

## USAID FOIA Handbook

### **Fact Sheet: What is the FOIA?**

Passed in 1966, the Freedom of Information Act (FOIA) established the public's right to obtain records from the Federal government, unless the information is protected under nine exemptions or three exclusions (such as national security materials). Federal agencies are required to disclose non-exempt records after receiving a written request for them. Agencies are not required to conduct research or answer questions. The law also provides for an appeals procedure if a FOIA request is denied.

The Electronic FOIA Amendments of 1996 added other provisions, including a requirement that agencies make information more accessible electronically. Agencies must now provide an electronic reading room containing FOIA information, including descriptions of information systems and a list of frequently requested documents.

The FOIA does not apply to Congress, the courts, the White House, or records of state or local governments. However, nearly all state governments have their own FOIA-type statutes, which are available from the state's attorney general's office. Neither does the FOIA require private organizations or businesses to release information directly to the public; however, information submitted to the federal government by such organizations may be available through a FOIA request if it is not protected by exemptions covering trade secrets or confidential business information.

# USAID FOIA Handbook

## Fact Sheet: Text of FOIA

### THE FREEDOM OF INFORMATION ACT

5 U.S.C. § 552

As Amended

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of an index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if--

- (i) it has been indexed and either made available or published as provided by this paragraph; or
- (ii) the party has actual and timely notice of the terms thereof.

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that--

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) 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 is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section--

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo, provided that the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause is shown.

(D) Repealed by Pub. L. 98-620, Title IV, 402(2), Nov. 8, 1984, 98 Stat. 3335, 3357.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

(i) determine within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause

(ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests--

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)(i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing the request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records--

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure--

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term "compelling need" means--

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

(b) This section does not apply to matters that are--

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement

authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and--

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize the withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include--

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests;

(F) the total amount of fees collected by the agency for processing requests; and

(G) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(2) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

(3) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(4) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(5) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term--

(1) "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

(2) "record" and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.

(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including--

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.

# USAID FOIA Handbook

## Fact Sheet: USAID FOIA Regulations

Code of Federal Regulations (CFR)  
22 CFR 212  
PUBLIC INFORMATION

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### 212.51 General Policy

**AUTHORITY:** The provisions of Part 212 are issued pursuant to 22 U.S.C. 552; 5 U.S.C. 552; and E.O. 12600 of June 23, 1987 (52 FR 23781).

## Subpart A - General

### §212.1 Statement of Policy

(a) It is the policy of the United States Agency for International Development (hereinafter "USAID" or "the Agency") that information about its objectives and operations be freely available to the public in accordance the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended; the President's Memorandum for Heads of Departments and Agencies regarding the FOIA, 29 Weekly Comp. Pres. Docs.

1999 (October 4, 1993); and the Attorney General's Memorandum of the same title and date. The Director, Office of Administrative Services, Bureau for Management, or his/her designee, is responsible on behalf of Agency for administration of the provisions of the regulations set forth in this part.

(b) In addition, concerning the International Cooperation and Development Agency ("IDCA"), pursuant to executive order and delegations of authority USAID is responsible not only for management of its own affairs but also for those of IDCA. The policy of IDCA in the FOIA area has been determined by USAID to be identical to that of USAID, as stated above. Therefore, all policies and procedures set forth in this part apply equally to IDCA as to USAID; and it is intended that references in this part to "USAID" or "the Agency" shall, wherever appropriate, include or mean a reference to IDCA. Accordingly, all IDCA FOIA-related matters shall be referred to and processed by USAID staff under this part as though they were USAID matters.

(c) All records of USAID shall be made available to the public upon compliance with the procedures established in this regulation, except to the extent a determination is made to withhold a record exemptible under 5 U.S.C. 552(b). Such a determination shall be made pursuant to procedures set forth in §§ 212.36, 212.37 and 212.38 below.

(d) The term "record" as used in this part includes all books, papers, maps, photographs, or other documentary material or copies thereof, regardless of physical form or characteristics, made in or received by USAID (including its missions or offices abroad), and preserved as evidence of its organization, functions, policies, decisions, procedures, operations, or other activities. The term does not include copies of the records of other U.S. Government agencies, foreign governments, international organizations, or non-governmental entities which do not evidence organization, functions, policies, decisions, procedures, operations, or activities of USAID.

## Subpart B - Publication in the Federal Register

### §212.11 Materials to be Published.

(a) USAID separately states and currently publishes in the FEDERAL REGISTER for the information and guidance of the public:

(1) Descriptions of its central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channelled and determined, including the nature and requirements for all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by USAID; and

(5) Every amendment, revision or repeal of the foregoing.

(b) USAID Public Notice No. 1 and the USAID Regulations published in chapter II of Title 22 and in subtitle A, Chapter 7 of Title 41 of the Code of Federal Regulations implement the provisions of this section.

#### §212.12 Effect of Nonpublication.

The materials referenced in §212.11 shall not be binding upon or otherwise adversely affect a person unless either

(a) the materials were in fact published in the FEDERAL REGISTER or (b) the person otherwise had actual and timely notice of the content of such materials.

#### §212.13 Incorporation by Reference

For purposes of this Subpart B, USAID matters which are reasonably available to the class of persons affected thereby are deemed to be published in the FEDERAL REGISTER when they have been incorporated by reference therein with the approval of the Director of the FEDERAL REGISTER.

### Subpart C - Availability of Information for Public

#### Inspection and Copying

##### § 212.21 Public Records

In accordance with this subpart, USAID makes the following information and materials available for public inspection and copying:

(a) All final opinions (including concurring and dissenting opinions), and all orders made in the adjudication of the cases:

(b) Those statements of policy and interpretations which have been adopted by the Agency and are not published in the FEDERAL REGISTER; and

(c) Administrative staff manuals and instructions to staff that affect any member of the public.

##### §212.22 Protection of Personal Privacy

To the extent required to prevent a clearly unwarranted invasion of personal privacy, USAID may delete identifying details when USAID makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. USAID will, in each such case, explain in writing the justification for the deletion.

#### §212.23 Current Index

USAID maintains and makes available for public inspection and copying a current index providing identifying information for the public as to any matter which he been issued, adopted, or promulgated after July 4, 1967, and which is required by §212.21 to be made available or published. Publication of an index is deemed both unnecessary and impractical. However, copies of the index are available, upon request, for a fee based on the direct cost of duplication.

#### §212.24 Effect of Noncompliance

No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited as precedent by USAID against any private party unless it has been indexed and either made available or published as provided by this subpart, or unless that private party shall have actual and timely notice of the terms thereof.

#### §212.25 Procedures for Obtaining Materials under this Subpart

(a) The materials required to be made available for public inspection and copying in accordance with this subpart are available to members of the public at USAID's Public Reading Room, Mezzanine Level, Ronald Reagan Building, Room M.01, 1300 Pennsylvania Avenue, N.W., Washington, DC 20523\*, which is open from 9 a.m. to 5 p.m., Monday through Friday, except on holidays. All such materials are available in electronic form (disks) only; to a reasonable degree, assistance will be provided in use of necessary equipment.

(b) Requests for materials which are available under this subpart should follow the procedures under §212.33(a) of this part, final sentence thereof.

(c) The direct costs of any necessary duplication will be charged in accordance with the fee schedule set forth in §212.35 of this part.

(d) USAID Missions and offices in countries abroad are not responsible for the maintenance of the index and materials available under this subpart. However, insofar as they do have these materials, they will make them available to citizens of the United States who are present in their respective countries upon application made either or in person in writing to the USAID Director, or other principal USAID officer, c/o American Embassy in the applicable country.

#### Subpart D - Access to Agency Records

##### §212.31 Availability of Agency Records

Upon receiving a request which reasonably describes a USAID record, and which is made in accordance with the provisions of this subpart, USAID will make such records, except the following, promptly available to the requesting party: (a) matters published in the FEDERAL REGISTER pursuant to Subpart B; (b) matters made available to the public pursuant to Subpart C; and (c) matters exempt from disclosure pursuant to §212.41 or §241.42 of this part.

##### §212.32 Identification of Records

The request for a record by a member of the public must contain a reasonably specific description of the particular record sought so that a USAID officer who is familiar with the subject matter of the request may be able to locate the record with a reasonable amount of effort. A description that includes as much information as possible, such as the subject matter, format, approximate date and, where pertinent, the name of the country or person involved, will facilitate the search for the requested record.

#### §212.33 Procedure for Making Requests

(a) Requests for records, other than records available at the Public Reading Room identified in §212.24(a), may be made by a member of the public in writing only to the Chief, Information and Records Division, Office of Administrative Services, U.S. Agency for International Development, Room 2.07C, RRB, Washington, D.C.

20523-2701\*. The request and the envelope must be plainly marked "FOIA Request." Requests may be made orally, that is, in person, only for records and materials available at the Public Reading Room.

(b) Requests for records may be made directly to a USAID mission or office abroad only by a citizen of the United States who is present in that country and must be by written application to the USAID Director (or other principal USAID officer), care of the American Embassy in that country. Any such written request and its envelope must be plainly marked "FOIA Request."

(c) Only signed original (as opposed to electronically transmitted) requests are acceptable for the above purposes. Telephoned requests, or in-person requests other than to the Public Reading Room, cannot be accepted. If a written request not properly marked "FOIA Request" on both the letter and envelope is thereby delayed in reaching the Chief, Information and Records Division\*, such request will not be deemed received by USAID until actually received by that official. In the event of such a delay, the person making the request will be furnished a notice of the effective date of receipt.

#### §212.34 Procedures for Responding to Requests for Records

(a) Upon receipt by the Chief, Information and Records Division\*, of a reasonably specific request made pursuant to §212.33 of this part, a maximum of ten working days\*\* will normally be taken to determine to what extent the Agency can provide the information requested. Upon the making of that determination, the person making the request will be promptly so informed. Copies of the releasable documents will be made available promptly thereafter upon receipt of applicable fees and charges as set forth in §212.35.

(b) In unusual circumstances, USAID may not be able to determine the availability of the requested documents within ten working days\*\*, in which event the person making the request will be informed by written notice of the delay, the reasons for the delay and the date on which a determination may be expected. In this context, the term "unusual circumstances" refers to the following situations:

- (1) When there is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
- (2) When there is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are sought in a single request; or
- (3) When there is a need for consultation (which will be conducted with all practicable speed) with another agency having a substantial interest in the determination of the request or among two or more components of the Agency, each having substantial subject-matter interest therein.

The maximum time in making a determination of availability, in the event of such unusual circumstances, will be twenty working days\*\*\* from receipt of the request. In the event that only part of the permissible ten working days extension is used, then USAID reserves the right, if necessary, to use any remainder of such time for the determination of an appeal, if one is made.

(c) If a request is made to USAID for material that is controlled or held by another agency, the person making the request will be immediately notified that USAID does not have or control the requested material and he/she will be advised of the name of the controlling agency and of the address from which the material may be requested, unless the other agency has, by public regulation, delegated the release authority to USAID. If release authority has been delegated, USAID will follow the procedures authorized by the delegation in determining whether to release the information. If a request for material is referred to USAID from another agency, the time period for determination of release of the information will not start until the request is received by the Chief, Information and Records Division\*. The person making the request will be immediately notified of the referral and of the date the request was received in USAID. USAID will not accept referral of requests unless and until the Chief, Information and Records Division\*, or his/her designee, determines that the material requested is actually within the scope and control of the release authority of USAID.

(d) If only a part of a record is exempt from disclosure, then any reasonably segregable portion of such record will be furnished after deletion of the portions which are exempt, provided that the segregable portion constitutes an intelligible record which is not distorted out of context or contradictory to the substance of the entire record before segregation.

#### §212.35 Schedule of Fees and Method of Payment for Services Rendered

(a) Definitions. (1) Direct Costs means those expenditures which the Agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents in order to respond to a FOIA request.

(2) Search includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Line-by-line search will not be done when duplicating an entire document would prove the less expensive and quicker method of complying with a request. ("Search" for this purpose is distinguished from "review" (see paragraph (a)(4) of this section).

(3) Duplication refers to the process of making a copy of a document available to the FOIA requester. Copies can take the form of paper copy, microfilm or audiovisual materials (among others) and will be in a form that is reasonably usable by requesters.

(4) Review refers to the process of examining documents located in response to a commercial use request (see paragraph (a)(5) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to redact those documents of exempt material and otherwise preparing them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) Commercial use request refers to a request from or on behalf of one who seeks information for a use or purpose that is related to commerce, trade, or the profit interest of the requester or of the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Agency will determine the use to which a requester will put the documents requested. Where the Agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Agency may seek additional clarification before assigning the request to a specific category.

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

(7) Non-commercial scientific institution refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a)(5) of this section and which is operated solely for the

purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) Representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast 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 (but only in those instances when they can qualify as disseminators of "news" who make their products available for purchase or subscription by the general public). These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g. electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "free-lance" journalists, they may be regarded as working for a news organization if they can demonstrate a sound basis for expecting publication through such an organization, even though not actually employed by it. A publication contract would be the clearest evidence, but the Agency may also look to the past publication record of the requester in making this determination.

(b) Fees to be charged. The following specific fees shall be applicable with respect to services rendered to members of the public under this part:

(1) Commercial use requesters. Fees are intended to cover the full estimated direct costs of researching for, reviewing for release, and duplicating the records requested. Search costs are computed based on the following formula: hours spent by Agency personnel, whatever their grade and location, and rounded up to the nearest full hour, and including locality pay for Washington-based personnel only, at the basic annual rate then payable to U.S. Government employees at the GS-9/Step 4 level, times 1.17 (to factor in related benefits) and divided by 2080 (hours per work year). Review costs are computed based on the same formula but, instead, using the rate then payable to employees at the GS-13/Step 4 level. Duplicating costs are \$0.20 per page. Search costs will be assessed even though no records may be found or even if, after review, there is no disclosure of records.

(2) Educational and non-commercial scientific institution requester. The Agency will provide documents to requesters in this category for the cost of duplication alone (\$0.20 per page), excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that a request is being made under the auspices of a qualifying institution and that the records are sought in furtherance of (a) scholarly research, if the request is from an educational institution or (b) scientific research, if the request is from a non-commercial scientific institution. Requesters eligible for free search must (as with all FOIA requesters) reasonably describe the records sought.

(3) Requesters who are representatives of the news media. The Agency will provide documents to requesters in this category for the cost of reproduction alone (\$0.20 per page), excluding charges for the first 100 pages. To be eligible for inclusion in this category a requester must meet the criteria in paragraph (a)(8) of this section, and his/her request must not be made for commercial use. In reference to this class of requesters, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters eligible for free search must also reasonably describe the records sought.

(4) All other requesters. The Agency will charge requesters who do not fit into any of the categories in paragraphs (b) (1), (2), and (3) of this section fees which recover the full direct cost of search, and for reproducing records that are responsive to the request, except that the first 100 pages and the first two hours of search time shall be furnished without charge. The hourly rates outlined in paragraph (b)(1) of this section will prevail. Requesters must reasonably describe the records sought. Moreover, requests from subjects for records filed in the Agency's Privacy Act System of Records will continue to be treated under the fee provisions of the Privacy Act of 1975 except that the first 100 pages of reproduction will be furnished without charge.

(c) Non-Payment of Fees. (1) The Agency will begin assessing interest charges on the thirty-first day following the day on which the requester is advised of the fee charge. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e. within thirty days of the billing date), the Agency will require the requester to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the remaining estimated fee before the Agency begins to process a new request or continues processing a then-pending request from the requester.

(3) When the Agency acts under paragraph (c)(1) or (2) of this section the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., ten working days\*\* from receipt of initial request and twenty working days from receipt of appeals from initial denial plus permissible extensions of these time limits) will begin only after the Agency has received fee payments described above.

(d) Advance Payments or Confirmation. Where USAID estimates or determines that allowable charges to a requester are likely to exceed \$250, USAID will require a requester to make an advance payment of the entire estimated charges before continuing to process the request. Where the estimated charges are in the \$25-\$250 range, then USAID in its discretion, before processing the request, may require either (i) an advance deposit of the entire estimated charges or (ii) written confirmation of the requester's willingness, when billed, to pay such charges.

(e) Waiving or Reducing Fee. In accordance with section (4)(A)(ii) of the FOIA, the Agency will furnish documents without charge or at reduced charges if disclosure of the information is "in the public interest" in that such disclosure 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. A requester may at any time, up to a period not to exceed thirty days from the final USAID decision concerning his/her request, request such waiver or reduction of fee by letter addressed to the Chief, Information and Records Division\*; such request shall address the above criteria for waiver. Such request will initially be decided by the Chief, Information and Records Division\*, or his/her designee; such decision will normally be made, and the requester so advised, within ten working days of its receipt. The requester, if dissatisfied with that decision, may appeal pursuant to the same procedures as apply under §212.36 and §212.37 of this part.

(f) Restrictions on Assessing Fees. With the exception of requesters seeking documents for a commercial use, Section (4)(A)(iv) of the FOIA, as amended, requires agencies to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits agencies from charging fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. These provisions work together so that, except for commercial use requesters, the Agency will not begin to assess fees until it has provided such free search and reproduction. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, the Agency will determine the cost of only ten minutes of search time and only five pages of reproduction. If this cost is equal to or less than the cost of processing the payment instrument - a figure which the Agency will from time to time review and determine - then there will be no charge to the requester.

(g) Other Provisions-(i) Charges for unsuccessful search. The Agency will assess charges for time spent searching even if the Agency fails to locate the records or if records located are determined to be exempt from disclosure.

(2) Aggregating requesters. When the Agency reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Agency will aggregate any such requesters and charge accordingly.

(3) Effect of the Debt Collection Act of 1982 (Pub. L. 97-365). The Agency will use the authorities of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

(4) Remittances. (i) Remittances will be in U.S. Dollars in the form of either a personal check or bank draft drawn on a bank in the United States or a money order.

(ii) Remittances shall be made payable to the order of the U.S Treasury and mailed to the Chief, Information and Records Division\*, at the address set forth in §212.33(a) of this part.

#### 212.36 Denial of Request for Access to Records

(a) If it is determined that the Agency cannot comply with all or part of a request for records, the person making the request shall be immediately notified of the determination, the reasons for the determination, the name and title of each officer responsible for the denial, and the right of the person to appeal the adverse determination.

(b) The denial of a request for records may be made, initially, only by the Chief, Information and Records Division\*, or his/her designee.

(c) Any person who has been denied access to records pursuant to this section may appeal the relevant decision not later than thirty days after the date of the notification of denial or, in the case of a partial denial, not later than thirty days after the date the releasable documents are actually furnished to the person making the request, whichever is later. The appeal shall be in writing addressed to the Agency's FOIA Appeals Officer, who is:

The Director, Office of Administrative Services  
U.S. Agency for International Development  
Room 4.6B, RRB  
Washington, D.C., 20523-4601\*

In order for the Agency to make a timely response to the appeal, both the text of the appeal and its envelope must be plainly marked "FOIA Appeal". The appeal must contain a reasonable description of the record sought and withheld, a copy of the initial decision to deny access and any other information that will enable the Appeals Officer to make the final decision.

#### §212.37 Procedures for Agency Consideration of Appeals

(a) Upon receipt of the appeal by the Appeals Officer, a maximum of twenty working days will normally be taken to decide the appeal. In unusual circumstances, as defined in 212.34, the twenty working days may be extended by ten working days or by the number of days not used in the original denial of the request.

(b) If the appeal is granted, the person making the appeal shall be immediately notified and copies of the releasable documents shall be made available promptly thereafter upon receipt of appropriate fees as set forth in 212.35. If the appeal is denied in whole or part, the person making the request shall be immediately notified of the decision and of the provisions for judicial review of the Agency's denial of the request.

(c) In the event a determination is not issued within the applicable time limit and the person making the request therefore chooses to sue the Agency, the Agency-level determination process shall nonetheless continue.

(d) If an appeal not properly marked "FOIA Appeal" on the text of the appeal and/or envelope is thereby delayed in reaching the Appeals Officer, it will not be deemed received by the Appeals Officer until actually received by him/her. In such event, the person making the appeal will be furnished notice of the effective date of receipt.

#### §212.38 Predisclosure Notification Procedures for Confidential Commercial Information

(a) In General. Confidential commercial information provided to the Agency shall not be disclosed pursuant to a FOIA request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) Confidential Commercial Information means records provided to the Agency by a submitter that arguably contain material exempt from release under Exemption 4 of FOIA, 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 to the Agency. The term "submitter" includes, but is not limited to, corporations, state governments and foreign governments.

(b) Notice to submitters. Whenever the Agency receives a FOIA request for confidential commercial information and, pursuant to paragraph (c) of this section, the submitter of such information is entitled to receive notice of that request, then the Agency shall promptly notify the submitter that it has received the request, unless such a notice is not required pursuant to paragraph (g) of this section. The notice shall be in writing and shall either describe the exact nature of the confidential commercial information requested or provide a copy of the records or portion of the records containing the confidential commercial information. The notice shall be addressed to the submitter and mailed, postage prepaid, first class mail, to the submitter's last known address. Where notice is required to be given to a voluminous number of submitters, in lieu of such a mailing the notice may be posted or published in a manner and place reasonably calculated to provide notice to the submitters.

(c) When notice is required; related matters.

