

international passenger flights operating at Terminal B. A carrier must separately obtain approval from the Port Authority for Terminal B flights and request runway slots from the FAA under the current Level 3 designation Order. After the effective date for the Level 2 designation, carriers would continue to work with the Port Authority to synchronize with the relevant terminals and gates at EWR to the extent practicable. Under existing practice, the FAA regularly works with the Port Authority and carriers to reconcile differences between available terminal/gate and runway times. The FAA expects this process to continue under the Level 2 designation based on impacts to the availability of facilities. This necessary de-conflicting of carriers' requested terminal/gate and runway schedules is likely to be most significant in the initial transition from Level 3 to Level 2 in the Winter 2016 and Summer 2017 seasons.

#### Environmental Considerations

The FAA conducted an environmental screening for potential impacts to noise and air emissions relative to the change of the EWR designation from Level 3 to Level 2. Based on the screening, the FAA has determined that this action may be categorically excluded from further environmental analysis according to FAA Order 1050.1, "Environmental Impacts: Policies and Procedures," paragraph 5–6.6.f. Specifically, paragraph 5–6.6.f states that "Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment)" are categorically excluded from further environmental review.

The FAA conducted noise screening of the proposed action using Area Equivalent Method and determined that the action does not have the potential to cause a significant impact on noise levels of noise sensitive areas. In addition, the FAA conducted an analysis of air emissions using Aviation Environmental Design Tool and determined that the action does not have the potential to cause a significant impact on air quality or a violation of Federal, state, tribal, or local air quality standards under the Clean Air Act, 42 U.S.C. §§ 7401–7671q. Therefore, implementation of the airport level change is not expected to result in significant adverse impacts to the human environment. The implementation of this action is not expected to result in any extraordinary circumstances in accordance with FAA Order 1050.1. A copy of the categorical

exclusion has been placed in the docket associated with this action.

#### Future Operational Demand and Performance Reviews

The FAA will continue to regularly review and monitor performance at EWR, as well as carrier compliance with FAA-approved schedules. The FAA will continue to review data on actual operations, including the number of hourly and daily air traffic operations, runway capacity and utilization, aircraft fleet mix, scheduled and unscheduled demand, on-time performance relative to schedule, the number and duration of flight arrival and departure delays, airfield or other capacity changes, and air traffic control procedures. The FAA will publish a notice in April, 2016 announcing the schedule submission deadline and the declared runway capacity limits for the Winter 2016 scheduling season.

The FAA expects that delays at EWR will increase over current levels as flights are added, but an incremental increase in delays would not necessarily mean the FAA would revert to Level 3. The FAA's objective while working with carriers under the Level 2 process is to appropriately balance and maximize the use of the available runway capacity at EWR while maintaining an acceptable level of delay.

Issued in Washington, DC on April 1, 2016.

**Daniel E. Smiley,**

*Acting Vice President, System Operations Services.*

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## DEPARTMENT OF STATE

### 22 CFR Part 171

**RIN 1400–AD44**

**[Public Notice: 9510]**

#### Public Access to Information

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State (the Department) finalizes its revisions to its regulations implementing the Freedom of Information Act (FOIA) and the Privacy Act. The final rule reflects changes in FOIA and other statutes and consequent changes in the Department's procedures since the last revision of the Department's regulations on this subject.

**DATES:** This rule is effective on May 6, 2016.

**FOR FURTHER INFORMATION CONTACT:** Alice Kottmyer, Office of the Legal

Adviser, Office of Management, U.S. Department of State, *kottmyeram@state.gov*, (202) 647–2318.

**SUPPLEMENTARY INFORMATION:** On July 28, 2015, the Department published a notice of proposed rulemaking (NPRM) to update its FOIA and Privacy Act rules contained in 22 CFR part 171. See 80 FR 44898, and the discussion therein.

This rulemaking responds to public comments and finalizes the rule. The rule is finalized as published in the NPRM, except for minor format edits; modifications, as indicated below, in response to public comments; and the addition of one clause to § 171.24(a), which codifies a longstanding provision of the Privacy Act (5 U.S.C. 552a(c)(3)), and which was inadvertently omitted from the NPRM. Since § 171.24(a) is substantially the same as 5 U.S.C. 552a(c)(3) in the Privacy Act itself, it need not be published for comment.

#### Response to Public Comments

The Department would like to thank the members of the public who invested time in reviewing the proposed changes to the FOIA and Privacy Act regulations, and for providing very useful feedback.

#### First Public Comment

The first commenter expressed concern about the proposal for the Department to charge a fee of 15 cents per page of duplication. The commenter pointed out that present day photocopying and scanning is relatively cheap, and expressed a belief that the Department's lease arrangements reflect a significantly lesser per page cost than 15 cents; in addition, he stated that other agencies' costs vary and might be lower, and no evidence was provided on how the Department formulated the fee. He stated that some other agencies have lowered duplication costs in their regulations in the last two years to be in line with actual direct costs.

#### Department Response

The fee charged for photocopying at the Department is 15 cents per page, which is charged at a standard rate throughout the Department for copying services. This charge is based on the costs calculated by examining paper costs, machinery, and services provided to produce a photocopy. Other agencies and departments charge FOIA duplication fees that range from five cents to twenty cents per page. The Department's duplication fee of fifteen cents per page is in line with what other agencies and departments charge for duplication. For this reason, the Department declines to change the duplication fee as suggested.

### *Second Public Comment*

This comment expressed the following six points:

1. In proposed § 171.11, Processing requests, the proposed regulations state that a requester “shall be considered to have agreed to pay applicable fees up to \$25, unless a fee waiver is granted.” The commenters believe that the Department should follow Department of Justice’s regulations and provide that no fees will be assessed if the fees are under \$25, which is their approximate cost of collecting fees. Also, they believe the Department should at least limit the presumption to instances in which a fee waiver has not been requested, per the Department of Justice’s superseded regulations.

### *Department Response to Point 1*

The Department accepts the Justice Department’s estimate that the cost to collect fees is approximately \$25.00. The Department agrees to revise § 171.14, “Fees to be charged,” to state the current cost of collecting a fee is \$25.00; therefore, the Department will process requests without assessing fees up to \$25.00. The Department will also revise this section to state that the Department will attempt to notify the requester if fees are estimated to exceed \$25.00, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated.

2. In proposed § 171.11(f), the commenters are concerned that the appeal of expedited processing is submitted to the Director of IPS, the same Director who is responsible for issuing initial determinations on requests. The regulations should clearly state if the Director is receiving the appeals on behalf of the Appeal Review Panel.

### *Department Response to Point 2*

The Department’s Appeals Review Panel does not review appeals from denials of expedited processing. See 22 CFR 171.13(a). For this reason, the Department will not revise § 171.11(f) as suggested. The Department will revise § 171.11(a) to state that the Division Chief, Requester Liaison Division, in the Office of Information Programs and Services, will issue all initial decisions on whether a request is valid or perfected, and whether to grant or deny requests for a fee waiver and for expedited processing.

3. The acknowledgement letter in subsection (i) should include the receipt date, to assist requesters with determining an agency’s statutory response deadline.

### *Department Response to Point 3*

The Department will revise § 171.11(e), “Receipt of request”, to include a subsection that states that upon receipt IPS will send an acknowledgement letter to the requester that will identify the date of receipt of the request in the proper component, as identified in § 171.11(a), and the case tracking number. Subsection (i) sets forth the information that is available to a requester by contacting the FOIA Requester Service Center.

4. The Department’s proposed consultation procedures in subsection (m) are limited to agencies only. They do not account for consultations that may be required with the Office of the White House Counsel. The commenters believe the regulations should address its FOIA-related consultations with the Office of White House Counsel.

### *Department Response to Point 4*

Section 171.11(m) “Referrals and Consultations” states that the Department will refer documents created by another agency to that agency for a release determination. In practice, the implementation of this section turns on the identity of the originator of a document and not on whether the originator works in an agency or department or other governmental entity. The Department will revise subsection (m) as follows: “If the Department determines that Department records retrieved as responsive to the request are of interest to another agency or Federal government office, it may consult with the other agency or office before responding to the request.”

5. Business information. The Department should specify a minimum number of days that submitters will have to provide comments and to file a “reverse-FOIA” lawsuit, respectively. This is preferred over a “reasonable period of time”. The commenters recognize that circumstances might warrant providing one submitter with more time than another. They believe five business days would be considered a “reasonable period of time,” as Executive Order 12600 requires.

### *Department Response to Point 5*

The Department declines to revise this subsection as suggested, because providing some flexibility to submitters in seeking input in response to a notice issued under this subsection ensures the best outcome for the requesters, the submitters, and the Department.

6. In § 171.16, Waiver or reduction of fees, the commenters are concerned with the Department responding to fee waiver appeals within “30 working

days” from the date of receipt. Unless unusual circumstances exist, an agency must make a determination on a fee waiver appeal within 20 working days. Furthermore, they ask for clarification on who will adjudicate the fee waiver appeals, as it is presumably not the “Director of IPS” who issues fee determinations.

### *Department Response to Point 6*

The Department will revise § 171.16(e) to state that the Department must respond to an appeal of a denial of a fee waiver or fee reduction request within 20 working days. The Department’s Appeals Review Panel does not review appeals from a denial of a fee waiver. See 22 CFR 171.13(a). The Department will revise § 171.16 (e) to state that the Division Chief of the Requester Liaison Division in IPS will issue all initial decisions on whether to grant or deny requests for a fee waiver and that appeals should be directed to the Director of IPS.

### *Third Public Comment*

The third public comment was submitted by the National Archives and Records Administration’s Office of Government Information Services (OGIS). OGIS suggested adding to the end of § 171.13(d) the following or similar language: “If the requester elects to engage in the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration, the Department of State must actively engage as a partner to the mediation process in an attempt to resolve the dispute.”

### *Department Response*

The Department understands the importance of resolving disputes between FOIA requesters and Federal agencies, and will revise this subsection as follows: “When the Department of State engages in the mediation services offered by OGIS, it will work in good faith as a partner to the mediation process in an attempt to resolve the dispute. The Department reserves its right to decide on a case-by-case basis whether to enter into formal mediation offered by OGIS.”

### *Fourth Public Comment*

This comment, from Cause of Action, suggests that the Department revise its definition of a representative of the news media, following an opinion of the District of Columbia Circuit Court in *Cause of Action v. Federal Trade Commission*. While the Department’s proposed rule states that those requesting news media status “make

their products available to the general public.” Cause of Action requests that the Department include a non-exhaustive list of the methods an agency must consider when analyzing this element of the test, including: “newsletters, press releases, press contacts, a Web site, and planned reports.”

Furthermore, Cause of Action raised concern over the “middleman standard” not being included in the Department’s regulatory definition. Cause of Action stated that the D.C. Circuit Court “disagreed with the suggestion that a public interest advocacy organization cannot satisfy the statute’s distribution criterion because it is ‘more like a middleman for dissemination to the media than a representative of the media itself’. . . There is no indication that Congress meant to distinguish between those who reach their ultimate audiences directly and those who partner with others to do so.” Cause of Action believes that the final rule should draw a distinction between those that market FOIA information for their direct economic benefit and the Court’s direction that “public interest advocacy organizations” can “partner with others” to disseminate their distinct works.

#### *Department Response*

The regulation states that the examples provided regarding who may qualify for news media status are not all-inclusive; therefore, the Department does not believe that providing another non all-inclusive list would help shed light on the process the Department employs.

The Department agrees that this information may be helpful for requesters to understand how IPS analyzes a request for representative in the news media status. For this reason, the Department will add this information to its public FOIA Web site.

In the second comment (regarding the “middleman standard”), the Office of Management and Budget (“OMB”) has policy-making responsibility for issuing fee guidance. For this reason, the Department defers to OMB with regard to this suggestion.

#### **Regulatory Findings**

##### *Administrative Procedure Act*

The Department published this rule under the provisions of 5 U.S.C. 553, with a 60-day public comment period.

##### *Regulatory Flexibility Act*

The Department of State, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has

reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

##### *Unfunded Mandates Act of 1995*

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

##### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

##### *Executive Order 12988—Civil Justice Reform*

The Department has reviewed this regulation in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

##### *Executive Orders 12372 and 13132—Federalism*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

##### *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

The Department has determined that this rulemaking will not have tribal implications, will not impose

substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

##### *Executive Orders 12866 and 13563—Improving Regulation and Regulatory Review*

The Department has considered this rule in light of these Executive Orders and affirms that this regulation is consistent with the guidance therein. The benefits of this rulemaking for the public include, but are not limited to, providing an up-to-date procedure for requesting information from the Department. The Department is aware of no cost to the public from this rulemaking.

##### *Paperwork Reduction Act*

This rule does not impose or revise any reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

#### **List of Subjects in 22 CFR Part 171**

Administrative practice and procedure, Freedom of information, Privacy.

For the reasons set forth in the preamble, 22 CFR part 171 is revised to read as follows:

#### **PART 171—PUBLIC ACCESS TO INFORMATION**

##### **Subpart A—General Policy and Procedures**

Sec.

- 171.1 General provisions.
- 171.2 Types of records maintained.
- 171.3 Records available on the Department’s Web site.
- 171.4 Requests for information—types and how made.
- 171.5 Archival records.

##### **Subpart B—Freedom of Information Act Provisions**

- 171.10 Purpose and scope.
- 171.11 Processing requests.
- 171.12 Business information.
- 171.13 Appeal of denial of request for records.
- 171.14 Fees to be charged.
- 171.15 Miscellaneous fee provisions.
- 171.16 Waiver or reduction of fees.
- 171.17 Resolving disputes.
- 171.18 Preservation of records.

##### **Subpart C—Privacy Act Provisions**

- 171.20 Purpose and scope.
- 171.21 Definitions.
- 171.22 Request for access to records.
- 171.23 Request to amend or correct records.
- 171.24 Request for an accounting of record disclosures.
- 171.25 Appeals from denials of PA amendment requests.
- 171.26 Exemptions.

### Subpart D—Process To Request Public Financial Disclosure Reports

171.30 Purpose and scope.

171.31 Requests.

**Authority:** 22 U.S.C. 2651a; 5 U.S.C. 552, 552a; E.O. 12600 (52 FR 23781); Pub. L. 95–521, 92 Stat. 1824 (codified as amended at 5 U.S.C. app. 101–505); 5 CFR part 2634.

### Subpart A—General Policy and Procedures

#### § 171.1 General provisions.

(a) This subpart contains the rules that the Department of State and the Foreign Service Grievance Board (FSGB), an independent body, follow in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, and the Privacy Act of 1974 (PA), 5 U.S.C. 552a, as amended. Records of the Department shall be made available to the public upon request made in compliance with the access procedures established in this part, except for any records exempt by law from disclosure. Regulations at 22 CFR 172.1 through 172.9 govern, *inter alia*, the service of subpoenas, court orders, and other demands or requests for official Department information or action, as well as the Department's response to demands or requests for official Department information or action in connection with legal proceedings in the United States to which the Department is not a party.

(b) **Definitions.** (1) For purposes of subparts A, B, and D of this part, *record* means information regardless of its physical form or characteristics—including information created, stored, and retrievable by electronic means—that is created or obtained by the Department and under the control of the Department at the time of the request, including information maintained for the Department by an entity under Government contract for records management purposes. It does not include records that are not already in existence and that would have to be created specifically to respond to a request. Information available in electronic form shall be searched and compiled in response to a request unless such search and compilation would significantly interfere with the operation of the Department's automated information systems.

(2) For purposes of subparts A, B, C, and D of this part, *Department* means the United States Department of State, including its field offices and Foreign Service posts abroad.

#### § 171.2 Types of records maintained.

Most of the records maintained by the Department pertain to the formulation

and execution of U.S. foreign policy. The Department also maintains certain records that pertain to individuals, such as applications for U.S. passports, applications for visas to enter the United States, records on consular assistance given abroad by U.S. Foreign Service posts to U.S. citizens and legal permanent residents, and records on Department employees. Further information on the types of records maintained by the Department may be obtained by reviewing the Department's records disposition schedules, which are available on the Department's Web site at [www.foia.state.gov](http://www.foia.state.gov).

#### § 171.3 Records available on the Department's Web site.

Information that is required to be published in the **Federal Register** under 5 U.S.C. 552(a)(1) is regularly updated by the Department and found on its public Web site: [www.state.gov](http://www.state.gov). Records that are required by the FOIA to be made available for public inspection and copying under 5 U.S.C. 552(a)(2) also are available on the Department's public Web site. Included on the Department's FOIA home page, [www.foia.state.gov](http://www.foia.state.gov), are links to other sites where Department information may be available, links to the Department's PA systems of records, and the Department's records disposition schedules. Also available on the FOIA Web site are certain records released by the Department pursuant to requests under the FOIA and compilations of records reviewed and released in certain special projects. In addition, see 22 CFR part 173 regarding materials disseminated abroad by the Department.

#### § 171.4 Requests for information—types and how made.

(a) Requests for records made in accordance with subparts A, B, and C of this part must be made in writing and may be made by mail addressed to the Office of Information Programs and Services (IPS), U.S. Department of State, State Annex 2 (SA–2), 515 22nd Street, NW., Washington, DC 20522–8100, or by fax to (202) 261–8579, or through the Department's FOIA Web site ([www.foia.state.gov](http://www.foia.state.gov)). PA requests may be made by mail or fax only. IPS does not accept requests submitted by email.

(1) Requests for passport records that are covered under PA System of Records Notice 26, including passport records issued from 1925 to present, should be mailed to U.S. Department of State, Law Enforcement Liaison Division, CA/PPT/S/L/LE, 44132 Mercure Cir, P.O. Box 1227, Sterling, VA 20166. Further guidance on obtaining passport records

is available on the Department's Web site: [travel.state.gov/content/passports/english/passports/services/obtain-copies-of-passport-records.html](http://travel.state.gov/content/passports/english/passports/services/obtain-copies-of-passport-records.html).

(2) Requests for records of the Office of Inspector General (OIG) may be submitted to U.S. Department of State, Office of Inspector General, Office of General Counsel, Washington, DC 20520–0308, ATTN: FOIA officer. In addition, FOIA requests seeking OIG records may be submitted via email to [oigfoia@state.gov](mailto:oigfoia@state.gov), which is preferred. PA requests are accepted by mail only. Guidance is available on the OIG's Web site: [oig.state.gov/foia/index.htm](http://oig.state.gov/foia/index.htm).

(3) All other requests for other Department records must be submitted to the Office of Information Programs and Services by one of the means noted above. The Office of Information Programs and Services, the Law Enforcement Liaison Division of the Office of Passport Services, and the OIG are the only Department components authorized to accept FOIA requests submitted to the Department.

(4) Providing the specific citation to the statute under which a requester is requesting information will facilitate the processing of the request by the Department. The Department automatically processes requests for information maintained in a PA system of records under both the FOIA and the PA to provide the requester with the greatest degree of access to the requester. Such information may be withheld only if it is exempt from access under both laws; if the information is exempt under only one of the laws, it must be released.

(b) Although no particular format is required, a request must reasonably describe the Department records that are sought. To the extent that requests are specific and include all pertinent details about the requested information, it will be easier for the Department to locate responsive records. For FOIA requests, such details include the subject, timeframe, names of any individuals involved, a contract number (if applicable), and reasons why the requester believes the Department may have records on the subject of the request.

(c) While every effort is made to guarantee the greatest possible access to all requesters regardless of the statute(s) under which the information is requested, the following guidance is provided for the benefit of requesters:

(1) The Freedom of Information Act applies to requests for records concerning the general activities of government and of the Department in particular (see subpart B of this part).

(2) The Privacy Act applies to requests from U.S. citizens or legal permanent resident aliens for records that pertain to them that are maintained by the Department in a system of records retrievable by the individual's name or personal identifier (see subpart C of this part).

(d) As a general matter, information access requests are processed in the order in which they are received. However, if the request is specific and the search can be narrowed, it may be processed more quickly. Additionally, FOIA requests granted expedited processing will be placed in the expedited processing queue (see § 171.11(f) for more information). Multi-tracking of FOIA requests is also used to manage requests (see § 171.11(h)).

#### § 171.5 Archival records.

The Department ordinarily transfers records designated as historically significant to the National Archives when they are 25 years old. Accordingly, requests for some Department records 25 years old or older should be submitted to the National Archives by mail addressed to Special Access and FOIA Staff (NWCTF), 8601 Adelphi Road, Room 5500, College Park, MD 20740; by fax to (301) 837-1864; or by email to [specialaccess\\_foia@nara.gov](mailto:specialaccess_foia@nara.gov). The Department's Web site, [www.foia.state.gov](http://www.foia.state.gov), has additional information regarding archival records.

### Subpart B—Freedom of Information Act Provisions

#### § 171.10 Purpose and scope.

This subpart contains the rules that the Department follows under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. The rules should be read together with the FOIA, which provides additional information about access to records and contains the specific exemptions that are applicable to withholding information, the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Guidelines), and information located at [www.foia.state.gov](http://www.foia.state.gov). The Department processes records maintained in a Privacy Act (PA) system of records that are determined to be exempt from disclosure under the PA under the FOIA as well. As a result, requests that seek such records are also subject to this subpart.

#### § 171.11 Processing requests.

(a) *In general.* (1) Subject to paragraph (a)(2) of this section, the Director of the Office of Information Programs and

Services (IPS) is responsible for initial action on all FOIA requests for Department records with two exceptions: Requests submitted directly to the Office of Inspector General (OIG), which receives and processes requests for OIG records; and the Office of Passport Services in the Bureau of Consular Affairs (PPT), which receives and processes requests for passport records (see § 171.4(a)). Once received by IPS, all requests for records coming under the jurisdiction of the following bureaus or offices are processed by those bureaus, although IPS may provide review and coordination support to these bureaus/offices in some situations: the Bureau of Consular Affairs' Office of Visa Services, Office of Passport Services (except for information identified in § 171.4(a)), and Office of Overseas Citizens Services; the Bureau of Diplomatic Security; the Bureau of Human Resources; the Office of Medical Services; and the Foreign Service Grievance Board (FSGB). Additionally, the FSGB, as an independent body, processes all FOIA requests seeking access to its records and responds directly to requesters.

(2) The Division Chief, Requester Liaison Division, in the Office of Information Programs and Services, shall issue all initial decisions on whether a request is valid or perfected, and whether to grant or deny requests for a fee waiver or for expedited processing.

*Definitions.* The following definitions apply for purposes of this section:

(1) *Control* means the Department's legal authority over a record, taking into account the ability of the Department to use and dispose of the record, the intent of the record's creator to retain or relinquish control over the record, the extent to which Department personnel have read or relied upon the record, and the degree to which the record has been integrated into the Department's record-keeping systems or files.

(2) *Urgently needed information.* The information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. Information of historical interest only or information sought for litigation or commercial activities would not generally qualify, nor would a news media publication or broadcast deadline unrelated to the breaking nature of the story.

(3) *Actual or alleged Federal government activity.* The information concerns actual or alleged actions taken or contemplated by the government of the United States, or by one of its

components or agencies, including the Congress.

(4) *Unusual circumstances* means:

(i) The need to search for and collect the requested records from Foreign Service posts or Department offices other than IPS;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of distinct records; or

(iii) The need to consult with another agency or other agencies that has/have a substantial interest in the records, or among two or more Department components that have a substantial subject-matter interest therein. In the majority of requests received by the Department unusual circumstances exist due to the need to search in multiple bureaus/offices/posts located around the globe.

(c) *Form of request and response.* A requester may ask for any information he or she believes the Department has in its possession or control. The requester must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort. The more specific the information the requester furnishes, the more likely that Department personnel will be able to locate responsive records if they exist. Any records provided in response to a request shall be provided in the form or format requested if the records are readily reproducible in that form or format.

(d) *Agreement to pay fees.* By making a FOIA request, the requester shall be considered to have agreed to pay all applicable fees up to \$25, unless a fee waiver is granted. IPS will confirm this agreement in an acknowledgement letter. When making a request, the requester may specify a willingness to pay a greater or lesser amount. If the Department determines that costs and fees will exceed the amount agreed to by the requester, the Department shall inform the requester of estimated fees and process up to the amount of the original agreement, unless a new agreement is made.

(e) *Receipt of request.* The Department is in receipt of a request when it reaches IPS, OIG, or PPT, depending on which office is the intended recipient. At that time, the Department shall send an acknowledgement letter to the requester that identifies the date of receipt of the request in the proper component (IPS, OIG, or PPT), and the case tracking number. The Department (IPS, OIG, or PPT) has 20 working days in which to determine whether to comply with a perfected request. Regardless of which of the three offices authorized to receive

FOIA requests receives the request (whether IPS, OIG, or PPT), the Department shall have no more than 10 working days to direct a request to the appropriate office (whether IPS, OIG, or PPT), at which time the 20-day limit for responding to the request will commence. The 20-day period shall not be tolled by the Department except:

(1) The Department may make one request to the requester for clarifying information and toll the 20-day period while waiting for the requester's response; or

(2) If necessary to clarify with the requester issues regarding fees. In either case, the Department's receipt of the information from the requester ends the tolling period.

(f) *Expedited processing.* Requests shall receive expedited processing when a requester demonstrates that a "compelling need" for the information exists. A "compelling need" is deemed to exist where the requester can demonstrate one of the following:

(1) Failure to obtain requested information on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(2) The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal government activity. Requesters must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public in general, not just to a particular segment or group.

(3) Failure to release the information would impair substantial due process rights or harm substantial humanitarian interests.

(4) A request for expedited processing may be made at the time of the initial request for records or at any later time. The request for expedited processing shall set forth with specificity the facts on which the request is based. A notice of the determination whether to grant expedited processing shall be provided to the requester within 10 calendar days of the date of the receipt of the request in the appropriate office (whether IPS, OIG, or PPT). A denial of a request for expedited processing may be appealed to the Director of IPS within 30 calendar days of the date of the Department's letter denying the request. A decision in writing on the appeal will be issued within 10 calendar days of the receipt of the appeal. See § 171.4 for contact information.

(g) *Time limits.* The statutory time limit for responding to a FOIA request or to an appeal from a denial of a FOIA request is 20 working days. Whenever

the statutory time limit for processing a request cannot be met because of "unusual circumstances" as defined in the FOIA, and the Department extends the time limit on that basis, the Department shall, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. See § 171.11(b)(4). Where the extension exceeds 10 working days, the Department shall, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing. The Department shall make available its designated FOIA contact and its FOIA Public Liaison for this purpose.

(h) *Multi-track processing.* The Department uses three processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request. The Department also uses a processing track for requests in which the Department has granted expedited processing. The Department may provide requesters in a slower track an opportunity to limit the scope of their request in order to qualify for faster processing.

(i) *Tracking requests.* Requesters may contact IPS using the individualized tracking number provided to the requester in the acknowledgment letter, and the Department will provide, at a minimum, information indicating the date on which the agency received the request and an estimated date for completion.

(j) *Cut-off date.* In determining which records are responsive to a request, the Department ordinarily will include only records in its possession as of the date of initiation of the search for responsive records, unless the requester has specified an earlier cut-off date.

(k) *Electronic records.* Information maintained in electronic form shall be searched and compiled in response to a request unless such search and compilation would significantly interfere with the operation of the Department's automated information systems.

(l) *Segregation of records.* The Department will release any reasonably segregable portion of a record after redaction of the exempt portions. The amount of information redacted and the exemption under which the redaction is made shall be indicated on the released portion of the record unless including that indication would harm an interest protected by the exemption. If technically feasible, the amount of

information redacted and the exemption under which the redaction is made shall be indicated at the place in the record where the redaction was made.

(m) *Referrals and consultations.* (1) If the Department determines that records retrieved as responsive to the request were created by another agency, it ordinarily will refer the records to the originating agency for direct response to the requester. If the Department determines that Department records retrieved as responsive to the request are of interest to another agency or Federal government office, it may consult with the other agency or office before responding to the request.

(2) Whenever the Department refers any part of the responsibility for responding to a request to another agency, it shall document the referral, maintain a copy of the record that it refers, and notify the requester of the referral.

(3) Agreements regarding consultations and referrals. The Department may make agreements with other agencies to eliminate the need for consultations or referrals for particular types of records.

(4) The Department will make efforts to handle referrals and consultations according to the date that the referring agency initially received the FOIA request.

(5) The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. In such instances, the Department will coordinate with the originating agency to seek its views on the disclosability of the record(s).

(n) *Requests for information about individuals to be processed under the FOIA—(1) First-party requests.* A first-party request is one that seeks access to information pertaining to the person making the request.

(2) *Verification of personal identity.* To protect the personal information found in its files, the Department recommends that first-party requesters provide the following information so that the Department can ensure that records are disclosed only to the proper persons: the requester's full name, current address, citizenship or legal permanent resident alien status, and date and place of birth (city, state, and country). A first-party request should be signed, and the requester's signature should be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746 as a substitute for notarization.

(3) *Third-party requests.* A third-party request is one that seeks access to information pertaining to a third party (*i.e.*, an individual other than the person submitting the request). A third-party requester who is the legal representative of another person covered under the PA, and submits all requirements under subpart C of this part, will be treated as a first-party requester.

(i) A third-party requester may receive greater access to requested information by submitting information about the subject of the request that is set forth in paragraph (n)(1) of this section, and providing proof that that third party is deceased or the third party's authorization to the Department to release information about him- or herself to the requester. The third-party authorization: should take one of the following forms:

(ii) A signed and notarized authorization by the third party; or

(iii) A declaration by the third party made in compliance with the requirements set forth in 28 U.S.C. 1746 authorizing disclosure pertaining to the third party to the requester. The third-party authorization or declaration should be dated within six months of the date of the request. In addition, the Department's Certification of Identity form, DS-4240, can be used to provide authorization from a third party.

(iv) Please note that if a requester is seeking information about a third party and the information is located in a PA system of records, the requester should review subpart C of this part. By providing verification of identity and authorization under that subpart, the third party is treated as a first party for processing purposes. Without providing the required information listed in that subpart, the request will still be processed under the FOIA procedures in subpart B of this part.

(4) *Requests for visa information.* According to the Immigration and Nationality Act, 222(f) (8 U.S.C. 1202(f)), the records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States. Other information found in the visa file, such as information submitted as part of the application and information not falling within section 222(f) or another FOIA exemption may be provided. In order to provide more information to requesters seeking visa records, the following information

should be provided with the FOIA request for both the petitioner and the beneficiary: full name, as well as any aliases used; current address; date and place of birth (including city, state, and country); the type of visa (immigrant or non-immigrant); the country and Foreign Service post where the visa application was made; when the visa application was made; and whether the visa application was granted or denied; and if denied, on what grounds.

Providing additional information regarding the records sought will assist the Department in properly identifying the responsive records and in processing the request. In order to gain maximum access to any visa records that exist, attorneys or other legal representatives requesting visa information on behalf of a represented individual should submit a statement signed by both the petitioner and the beneficiary authorizing release of the requested visa information to the representative. Alternatively, the Department's form, DS-4240, may be used to certify the identity of the requester and to provide authorization from the petitioner and the beneficiary to release the requested information to the legal representative. Forms created by other Federal agencies will not be accepted.

(5) *Requests for passport records.* All passport records requests must meet the requirements found in § 171.22(d). If the PA requirements are not met, the requests will be processed under this subpart and access may be limited.

#### § 171.12 Business information.

(a) *Definitions.* The following definitions apply for purposes of this section:

(1) Business information means commercial or financial or proprietary intellectual information obtained by the Department from a submitter that may be exempt from disclosure as privileged or confidential under Exemption 4 of the FOIA.

(2) Submitter means any person or entity from which the Department obtains business information, directly or indirectly. The term includes corporations, partnerships, and sole proprietorships; state, local, and tribal governments; foreign governments, NGOs and educational institutions.

(b) *Designation of business information.* A submitter of information must use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers exempt from disclosure under FOIA Exemption 4. These designations will expire ten

years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Notice to submitters.* The Department shall provide a submitter with prompt written notice of a FOIA request that seeks its business information, or of an administrative appeal of a denial of such a request, whenever required under paragraph (d) of this section, except as provided in paragraph (e) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the information requested or include copies of the requested records or record portions containing the business information.

(d) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The information has been designated in good faith by the submitter as information considered exempt from disclosure under Exemption 4; or

(2) The Department has reason to believe that the information may be exempt from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure under that exemption or any other applicable exemption.

(e) *When notice is not required.* The notice requirements of paragraphs (c) and (d) of this section shall not apply if:

(1) The Department determines that the information is exempt from disclosure;

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

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous, except that, in such a case, the Department shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(f) *Opportunity to object to disclosure.* The Department will allow a submitter a reasonable time to respond to the notice described in paragraph (c) of this section and will specify that time period in the notice. If a submitter has any objections to disclosure, it should provide the component a detailed written statement that specifies all grounds for withholding the particular



information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The Department shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever the Department decides to disclose business information over the objection of a submitter, it shall give the submitter written notice, which shall include:

- (1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;
- (2) A description of the business information to be disclosed; and
- (3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Notice of lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the Department shall promptly notify the submitter.

(i) *Notice to requester.* Whenever the Department provides a submitter with notice and an opportunity to object to disclosure under paragraph (f) of this section, the Department shall also notify the requester. Whenever the Department notifies a submitter of its intent to disclose requested business information under paragraph (g) of this section, the Department shall also notify the requester. Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the Department shall notify the requester.

### **§ 171.13 Appeal of denial of request for records.**

(a) Any denial, in whole or in part, of a request for Department records under the FOIA may be administratively appealed to the Appeals Review Panel of the Department. This appeal right includes the right to appeal the determination that no records responsive to the request exist in Department files. Appeals must be postmarked within 60 calendar days of the date of the Department's denial letter and sent to: Appeals Officer, Appeals Review Panel, Office of Information Programs and Services, at

the address set forth in § 171.4, or faxed to (202) 261-8571. The time limit for a response to an appeal is 20 working days, which may be extended in unusual circumstances, as defined in § 171.11(b). The time limit begins to run on the day the appeal is received by IPS. Appeals from denials of requests for expedited processing and for a fee reduction or waiver must be postmarked within 30 calendar days of the date of the Department's denial letter. See §§ 171.11(f)(4) (expedited processing appeals) and 171.16(e) (fee reduction/waiver appeals) of this subpart. See also § 171.4 for address information.

(b) Requesters may decide to litigate a request that is in the appeal stage. Once a summons and complaint is received by the Department in connection with a particular request, the Department will administratively close any open appeal regarding such request.

(c) Requesters should submit an administrative appeal, to IPS at the above address, of any denial, in whole or in part, of a request for access to FSGB records under the FOIA. IPS will assign a tracking number to the appeal and forward it to the FSGB, which is an independent body, for adjudication.

(d) *Decisions on appeals.* A decision on an appeal must be made in writing. A decision that upholds the Department's determination will contain a statement that identifies the reasons for the affirmance, including any FOIA and Privacy Act exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services of the National Archives and Records Administration (OGIS) as a non-exclusive alternative to litigation. If the Department's decision is remanded or modified on appeal, the requester will be notified of that determination in writing. The Department will thereafter further process the request in accordance with that appeal determination and respond directly to the requester. When the Department of State engages in the mediation services offered by OGIS, it will work in good faith as a partner to the mediation process in an attempt to resolve the dispute. The Department reserves its right to decide on a case-by-case basis whether to enter into formal mediation offered by OGIS.

### **§ 171.14 Fees to be charged.**

(a) *In general.* The Department shall charge fees that recoup the full allowable direct costs it incurs in processing a FOIA request in

accordance with the provisions of this part and with the OMB Guidelines. It shall use the most efficient and least costly methods to comply with requests for records made under the FOIA. The Department will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than \$25.00. The Department shall attempt to notify the requester if fees are estimated to exceed \$25.00. Such notification shall include a breakdown of the fees for search, review, or duplication, unless the requester has expressed a willingness to pay fees as high as those anticipated.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) Direct costs are those costs the Department incurs in searching for, duplicating, and, in the case of commercial use requests, reviewing records in response to a FOIA request. The term does not include overhead expenses.

(2) Search costs are those costs the Department incurs in looking for, identifying, and retrieving material, in paper or electronic form, that is potentially responsive to a request. The Department shall attempt to ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the Department and the requester. The Department may charge for time spent searching even if it does not locate any responsive record, or if it withholds the record(s) located as entirely exempt from disclosure. Further information on current search fees is available by visiting the FOIA home page at [www.foia.state.gov](http://www.foia.state.gov) and reviewing the Information Access Guide.

(3) Duplication costs are those costs the Department incurs in reproducing a requested record in a form appropriate for release in response to a FOIA request.

(4) Review costs are those costs the Department incurs in examining a record to determine whether and to what extent the record is responsive to a FOIA request and the extent to which it may be disclosed to the requester, including the page-by-page or line-by-line review of material within records. It does not include the costs of resolving general legal or policy issues that may be raised by a request.

(5) *Categories of requesters.* "Requester fee category" means one of the categories in which a requester will be placed for the purpose of determining whether the requester will be charged fees for search, review, and duplication. "Fee waiver" (see § 171.16)



means the waiver or reduction of processing fees that may be granted if the requester can demonstrate that certain statutory standards are satisfied. There are three categories of requesters: commercial use requesters, distinct subcategories of non-commercial requesters (educational and non-commercial scientific institutions, representatives of the news media), and all other requesters.

(i) A commercial use requester is a person or entity who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester belongs within this category, the Department will look at the way in which the requester intends to use the information requested. Commercial use requesters will be charged for search time, review time, and duplication in connection with processing their requests.

(ii) *Distinct subcategories of non-commercial requesters.* (A) An educational institution requester is a person or entity who submits a request under the authority of a school that operates a program of scholarly research. A requester in this category must show that the records are not sought for a commercial use and are not intended to promote any particular product or industry, but rather are sought to further scholarly research of the institution. A signed letter from the chairperson on an institution's letterhead is presumed to be from an educational institution. A student seeking inclusion in this subcategory who makes a request in furtherance of the completion of a course of instruction is carrying out an individual research goal and does not qualify as an educational institution requester. See a summary of the OMB Fee Guidelines at: <https://www.justice.gov/oip/foia-guide-2004-edition-fees-and-fee-waivers>. Educational institution requesters will not be charged for search and review time, and the first 100 pages of duplication will be provided free of charge.

(1) *Example 1.* A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

(2) *Example 2.* A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

(B) A non-commercial scientific institution requester is a person or

entity that submits a request on behalf of an institution that is not operated on a "commercial" basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. Non-commercial scientific institution requesters will not be charged for search and review time, and the first 100 pages of duplication will be provided free of charge.

(C) A representative of the news media is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term news means information that is about current events or that would be of current interest to the public. News media include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available to the general public. "Freelance" journalists shall be regarded as working for a news media entity if they can demonstrate a solid basis for expecting publication through that entity, such as by a contract or past publication record. These examples are not all-inclusive. A representative of the news media will not be charged for search and review time, and the first 100 pages of duplication will be provided free of charge.

(iii) All other requesters are persons or entities that do not fall into the requester categories defined above. All other requesters will be provided the first two hours of search time and the first 100 pages of duplication free of charge, and will not be charged for review time.

(c) *Searches for responsive records.* The Department charges the estimated direct cost of each search based on the average current salary rates of the categories of personnel doing the searches. Updated search and review fees are available at [www.foia.state.gov](http://www.foia.state.gov)

(d) *Manual (paper) and computer searches.* For both manual and computer searches, the Department shall charge the estimated direct cost of each search based on the average current salary rates of the categories of personnel doing the searches.

(e) *Review of records.* Only requesters who are seeking records for commercial use may be charged for time spent reviewing records to determine whether they are responsive, and if so, releasable. Charges may be assessed for the initial review only, *i.e.*, the review undertaken the first time the

Department analyzes the applicability of a specific exemption to a particular record or portion of a record

(f) *Duplication of records.* Paper copies of records shall be duplicated at a rate of \$0.15 per page. Other charges may apply depending on the type of production required. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication, the Department shall charge the direct costs.

(g) *Other charges.* The Department shall recover the full costs of providing services such as those below:

(1) Sending records by special methods such as express mail, overnight courier, etc.

(2) Providing records to a requester in a special format.

(3) Providing duplicate copies of records already produced to the same requester in response to the same request.

(h) *Payment.* Fees shall be paid by either personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed to the Office of Information Programs and Services, U.S. Department of State, State Annex 2 (SA-2), 515 22nd Street NW., Washington, DC, 20522-8100. A receipt for fees paid will be given upon request.

(i) *When certain fees are not charged.* The Department shall not charge search fees (or in the case of educational and non-commercial scientific institutions or representatives of the news media, duplication fees) when the Department fails to comply with any time limit under 5 U.S.C. 552(a)(6), unless unusual circumstances (see § 171.11(b)) or exceptional circumstances exist. Exceptional circumstances cannot include a delay that results from a predictable agency workload of requests unless the agency demonstrates reasonable progress in reducing its backlog of pending requests. See 5 U.S.C. 552(a)(6)(C). Apart from the stated provisions regarding waiver or reduction of fees, see § 171.16, the Department retains the administrative discretion to not assess fees if it is in the best interests of the government to do so.

#### § 171.15 Miscellaneous fee provisions.

(a) *Charging interest.* The Department shall begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was

sent. The fact that a fee has been received by the Department within the thirty-day grace period, even if not processed, shall stay the accrual of interest. Interest will be at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of the billing.

(b) *Charges for unsuccessful search or if records are withheld.* The Department may assess charges for time spent searching, even if it fails to locate the records or if the records located are determined to be exempt from disclosure.

(c) *Advance payment.* The Department may not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) It estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. In such a case, the Department shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or shall, in its discretion, require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay an assessed fee within 30 days of the date of its billing. In such a case, the Department shall require the requester to pay the full amount previously owed plus any applicable interest and to make an advance payment of the full amount of the estimated fee before the Department begins to process a new or pending request from that requester.

(3) If a requester has failed to pay a fee properly charged by another U.S. government agency in a FOIA case, the Department may require proof that such fee has been paid before processing a new or pending request from that requester.

(4) When the Department acts under paragraph (c)(1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (*i.e.*, 20 working days from receipt of initial requests and 20 working days from receipt of appeals, plus permissible extensions of these time limits), will begin only after the Department has received fee payments described in paragraphs (c)(1) and (2) of this section.

(d) *Aggregating requests.* When the Department reasonably believes that a requester, or a group of requesters acting in concert, has submitted multiple requests involving related matters solely to avoid payment of fees, the Department may aggregate those

requests for purposes of assessing processing fees.

(e) *Effect of the Debt Collection Act of 1982, as amended.* The Department shall comply with provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to effect repayment.

(f) *Itemization of charges.* The Department shall, where possible, provide the requester with a breakdown of fees charged indicating how much of the total charge is for search, review, and/or duplication for each specific request.

#### § 171.16 Waiver or reduction of fees.

(a) Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where the requester seeks a waiver or reduction of fees and the Department determines, in its discretion, that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(1) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government, the Department shall consider all four of the following factors:

(i) The subject of the request must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public’s understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area as well as the requester’s ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public’s understanding of the subject in question must be enhanced by the disclosure to a significant extent.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Department will consider the following factors:

(i) The existence and magnitude of a commercial interest, *i.e.*, whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure, *i.e.*, whether disclosure is primarily in the commercial interest of the requester.

(iii) Requests for purposes of writing a book, an article, or other publication will not be considered a commercial purpose.

(b) The Department may refuse to consider waiver or reduction of fees for requesters from whom unpaid fees remain owed to the Department for another FOIA request.

(c) Where only some of the records to be released satisfy the requirements for a waiver or reduction of fees, a waiver or reduction shall be granted for only those records.

(d) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Department and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received.

(e) The Division Chief of the Requester Liaison Division in IPS will issue all initial decisions on whether to grant or deny requests for a fee waiver. A decision to refuse to waive or reduce fees may be appealed to the Director of IPS within 30 calendar days of the date of the Department’s refusal letter. See § 171.4 for address information. A decision in writing on the appeal shall be issued within 20 working days of the receipt of the appeal.

#### § 171.17 Resolving disputes.

The Office of Government Information Services (OGIS) in the National Archives and Records Administration is charged with offering mediation services to resolve disputes between persons making FOIA requests and Federal agencies as a non-exclusive alternative to litigation. Additionally, the FOIA directs the Department’s FOIA Public Liaison to assist in the resolution of disputes. The Department will inform

requesters in its agency appeal response letter of services offered by OGIS and the FOIA Public Liaison. Requesters may reach the Department's FOIA Public Liaison at Office of Information Programs and Services, A/GIS/IPS/PP/LA, U.S. Department of State, Washington, DC 20522-8100, or at (202) 261-8484. Requesters may contact OGIS at Office of Government Information Services (OGIS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001; at [ogis@nara.gov](mailto:ogis@nara.gov); and at (202) 741-5770, or toll-free at (877) 684-6448.

#### **§ 171.18 Preservation of records**

The Department shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 14 of the National Archives and Records Administration. Records shall not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

### **Subpart C—Privacy Act Provisions**

#### **§ 171.20 Purpose and scope.**

This subpart contains the rules that the Department follows under the Privacy Act of 1974 (PA), 5 U.S.C. 552a, as amended. These rules should be read together with the text of the statute, which provides additional information about records maintained on individuals. The rules in this subpart apply to all records in systems of records maintained by the Department that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the Department. If any records retrieved pursuant to an access request under the PA are found to be exempt from access under that Act, they will be processed for possible disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. No fees shall be charged for access to or amendment of PA records.

#### **§ 171.21 Definitions.**

As used in this subpart, the following definitions shall apply:

(a) Individual means a citizen or a legal permanent resident alien (LPR) of the United States.

(b) Maintain includes maintain, collect, use, or disseminate.

(c) Record means any item, collection, or grouping of information about an individual that is maintained by the Department and that contains the individual's name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph.

(d) System of records means a group of any records under the control of the Department from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

#### **§ 171.22 Request for access to records.**

(a) *In general.* Requests for access to records under the PA must be made in writing and mailed to the Office of Information Programs and Service, the Office of Passport Services, or the Office of Inspector General at the addresses given in § 171.4. The Director of the Office of Information Programs and Services (IPS) is responsible for acting on all PA requests for Department records except for requests received directly by the Office of Inspector General, which processes its own requests for information, and the Office of Passport Services within the Bureau of Consular Affairs which receives directly and processes its own PA requests for information as described in PA System of Record Notice 26. Once received by IPS, all processing of PA requests coming under the jurisdiction of the Bureau of Consular Affairs/Visa Services Office and Overseas Citizens Services, the Bureau of Diplomatic Security, the Bureau of Human Resources, the Office of Medical Services, and the Foreign Service Grievance Board (FSGB) are handled by those bureaus or offices instead of IPS.

(b) *Description of records sought.* Requests for access should describe the requested record(s) in sufficient detail to permit identification of the record(s). At a minimum, requests should include the individual's full name (including maiden name, if appropriate) and any other names used, current complete mailing address, and date and place of birth (city, state and country). Helpful data includes the approximate time period of the record and the circumstances that give the individual reason to believe that the Department maintains a record under the individual's name or personal identifier, and, if known, the system of records in which the record is maintained. In certain instances, it may be necessary for the Department to request additional information from the requester, either to ensure a full search, or to ensure that a

record retrieved does in fact pertain to the individual.

(c) *Verification of personal identity.* The Department will require reasonable identification of individuals requesting records about themselves under the PA's access provisions to ensure that records are only accessed by the proper persons. Requesters must state their full name, current address, citizenship or legal permanent resident alien status, and date and place of birth (city, state, and country). The request must be signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746. If the requester seeks records under another name the requester has used, a statement, under penalty of perjury, that the requester has also used the other name must be included. Requesters seeking access to copies of the Passport Office's passport records must meet the requirements in paragraph (d) of this section.

(d) *Special requirements for passport records.* Given the sensitive nature of passport records and their use, requesters seeking access to copies of the Passport Office's passport records under the PA must submit a letter that is either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746, which includes the full name at birth and any subsequent name changes of the individual whose records are being requested (if submitting the request on behalf of a minor, provide the representative's full name as well); the date and place of birth of the individual whose records are being requested; the requester's current mailing address; and, if available, daytime telephone number and email address; the date or estimated date the passport(s) was issued; the passport number of the person whose records are being sought, if known; and any other information that will help to locate the records. The requester must also include a clear copy of both sides of the requester's valid Government-issued photo identification, e.g., a driver's license.

(e) *Authorized third party access.* The Department shall process all properly authorized third party requests, as described in this section, under the PA. In the absence of proper authorization from the individual to whom the records pertain, the Department will process third party requests under the FOIA. The Department's form, DS-4240, may be used to certify identity and provide third party authorization.

(1) *Parents and guardians of minor children.* Upon presentation of acceptable documentation of the parental or guardian relationship, a

parent or guardian of a U.S. citizen or LPR minor (an unmarried person under the age of 18) may, on behalf of the minor, request records under the PA pertaining to the minor. In any case, U.S. citizen or LPR minors may request such records on their own behalf.

(2) *Guardians.* A guardian of an individual who has been declared by a court to be incompetent may act for and on behalf of the incompetent individual upon presentation of appropriate documentation of the guardian relationship.

(3) *Authorized representatives or designees.* When an individual wishes to authorize another person or persons access to his or her records, the individual may submit, in addition to the identity verification information described in paragraph (c) or paragraph (d) of this section if the request is for passport records, a signed statement from the individual to whom the records pertain, either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746, giving the Department authorization to release records about the individual to the third party. The designated third party must submit identity verification information described in paragraph c. Third party requesters seeking access to copies of the Passport Office's records must submit a clear copy of both sides of a valid Government-issued photo identification (*e.g.*, a driver's license) in addition to the other information described above.

(f) *Referrals and consultations.* If the Department determines that records retrieved as responsive to the request were created by another agency, it ordinarily will refer the records to the originating agency for direct response to the requester. If the Department determines that Department records retrieved as responsive to the request are of interest to another agency, it may consult with the other agency before responding to the request. The Department may make agreements with other agencies to eliminate the need for consultations or referrals for particular types of records.

(g) *Records relating to civil actions.* Nothing in this subpart entitles an individual to access to any information compiled in reasonable anticipation of a civil action or proceeding.

(h) *Time limits.* The Department will acknowledge the request promptly and furnish the requested information as soon as possible thereafter.

#### **§ 171.23 Request to amend or correct records.**

(a) An individual has the right to request that the Department amend a

record pertaining to the individual that the individual believes is not accurate, relevant, timely, or complete.

(b) Requests to amend records must be in writing and mailed or delivered to the Office of Information Programs and Services at the address given in § 171.4, with ATTENTION: PRIVACY ACT AMENDMENT REQUEST written on the envelope. IPS will coordinate the review of the request with the appropriate offices of the Department. The Department will require verification of personal identity as provided in section 171.22(c) before it will initiate action to amend a record. Amendment requests should contain, at a minimum, identifying information needed to locate the record in question, a description of the specific correction requested, and an explanation of why the existing record is not accurate, relevant, timely, or complete. The request must be signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746. The requester should submit as much pertinent documentation, other information, and explanation as possible to support the request for amendment.

(c) All requests for amendments to records shall be acknowledged within 10 working days.

(d) In reviewing a record in response to a request to amend, the Department shall review the record to determine if it is accurate, relevant, timely, and complete.

(e) If the Department agrees with an individual's request to amend a record, it shall:

(1) Advise the individual in writing of its decision;

(2) Amend the record accordingly; and

(3) If an accounting of disclosure has been made, advise all previous recipients of the record of the amendment and its substance.

(f) If the Department denies an individual's request to amend a record, it shall advise the individual in writing of its decision and the reason for the refusal, and the procedures for the individual to request further review. See § 171.25.

#### **§ 171.24 Request for an accounting of record disclosures.**

(a) How made. Except where accountings of disclosures are not required to be kept, as set forth in paragraph (b) of this section, or where accountings of disclosures do not need to be provided to a requesting individual pursuant to 5 U.S.C. 552a(c)(3), an individual has a right to request an accounting of any disclosure

that the Department has made to another person, organization, or agency of any record about an individual. This accounting shall contain the date, nature, and purpose of each disclosure as well as the name and address of the recipient of the disclosure. Any request for accounting should identify each particular record in question and may be made by writing directly to the Office of Information Programs and Services at the address given in § 171.4.

(b) Where accountings not required. The Department is not required to keep an accounting of disclosures in the case of:

(1) Disclosures made to employees within the Department who have a need for the record in the performance of their duties; and

(2) Disclosures required under the FOIA.

#### **§ 171.25 Appeals from denials of PA amendment requests.**

(a) If the Department denies a request for amendment of such records, the requester shall be informed of the reason for the denial and of the right to appeal the denial to the Appeals Review Panel. Any such appeal must be postmarked within 60 working days of the date of the Department's denial letter and sent to: Appeals Officer, Appeals Review Panel, Office of Information Programs and Services, at the address set forth in § 171.4.

(b) Appellants should submit an administrative appeal of any denial, in whole or in part, of a request for access to FSGB records under the PA to IPS at the above address. IPS will assign a tracking number to the appeal and forward it to the FSGB, which is an independent body, for adjudication.

(c) The Appeals Review Panel will decide appeals from denials of PA amendment requests within 30 business days, unless the Panel extends that period for good cause shown, from the date when it is received by the Panel.

(d) Appeals Review Panel Decisions will be made in writing, and appellants will receive notification of the decision. A reversal will result in reprocessing of the request in accordance with that decision. An affirmance will include a brief statement of the reason for the affirmance and will inform the appellant that the decision of the Panel represents the final decision of the Department and of the right to seek judicial review of the Panel's decision, when applicable.

(e) If the Panel's decision is that a record shall be amended in accordance with the appellant's request, the Chairman shall direct the office responsible for the record to amend the

record, advise all previous recipients of the record of the amendment and its substance (if an accounting of previous disclosures has been made), and so advise the individual in writing.

(f) If the Panel's decision is that the amendment request is denied, in addition to the notification required by paragraph (d) of this section, the Chairman shall advise the appellant:

(1) Of the right to file a concise Statement of Disagreement stating the reasons for disagreement with the decision of the Department;

(2) Of the procedures for filing the Statement of Disagreement;

(3) That any Statement of Disagreement that is filed will be made available to anyone to whom the record is subsequently disclosed, together with, at the discretion of the Department, a brief statement by the Department summarizing its reasons for refusing to amend the record;

(4) That prior recipients of the disputed record will be provided a copy of any statement of disagreement, to the extent that an accounting of disclosures was maintained.

(g) If the appellant files a Statement of Disagreement under paragraph (f) of this section, the Department will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently access the record. When the disputed record is subsequently disclosed, the Department will note the dispute and provide a copy of the Statement of Disagreement. The Department may also include a brief summary of the reasons for not amending the record. Copies of the Department's statement shall be treated as part of the individual's record for granting access; however, it will not be subject to amendment by an individual under this part.

#### § 171.26 Exemptions.

Systems of records maintained by the Department are authorized to be exempt from certain provisions of the PA under both general and specific exemptions set forth in the Act. In utilizing these exemptions, the Department is exempting only those portions of systems that are necessary for the proper functioning of the Department and that are consistent with the PA. Where compliance would not interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, the applicable exemption may be waived, either partially or totally, by the Department or the OIG, in the sole discretion of the Department or the OIG, as appropriate. Records exempt under 5

U.S.C. 552a(j) or (k) by the originator of the record remain exempt if subsequently incorporated into any Department system of records, provided the reason for the exemption remains valid and necessary.

(a) *General exemptions.* If exempt records are the subject of an access request, the Department will advise the requester of their existence and of the name and address of the source agency, unless that information is itself exempt from disclosure.

(1) Individuals may not have access to records maintained by the Department that are maintained or originated by the Central Intelligence Agency under 5 U.S.C. 552a(j)(1).

(2) In accordance with 5 U.S.C. 552a(j)(2), individuals may not have access to records maintained or originated by an agency or component thereof that performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of:

(i) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(ii) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(iii) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. The reason for invoking these exemptions is to ensure effective criminal law enforcement processes. Records maintained by the Department in the following systems of records are exempt from all of the provisions of the PA except paragraphs (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (e)(7), (e)(9), (e)(10), and (e)(11), and (i), to the extent to which they meet the criteria of section (j)(2) of 5 U.S.C. 552a. The names of the systems correspond to those published in the **Federal Register** by the Department.

Office of Inspector General Investigation Management System. STATE-53.

Information Access Program Records. STATE-35.

Risk Analysis and Management. STATE-78.

Security Records. STATE-36.

(b) *Specific exemptions.* Portions of the following systems of records are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), and (4), (G), (H), and (I), and (f). The names of the systems correspond to those published in the **Federal Register** by the Department.

(1) *Exempt under 5 U.S.C. 552a(k)(1).* Records contained within the following systems of records are exempt under this section to the extent that they are subject to the provisions of 5 U.S.C. 552(b)(1).

Board of Appellate Review Records. STATE-02.

Congressional Correspondence. STATE-43.

Congressional Travel Records. STATE-44.

Coordinator for the Combating of Terrorism Records. STATE-06.

External Research Records. STATE-10.

Extradition Records. STATE-11.

Family Advocacy Case Records.

STATE-75.

Foreign Assistance Inspection Records. STATE-48.

Human Resources Records. STATE-31.

Information Access Programs Records. STATE-35.

Intelligence and Research Records. STATE-15.

International Organizations Records. STATE-17.

Law of the Sea Records. STATE-19.

Legal Case Management Records. STATE-21.

Munitions Control Records. STATE-42.

Overseas Citizens Services Records. STATE-05.

Passport Records. STATE-26.

Personality Cross Reference Index to the Secretariat Automated Data Index. STATE-28.

Personality Index to the Central Foreign Policy Records. STATE-29.

Personnel Payroll Records. STATE-30.

Office of Inspector General Investigation Management System. STATE-53.

Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes. STATE-54.

Risk Analysis and Management Records. STATE-78.

Rover Records. STATE-41.

Records of Domestic Accounts Receivable. STATE-23.

Records of the Office of White House Liaison. STATE-34.

Refugee Records. STATE-59.

Security Records. STATE-36.

Visa Records. STATE-39.

(2) *Exempt under 5 U.S.C. 552a(k)(2).* Records contained within the following

systems of records are exempt under this section to the extent that they consist of investigatory material compiled for law enforcement purposes, subject to the limitations set forth in 5 U.S.C. 552a(k)(2).

Board of Appellate Review Records. STATE-02.

Coordinator for the Combating of Terrorism Records. STATE-06.

Extradition Records. STATE-11.

Family Advocacy Case Records. STATE-75

Foreign Assistance Inspection Records. STATE-48.

Garnishment of Wages Records. STATE-61.

Information Access Program Records. STATE-35.

Intelligence and Research Records. STATE-15.

Munitions Control Records. STATE-42.

Overseas Citizens Services Records. STATE-05.

Passport Records. STATE-26.

Personality Cross Reference Index to the Secretariat Automated Data Index. STATE-28.

Personality Index to the Central Foreign Policy Records. STATE-29.

Office of Inspector General Investigation Management System. STATE-53.

Risk Analysis and Management Records. STATE-78.

Security Records. STATE-36.

Visa Records. STATE-39.

(3) *Exempt under 5 U.S.C. 552a(k)(3).* Records contained within the following systems of records are exempt under this section to the extent that they are maintained in connection with providing protective services pursuant to 18 U.S.C. 3056.

Extradition Records. STATE-11.

Information Access Programs Records. STATE-35.

Intelligence and Research Records. STATE-15.

Overseas Citizens Services Records. STATE-05.

Passport Records. STATE-26.

Personality Cross-Reference Index to the Secretariat Automated Data Index. STATE-28.

Personality Index to the Central Foreign Policy Records. STATE-29.

Security Records. STATE-36.

Visa Records. STATE-39.

(4) *Exempt under 5 U.S.C. 552a(k)(4).* Records contained within the following systems of records are exempt under this section to the extent that they are required by statute to be maintained and are used solely as statistical records.

Foreign Service Institute Records. STATE-14.

Human Resources Records. STATE-31.

Information Access Programs Records. STATE-35.

Overseas Citizens Services Records. STATE-05

Personnel Payroll Records. STATE-30.

Security Records. STATE-36.

(5) *Exempt under 5 U.S.C. 552a(k)(5).* Records contained within the following systems of records are exempt under this section to the extent that they consist of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that disclosure of such material would reveal the identity of a confidential informant.

Records Maintained by the Office of Civil Rights. STATE-09.

Foreign Assistance Inspection Records. STATE-48.

Foreign Service Grievance Board Records. STATE-13.

Human Resources Records. STATE-31.

Information Access Programs Records. STATE-35.

Legal Adviser Attorney Employment Application Records. STATE-20.

Overseas Citizens Services Records. STATE-25.

Personality Cross-Reference Index to the Secretariat Automated Data Index. STATE-28.

Office of Inspector General Investigation Management System. STATE-53.

Records of the Office of White House Liaison. STATE-34.

Risk Analysis and Management Records. STATE-78.

Rover Records. STATE-41.

Security Records. STATE-36.

Senior Personnel Appointments Records. STATE-47.

(6) *Exempt under 5 U.S.C. 552a(k)(6).* Records contained within the following systems of records are exempt under this section to the extent that they consist of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

Foreign Service Institute Records. STATE-14.

Human Resources Records. STATE-31.

Information Access Programs Records. STATE-35.

Records Maintained by the Office of Civil Rights. STATE-09

Security Records. STATE-36.

(7) *Exempt under 5 U.S.C. 552a(k)(7).* Records contained within the following systems of records are exempt under this section to the extent that they consist of evaluation material used to determine potential for promotion in the armed services, but only to the extent that such disclosure would reveal the identity of a confidential informant.

Overseas Citizens Services Records. STATE-25.

Human Resources Records. STATE-31.

Information Access Programs Records. STATE-35.

Personality Cross-Reference Index to the Secretariat Automated Data Index. STATE-28.

Personality Index to the Central Foreign Policy Records. STATE-29.

#### **Subpart D—Process To Request Public Financial Disclosure Reports**

##### **§ 171.30 Purpose and scope.**

This subpart sets forth the process by which persons may request access to public financial disclosure reports filed with the Department in accordance with sections 101 and 103(l) of the Ethics in Government Act of 1978, 5 U.S.C. app. 101 and 103(l), as amended. The retention, public availability, and improper use of these reports are governed by 5 U.S.C. app. 105 and 5 CFR 2634.603.

##### **§ 171.31 Requests.**

Requests for access to public financial disclosure reports filed with the Department should be made by submitting a completed Office of Government Ethics request form, OGE Form 201, to [OGE201Request@state.gov](mailto:OGE201Request@state.gov) or the Office of the Assistant Legal Adviser for Ethics and Financial Disclosure, U.S. Department of State, 2201 C Street NW., Washington, DC 20520. The OGE Form 201 may be obtained by visiting <http://www.oge.gov> or writing to the address above.

Dated: March 30, 2016.

**Joyce A. Barr,**

*Assistant Secretary for Administration,  
Department of State.*

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