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Title 28 – Judicial Administration

Chapter I – Department of Justice

Part 16 – Production or Disclosure of Material or Information

Subpart A – Procedures for Disclosure of Records Under the Freedom of Information Act

Source: AG Order No. 3517–2015, 80 FR 18106, Apr. 3, 2015, unless otherwise noted.

Authority: 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

§ 16.4 Responsibility for responding to requests.

- (a) ***In general.*** Except in the instances described in paragraphs (c) and (d) of this section, the component that first receives a request for a record and maintains that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the component shall inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), is not considered responsive to a request.
- (b) ***Authority to grant or deny requests.*** The head of a component, or designee, is authorized to grant or to deny any requests for records that are maintained by that component.
- (c) ***Re-routing of misdirected requests.*** Where a component's FOIA office determines that a request was misdirected within the Department, the receiving component's FOIA office shall route the request to the FOIA office of the proper component(s).
- (d) ***Consultation, referral, and coordination.*** When reviewing records located by a component in response to a request, the component shall determine whether another component or another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the component shall proceed in one of the following ways:
 - (1) ***Consultation.*** When records originated with the component processing the request, but contain within them information of interest to another component, agency, or other Federal Government office, the component processing the request should typically consult with that other component or agency prior to making a release determination.
 - (2) ***Referral.***
 - (i) When the component processing the request believes that a different component, agency, or other Federal Government office is best able to determine whether to disclose the record, the component typically should refer the responsibility for responding to the request regarding that record, as long as the referral is to a component or agency that is subject to the FOIA. Ordinarily, the component or agency that originated the record will be presumed to be best able to make the disclosure determination. However, if the component processing the request and the originating component or agency jointly agree that the former is in the best position to respond regarding the record, then the record may be handled as a consultation.

- (ii) Whenever a component refers any part of the responsibility for responding to a request to another component or agency, it shall document the referral, maintain a copy of the record that it refers, and notify the requester of the referral and inform the requester of the name(s) of the component or agency to which the record was referred, including that component's or agency's FOIA contact information,
- (3) **Coordination.** The standard referral procedure is not appropriate where disclosure of the identity of the component or 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. For example, if a non-law enforcement component responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if a component locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the component that received the request should coordinate with the originating component or agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the component that originally received the request.
- (e) **Classified information.** On receipt of any request involving classified information, the component shall determine whether the information is currently and properly classified and take appropriate action to ensure compliance with part 17 of this title. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another component or agency under any applicable executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, or that should consider the information for classification. Whenever a component's record contains information that has been derivatively classified (for example, when it contains information classified by another component or agency), the component shall refer the responsibility for responding to that portion of the request to the component or agency that classified the underlying information.
- (f) **Timing of responses to consultations and referrals.** All consultations and referrals received by the Department will be handled according to the date that the FOIA request initially was received by the first component or agency.
- (g) **Agreements regarding consultations and referrals.** Components may establish agreements with other components or agencies to eliminate the need for consultations or referrals with respect to particular types of records.

[AG Order No. 3517–2015, 80 FR 18106, Apr. 3, 2015, as amended by AG Order 3803–2016, 82 FR 727, Jan. 4, 2017]