

requests must be sent to the Clerk of the Board, 1615 M Street, NW., Washington, DC 20419-0001. Requests sent under this part must be clearly marked "Freedom of Information Act Request" on both the envelope and the request.

(b) *Description.* A request must describe the records wanted in enough detail for Board employees to locate the records with no more than a reasonable effort. Wherever possible, a request must include specific information about each record, such as the date, title or name, author, recipient, and subject matter of the record. In addition, if the request asks for records on cases decided by the Board, it must show the title of the case, the MSPB docket number, and the date of the decision.

(c) *Time limits and decisions.* If a request is not properly labeled or is sent to the wrong office, the time for processing the request will begin when the proper office receives it. Requests to the Board's headquarters will be decided by the Clerk of the Board. Requests to one of the regional or field offices will be decided by the Regional Director or Chief Administrative Judge. The Board will decide a request within 20 workdays after the appropriate office receives it, except under the conditions that follow.

(1) *Extension of time.* If "unusual circumstances" exist, the Board may extend the time for deciding the request by no more than 10 additional workdays. An example of unusual circumstances could be the need to find and retrieve records from regional or field offices or from federal records centers or the need to search, collect and or examine a large number of records which are demanded in a single request, or the need to talk to another agency with a substantial interest in the determination of the request. When the Board extends the time to decide the request, it will inform the requester in writing and describe the "unusual circumstances", and it will state a date on which a decision on the request will be made. If the "unusual circumstances" are such that the Board cannot comply with the request within the time limit, the Board will offer the requester an opportunity: