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

This subpart contains the regulations of the Office of Personnel Management (OPM) implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. Except as provided by §294.105, OPM will use the provisions of this subpart to process all requests for records.

§ 294.101 Purpose.

This subpart contains the regulations of the Office of Personnel Management (OPM) implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. Except as provided by §294.105, OPM will use the provisions of this subpart to process all requests for records.

§ 294.102 General definitions.

All of the terms defined in the Freedom of Information Act, and the definitions included in the “Uniform Freedom of Information Act Fee Schedule and Guidelines” issued by the Office of Management and Budget apply, regardless of whether they are defined in this subpart.

Direct costs means the expenditures that an agency actually incurs in searching for, duplicating, and reviewing documents to respond to an FOIA request. Overhead expenses (such as the cost of space, and heating or lighting the facility in which the records are stored), are not included in direct costs.

Disclose or disclosure means making records available, on request, for examination and copying, or furnishing a copy of records.

Duplication means the process of making a copy of a document necessary to respond to an FOIA request. Among the forms that such copies can take are paper, microform, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk).
not for a commercial use, but in furtherance of scholarly or scientific research.

(1) Educational institution refers to any public or private, preschool, elementary, or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program or programs of scholarly or scientific research.

(2) A non-commercial scientific institution refers to an institution that is not operated on a commercial basis as that term is referenced in paragraph (a) of this section, and which is operated solely to conduct scientific or scholarly research, the results of which are not intended to promote any particular product or industry.

(c) Request from a representative of the news media. “Representative of the news media” refers to any person actively gathering news for an entity that is organized and operated to publish, broadcast, or otherwise disseminate news to the public. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals who make their products available for purchase or subscription by the general public. Free-lance journalists may be regarded as representatives of the news media if they demonstrate a solid basis for expecting publication, or some other form of dissemination, through a particular organization even though they are not actually employed by it. OPM will assign news media officials to this category only when a request is not for commercial use. If a person meets the other qualifications for inclusion, OPM will not apply the term “commercial use” to his or her request for records in support of a news dissemination function.

(d) Requests from others. The category “all others,” consists of any requesters not covered by paragraphs (a), (b), or (c) of this section. However, as provided by §294.105, OPM will use its Privacy Act regulations, rather than this subpart, when individuals ask for records about themselves that may be filed in OPM systems of records.

§294.105 Access to the requester’s own records.

When the subject of a record, or a duly authorized representative of the subject, requests his or her own records from a Privacy Act system of records, as defined by 5 U.S.C. 552a (a)(5), and the record is maintained so that it is retrieved by the subject’s name or other personal identifier, OPM will process the request under the Privacy Act procedures in part 297 of this chapter.
§ 294.106 Handbook of Publications, Periodicals, and OPM Issuances.

(a)(1) Annually, OPM publishes OPM-AG-PSD-01, "Handbook of Publications, Periodicals, and Issuances," and accompanying addendum. This handbook and addendum lists material published and offered for sale are available for public inspection or copying. Unless the material is published and offered for sale, OPM makes available for public inspection and copying:

(i) Final opinions made by OPM in the adjudication of cases;

(ii) OPM policy statements and interpretations adopted by OPM but not published in the FEDERAL REGISTER; and

(iii) OPM administrative staff manuals and instructions that affect a member of the public.

(2) To the extent required to prevent a clearly unwarranted invasion of personal privacy, OPM may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction.

(b) A copy of this handbook and addendum is available at no cost from the—Publishing Management Branch, Office of Personnel Management, room B464, 1900 E Street, NW., Washington, DC 20415–0001.

(c) OPM indexes material in this handbook and addendum in a format for the convenience of the public. Indexing does not constitute a determination that all of the material listed is within the category that is required to be indexed by 5 U.S.C. 552(a)(2). Most of OPM's publications may be found in OPM's Library in room 5H27 at the address listed in paragraph (b) of this section.

(d) As provided by 5 U.S.C. 552(a)(2), OPM has determined that it is unnecessary and impractical to publish the "Handbook of Publications, Periodicals, and Issuances" and addendum more frequently than annually because of the small number of revisions that occur.


§ 294.107 Places to obtain records.

(a) Address requests for OPM records to the officials listed in paragraph (b), (c), or (d) of this section.

(b) The following is a list of key Washington, DC, officials of OPM and their principal areas of responsibility. Address requests for records to the appropriate official using the official's title and the following address: Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

<table>
<thead>
<tr>
<th>Send to</th>
<th>For subject-matter about</th>
</tr>
</thead>
<tbody>
<tr>
<td>Associate Director for</td>
<td>Administrative services; information management, including</td>
</tr>
<tr>
<td>Administration.</td>
<td>automated data processing; equal employment opportunity;</td>
</tr>
<tr>
<td>Associate Director for</td>
<td>personnel.</td>
</tr>
<tr>
<td>Retirement and Insurance.</td>
<td>Personnel management in agencies; pay; position classification;</td>
</tr>
<tr>
<td>Associate Director for</td>
<td>wage grade jobs; performance management; and employee</td>
</tr>
<tr>
<td>Personnel Systems and Oversight.</td>
<td>and labor relations.</td>
</tr>
<tr>
<td>Assistant Director for</td>
<td>Governmentwide personnel statistics; official personnel and</td>
</tr>
<tr>
<td>Workforce Information.</td>
<td>employee medical folders.</td>
</tr>
<tr>
<td>Associate Director for</td>
<td>Background investigations and related records on individuals.</td>
</tr>
<tr>
<td>Investigations.</td>
<td>Nationwide examining and testing for employment; promotions;</td>
</tr>
<tr>
<td>Associate Director for Career Entry.</td>
<td>administrative law judges; affirmative employment programs for</td>
</tr>
<tr>
<td></td>
<td>minorities, women, veterans, and the handicapped; recruiting</td>
</tr>
<tr>
<td>Chief Financial Officer ...</td>
<td>and employment; and staffing policy.</td>
</tr>
<tr>
<td>Director for Human Resources</td>
<td>Financial management.</td>
</tr>
<tr>
<td>Development.</td>
<td>Training, education, and development; senior executive service.</td>
</tr>
<tr>
<td>Director, Washington</td>
<td>Examing, testing, and training operations in Washington, DC.</td>
</tr>
<tr>
<td>Area Service Center.</td>
<td></td>
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</tbody>
</table>

(c) Direct requests for records on subjects not specifically referred to in this section or in the handbook or addendum, to Plans and Policies Division (CHP-500), Office of Information Resources Management, Administration Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

(d) The following is a list of OPM regional offices. Address requests for regional records to the Regional Director, Office of Personnel Management in the appropriate region:

- Atlanta Region—Richard B. Russell Federal Building, Suite 904, 75 Spring Street, SW., Atlanta, GA 30303-3019.
§ 294.108 Procedures for obtaining records.

(a) Mailing or delivering a request. Any person may ask for records under section 552 of title 5, United States Code, by directing a letter to one of the organizations listed in §294.107, or by delivering a request in person at the addresses listed in that section during business hours on a regular business day.

(b) Proper marking. Each request for records should have a clear and prominent notation on the first page, such as “Freedom of Information Act Request.” In addition, if sent by mail or otherwise submitted in an envelope or other cover, mark the outside clearly and prominently with “FOIA Request” or “Freedom of Information Act Request.”

(c) Contents of request letter. A request must describe the records sought in sufficient detail to enable OPM personnel to locate the records with a reasonable amount of effort.

(1) OPM will regard a request for a specific category of records as fulfilling the requirements of this paragraph, if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive to OPM operations.

(2) Whenever possible, a request should include specific information about each record sought, such as the date, number, title or name, author, recipient, and subject matter of the record.

(3) If an OPM organization determines that a request does not reasonably describe the records sought, it will either provide notice of any additional information needed or otherwise state why the request is insufficient. OPM will also offer the record seeker an opportunity to confer, with the objective of reformulating the request so that it meets the requirements of this section.

(d) Medical records. OPM or another Government agency may disclose the medical records of an applicant, employee, or annuitant to the subject of the record, or to a representative designated in writing. However, medical records may contain information about an individual’s mental or physical condition that a prudent physician would hesitate to give to the individual.


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(d) Medical records. OPM or another Government agency may disclose the medical records of an applicant, employee, or annuitant to the subject of the record, or to a representative designated in writing. However, medical records may contain information about an individual’s mental or physical condition that a prudent physician would hesitate to give to the individual.
Under such circumstances, OPM may disclose the records, including the exact nature and probable outcome of the condition, only to a licensed physician designated in writing for that purpose by the individual or his or her designated representative.

(e) Publications. If the subject matter of a request includes material published and offered for sale (e.g., by the Superintendent of Documents, Government Printing Office), OPM will explain where a person may review and/or purchase the publications.

(f) Responses within 10 working days. Except in unusual circumstances (as defined in 5 U.S.C. 552(a)(6)(B)), OPM will determine whether to disclose or deny records within 10 working days after receipt of the request (excluding weekends and holidays) and will provide notice immediately of its determination and the reasons therefor, and of the right to appeal any adverse determination.

§ 294.109 Fees.

(a) Applicability of fees. (1) OPM will furnish, without charge, reasonable quantities of material that it has available for free distribution to the public.

(2) OPM may furnish other materials, subject to payment of fees intended to recoup the full allowable direct costs of providing services. Fees for these materials may be waived if the request meets the requirements specified in paragraph (f) of this section.

(3) If a request does not include an acceptable agreement to pay fees and does not otherwise convey a willingness to pay fees, OPM will promptly provide notification of the estimated fees. This notice will offer an opportunity to confer with OPM staff to reframe the request to meet the requester’s needs at a lower cost. Upon agreement to pay the required fees, OPM will further process the request.

(4) As described in §294.107, OPM ordinarily responds to FOIA requests in a decentralized manner. Because of this, OPM may at times refer a single request to two or more OPM entities to make separate direct responses. In such cases, each responding entity may assess fees as provided by this section, but only for direct costs associated with any response it has prepared.

(5) If fees for document search are authorized as provided in paragraph (c) of this section, OPM may assess charges for employee time spent searching for documents and other direct costs of a search, even if a search fails to locate records or if records located are determined to be exempt from disclosure. Searches should be conducted in the most efficient and least expensive manner so as to minimize the cost for both the agency and the requester, e.g., personnel should not engage in line-by-line search when photocopying an entire document would be a less expensive and quicker way to comply with a request.

(6) Services requested and performed but not required under the FOIA, such as formal certification of records as true copies, will be subject to charges under the Federal User Charge Statute (31 U.S.C. 483a) or other applicable statutes.

(b) Rates used to compute fees. The following rates form the basis for assessing reasonable, standard charges for document search, duplication, and review as required by 5 U.S.C. 552(a)(4). The listing of rates below should be used in conjunction with the fee components listed in paragraph (c) of this section:

<table>
<thead>
<tr>
<th>Service</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee time</td>
<td>Salary rate plus 16% to cover benefits.</td>
</tr>
<tr>
<td>Photocopies (up to 8 1⁄2 × 14&quot;)</td>
<td>$.013 per page.</td>
</tr>
<tr>
<td>Printed materials, per 25 pages or fraction thereof</td>
<td>$.025.</td>
</tr>
<tr>
<td>Computer time</td>
<td>Actual direct cost.</td>
</tr>
<tr>
<td>Supplies and other materials</td>
<td>Actual direct cost.</td>
</tr>
<tr>
<td>Other costs not identified above</td>
<td>Actual direct cost.</td>
</tr>
</tbody>
</table>

(c) Assessing fees based on requester’s category. Rates are assessed differently for the different categories of requesters as defined in §294.103. Requests have three cost components for the purpose of assessing fees: the cost of document search, the cost of duplication, and the cost of review. OPM will apply the rates in paragraph (b) of this section to the cost components that apply to the requester’s category as follows:
(d) Payment of fees. Fees are payable by check or money order to the Office of Personnel Management.

(1) If the total charge for fulfilling the request will be less than $25, no fee will be assessed (except as provided in paragraph (d)(3) of this section).

(2) If a request may reasonably result in a fee assessment of more than $25, OPM will not release the records unless the requester agrees in advance to pay the anticipated charges.

(3) OPM may aggregate requests and charge fees accordingly, when there is a reasonable belief that a requester, or a group of requesters acting in concert, is attempting to break down a request into a series of requests to evade the assessment of fees.

(i) If multiple requests of this type occur within a 30-day period, OPM may provide notice that it is aggregating the requests and that it will apply the fee provisions of this section, including any required agreement to pay fees and any advance payment.

(ii) Before aggregating requests of this type made over a period longer than 30 days, OPM will assure that it has a solid basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees.

(iii) OPM will not aggregate multiple requests on unrelated subjects from one person.

(e) Payment of fees in advance. If OPM estimates or determines that fees are likely to exceed $250, OPM may require the payment of applicable fees in advance.

(1) If an OPM official, who is authorized to make a decision on a particular request, determines that the requester has a history of prompt payment of FOIA fees, OPM will provide notice of the likely cost and obtain satisfactory assurance of full payment.

(2) When a person, or an organization that a person represents, has previously failed to pay assessed fees in a timely manner (i.e., payment was not made within 30 days of the billing date), OPM will require full payment of all fees in advance.

(3) If a person, or an organization that a person represents, has not paid fees previously assessed, OPM will not begin to process any new request for records until the requester has paid the full amount owed plus any applicable interest, and made a full advance payment for the new request.

(f) Waiver or reduction of fees. OPM will furnish documents without any charge, or at a reduced charge, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and release of the material is not primarily in the commercial interest of the requester.

(1) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, OPM shall consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Government";

(ii) The information value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of Government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure:
Whether disclosure of the requested information will contribute to "public understanding"; and
(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities.

(2) In determining whether disclosure of the information is or is not primarily in the commercial interest of the requester, OPM shall consider the following factors:
    (i) The existence and magnitude of a commercial interest. Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so—
    (ii) The primary interest in disclosure. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(3) In all cases the burden of proof shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(g) Denial of waiver request. (1) An OPM official may deny a request for a full or partial waiver of fees without further consideration if the request does not include:
    (i) A clear statement of the requester's interest in the requested information;
    (ii) A clear statement of the use proposed for the information and whether the requester will derive income or other benefit from such use;
    (iii) A clear statement of how the public will benefit from OPM's release of the requested information; and
    (iv) If specialized use of the documents is contemplated, a clear statement of the requester's qualifications that are relevant to the specialized use.

(2) A requester may appeal the denial of a waiver request as provided by §294.110 of this part.

(h) Fees not paid; penalties; debt collection. (1) If a request, which requires the advance payment of fees under the criteria specified in this section, is not accompanied by the required payment, OPM will promptly notify the requester that the required fee must be paid within 30 days, and that OPM will not further process the request until it receives payment.

(2) OPM may begin assessing interest charges on an unpaid bill starting on the 31st day following the date on which the bill was sent. Interest will be charged at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.

(3) To encourage the repayment of debts incurred under this subpart, OPM may use the procedures authorized by Public Law 97–365, the Debt Collection Act of 1982. This may include disclosure to consumer reporting agencies and the use of collection agencies.

[58 FR 32044, June 8, 1993]

§ 294.110 Appeals.

(a) When an OPM official denies records or a waiver of fees under the Freedom of Information Act, the requester may appeal to the—

Office of the General Counsel, Office of Personnel Management, Washington, DC 20415

(b) A person may appeal denial of a Freedom of Information Act request for information maintained by OPM's Office of the General Counsel to the—

Deputy Director, Office of Personnel Management Washington, DC 20415

(c) If an official of another agency denies a Freedom of Information Act request for records in one of OPM's Government-wide systems of records, the requester should consult that agency's regulations for any appeal rights that may apply. An agency may, at its discretion, direct these appeals to OPM's Office of the General Counsel.

(d) An appeal should include a copy of the initial request, a copy of the letter denying the request, and a statement explaining why the appellant believes the denying official erred.

(e) The appeals provided for in this section constitute the final levels of administrative review that are available. If a denial of information or a denial of a fee waiver is affirmed, the requester may seek judicial review in the district court of the United States in the district in which he or she resides, or has his or her principal place of
§ 294.111 Custody of records; subpoenas.

(a) The Chief, Plans and Policies Division, Administration Group, OPM, has official custody of OPM records. A subpoena or other judicial order for an official record from OPM should be served on the—

Chief, Plans and Policies Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415

(b) See 5 CFR part 297, subpart D—Disclosure of Records, of this title, for the steps other officials should take on receipt of a subpoena or other judicial order for an Office record.


§ 294.112 Confidential commercial information.

(a) In general, OPM will not disclose confidential commercial information in response to a Freedom of Information Act request except in accordance with this section.

(b) The following definitions from Executive Order 12600, apply to this section:

(1) Confidential commercial information means records provided to the Government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) Submitter means any person or entity who provides confidential commercial information, directly or indirectly, to OPM. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(c) Submitters of information shall designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of their submissions that they consider to be confidential commercial information. Such designations shall expire 10 years after the date of submission unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(d) OPM shall, to the extent permitted by law, provide prompt written notice to an information submitter of Freedom of Information requests or administrative appeals if:

(1) The submitter has made a good faith designation that the requested material is confidential commercial information, or

(2) OPM has reason to believe that the requested material may be confidential commercial information.

(e) The written notice required in paragraph (d) of this section shall either describe the confidential commercial material requested or include as an attachment, copies or pertinent portions of the records.

(f) Whenever OPM provides the notification and opportunity to object required by paragraphs (d) and (h) of this section, it will advise the requester that notice and an opportunity to object are being provided to the submitter.

(g) The notice requirements of paragraph (d) of this section shall not apply if:

(1) OPM determines that the information should not be disclosed;

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

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(4) The information was submitted on or after August 20, 1992, and has not been designated by the submitter as exempt from disclosure in accordance with paragraph (c) of this section, unless OPM has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such a case, OPM shall, within a reasonable number of days prior to a specified disclosure date, notify the submitter in writing of any final administrative decision to disclose the information.

(h) The notice described in paragraph (d) of this section shall give a submitter a reasonable period from the date of the notice to provide OPM with
a detailed written statement of any objection to disclosure. The statement shall specify all grounds for withholding any of the material under any exemption of the Freedom of Information Act. When Exemption 4 of the FOIA is cited as the grounds for withholding, the specification shall demonstrate the basis for any contention that the material is a trade secret or commercial or financial information that is privileged or confidential. It must also include a specification of any claim of competitive harm, including the degree of such harm, that would result from disclosure. Information provided in response to this paragraph may itself be subject to disclosure under the FOIA. Information provided in response to this paragraph shall also be subject to the designation requirements of paragraph (c) of this section. Failure to object in a timely manner shall be considered a statement of no objection by OPM, unless OPM extends the time for objection upon timely request from the submitter and for good cause shown. The provisions of this paragraph concerning opportunity to object shall not apply to notices of administrative appeals, when the submitter has been previously provided an opportunity to object at the time the request was initially considered.

(i) OPM shall consider carefully a submitter's objections and specific grounds for nondisclosure, when received within the period of time described in paragraph (h) of this section, prior to determining whether to disclose the information. Whenever OPM decides to disclose the information over the objection of a submitter, OPM shall forward to the submitter a written notice, which shall include:

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

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

(j) OPM will notify both the submitter and the requester of its intent to disclose material a reasonable number of days prior to the specified disclosure date.

(k) Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, OPM shall promptly notify the submitter.

[57 FR 32150, July 21, 1992]

Subpart B—The Public Information Function

§ 294.201 Public information policy.

(a) In addition to the basic policies of the Office relative to the disclosure of information when requested by a member of the public, the Office has an independent public information policy for bringing to the attention of the public through news releases, publications of the Office, or other methods, information concerning the functions of the Office as a Federal agency, and the programs administered by the Office.

(b) The Assistant Director for Public Affairs carries out the public information policy of the Office. In addition, each employee of the Office shall cooperate in carrying out this policy.

[50 FR 3310, Jan. 24, 1985]

Subpart C—Office Operations

§ 294.301 Policy and interpretations.

(a) Statements of Office policy and interpretations of the laws and regulations administered by the Office which the Office has adopted, whether or not published in the FEDERAL REGISTER, are available to the public.

(b) Generally, memoranda, correspondence, opinions, data, staff studies, information received in confidence, and similar documentary material, when prepared for the purpose of internal communication within the Office or between the Office and other agencies, organizations, or persons, are not available to the public.


Subpart D—Cross References

§ 294.401 References.

The table below provides assistance in locating other OPM regulations in title 5 of the Code of Federal Regulations that have provisions on the disclosure of records:
PART 297—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

Subpart A—General Provisions

Sec. 297.101 Purpose and scope.
This part sets forth the regulations of the U.S. Office of Personnel Management (the Office) to govern the maintenance, protection, disclosure, and amendment of records within the systems of records as defined by the Privacy Act of 1974 (5 U.S.C. 552a), Public Law 93-579.

297.102 Definitions.
In this part, the terms agency, individual, maintain, record, statistical records, and systems of records have the same meanings as defined in the Privacy Act, 5 U.S.C. 552a. In addition:

Access means providing a copy of a record to, or allowing review of the original record by, the data subject or the data subject’s authorized representative, parent, or legal guardian;


Agency means any department or independent establishment in the Executive Branch of the Federal Government, including a Government corporation, of Government-controlled corporation, except those specifically excluded from the Office recordkeeping requirements by statute, this title, or formal agreement between the Office and the agency.

Amendment means the correction, addition, deletion, or destruction of a record or specific portions of a record;

Data subject means the individual to whom the information pertains and by whose name or other individual identifier the information is retrieved;

Disclosure means providing personal review of a record, or a copy thereof, to