

Presidio Trust

§ 1007.5

(2) A request for documents that were classified by another agency shall be referred to that agency.

(c) *Consultation with submitters of commercial and financial information.* (1) If a request seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal government, the Presidio Trust shall provide the submitter with notice of the request whenever:

(i) The submitter has made a good faith designation of the information as commercially or financially sensitive, or

(ii) The Presidio Trust has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.

(2) Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(3) The notice to the submitter shall afford the submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The submitter's statement shall explain the basis on which the information is claimed to be exempt under FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement shall also include a certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(4) If a submitter's statement cannot be obtained within the time limit for processing the request under §1007.6, the requester shall be notified of the delay as provided in §1007.6(f).

(5) Notification to a submitter is not required if:

(i) The Presidio Trust determines, prior to giving notice, that the request for the record should be denied;

(ii) The information has previously been lawfully published or officially made available to the public;

(iii) Disclosure is required by a statute (other than FOIA) or regulation (other than this part);

(iv) Disclosure is clearly prohibited by a statute, as described in §1007.2(c)(3);

(v) The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter, if the submitter was specifically afforded an opportunity to make such a designation; however, a submitter will be notified of a request for information that was not designated as confidential at the time of submission, or a reasonable time thereafter, if there is substantial reason to believe that disclosure of the information would result in competitive harm;

(vi) The designation of confidentiality made by the submitter is obviously frivolous; or

(vii) The information was submitted to the Presidio Trust more than 10 years prior to the date of the request, unless the Presidio Trust has reason to believe that it continues to be confidential.

(6) If a requester brings suit to compel disclosure of information, the submitter of the information will be promptly notified.

§ 1007.5 Action on initial requests.

(a) *Authority.* (1) Requests shall be decided by the FOIA Officer.

(2) A decision to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the General Counsel.

(b) *Form of grant.* (1) When a requested record has been determined to be available, the FOIA Officer shall notify the requester as to when and where the record is available for inspection or, as the case may be, when and how copies will be provided. If fees are due, the FOIA Officer shall state the amount of fees due and the procedures for payment, as described in §1007.9.

(2) The FOIA Officer shall honor a requester's specified preference of form or format of disclosure (e.g., paper, microform, audiovisual materials, or electronic records) if the record is readily available to the Presidio Trust in the requested form or format or if the record is reproducible by the Presidio Trust with reasonable efforts in the requested form or format.

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(3) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with §1007.4(c), both the requester and the submitter shall be notified of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include:

(i) A statement of the reasons why the submitter's objections were not sustained;

(ii) A specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part; and

(iii) A specified disclosure date.

(4) If a claim of confidentiality has been found frivolous in accordance with §1007.4(c)(5)(vi) and a determination is made to release the information without consultation with the submitter, the submitter of the information shall be notified of the decision and the reasons therefor a reasonable number of days prior to the date on which disclosure is to be made.

(c) *Form of denial.* (1) A decision withholding a requested record shall be in writing and shall include:

(i) A listing of the names and titles or positions of each person responsible for the denial;

(ii) A reference to the specific exemption or exemptions authorizing the withholding;

(iii) If neither a statute nor an Executive order requires withholding, the sound ground for withholding;

(iv) 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; and

(v) A statement that the denial may be appealed and a reference to the procedures in §1007.7 for appeal.

(2) A decision denying a request for failure to reasonably describe requested records or for other procedural deficiency or because requested records

cannot be located shall be in writing and shall include:

(i) A description of the basis of the decision;

(ii) A list of the names and titles or positions of each person responsible; and

(iii) A statement that the matter may be appealed and a reference to the procedures in §1007.7 for appeal.

(d) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined by the FOIA Officer that they involve:

(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; or

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester 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.

(4) Within ten calendar days of receiving of a request for expedited processing, the FOIA Officer shall decide whether to grant the request for expedited processing and shall notify the requester of the decision. If a request for expedited processing is granted, the underlying FOIA request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§1007.6 Time limits for processing initial requests.

(a) *Basic limit.* Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within 20 working days after receipt of a request. This determination shall be communicated immediately to the requester.