(1) for confidential commercial information submitted prior to January 1, 1988, the Agency shall provide a submitter with notice of its receipt of a FOIA request whenever:

(i) The records are less than ten years old and the information has been designated by the submitter as confidential commercial information; or

(ii) The Agency has reason to believe that the disclosure of the information could reasonably be expected to cause substantial competitive harm to the submitter thereof.

(2) For confidential commercial information submitted to the Agency on or after January 1, 1988, the Agency shall provide a submitter with notice of its receipt of a FOIA request whenever:

(i) The submitter has designated the information as confidential commercial information pursuant to the requirements of this section; or

(ii) The Agency has reason to believe that the disclosure of the information could reasonably be expected to cause substantial competitive harm to the submitter.

(3) Notice of a request for confidential commercial information falling within paragraph (c)(2)(i) of this section shall be required for a period of not more than ten years after the date of submission unless the submitter provides reasonable justification for a designation period of greater duration.

(4) A submitter shall use good-faith efforts to designate by appropriate markings, either at the time a record is submitted to the Agency or within a reasonable period of time thereafter, those portions of the record which it deems to contain confidential commercial information. The designation shall be accompanied by a certification made by the submitter, its agent or designee that to the best of the submitter's knowledge, information and belief, the record does, in fact, contain confidential commercial information that theretofore has not been disclosed to the public.

(5) Whenever the Agency provides notice to the submitter in accordance with paragraph (c) of this section, the Agency shall at the same time provide written notice to the requester that it is affording the

submitter a reasonable period of time within which to object to the disclosure, and that, therefore, the Agency may be required to enlarge the time within which it otherwise would respond to the request.

(d) Opportunity to object to disclosure.

To the extent permitted by law, the notice required by paragraph (c) of this section shall afford a submitter a reasonable period of time within which the submitter or its authorized representative may provide the Agency with a written objection to the disclosure of the confidential commercial information and demonstrate why the submitter believes that the records contain confidential commercial information whose disclosure would, probably, cause substantial competitive injury to the submitter. Except where a certification already has been made in conformance with the requirements of paragraph (c)(4) of this section, the objection shall be accompanied by certification made by the submitter, its agent or designee, that to the best of the submitter's knowledge, information and belief, the record does, in fact, contain confidential commercial information that theretofore has not been disclosed to the public. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) Notice of intent to disclose.

(1) The Agency shall give careful consideration to objections made by a submitter pursuant to paragraph (d) of this section prior to making any administrative determination of the issue. Whenever the Agency decides to disclose information despite the objection of a submitter, the Agency shall forward to the submitter a written notice which shall include:

- (i) A statement of the reasons for which a submitter's disclosure objections were not sustained; and
- (ii) A description of the information to be disclosed.

(2) To the extent permitted by law, the notice required to be given by paragraph (e)(1) of this section shall be provided to the submitter a reasonable number of days prior to the specified disclosure date.

(3) Whenever the Agency provides notice to the submitter in accordance with paragraphs (e) (1) and (2) of this section, the Agency shall at the same time notify the requester (a) that such a notice has been given and (b) of the proposed date for disclosure.

(f) Notice of lawsuit. When a requester brings suit seeking to compel the disclosure of information for which notice is required pursuant to paragraph (c) of this section, the Agency shall promptly notify the submitter that such suit has been filed.

(g) Exceptions to notice requirements. The notice requirements of this section shall not apply if:

- (1) The Agency determines that the information should not be disclosed;
- (2) The information has been published or has been officially made available to the public;
- (3) Disclosure of the information is required by an Agency rule that;
  - (i) was adopted pursuant to notice and public comment;
  - (ii) specifies narrow classes of records submitted to the Agency that are to be released under the FOIA; and
  - (iii) provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(4) For purposes of paragraph (c) of this section, the information requested was not designated by the submitter as exempt from disclosure when the submitter had an opportunity to make such designation at the time of submission of the information or within a reasonable time thereafter, unless;

(i) the Agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(ii) The designation made by the submitter appears obviously frivolous; except that, in such case, the Agency must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

#### Subpart E - Exemptions from Disclosure

##### §212.41 Exemptions from the publication and disclosure requirements of subparts B, C, and D.

None of the provisions of subparts B, C, and D which provide for publication and disclosure of certain information and records shall be applicable to matters that are:

(a) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(b) related solely to the internal personnel rules and practices of the Agency;

(c) specifically exempted from disclosure by statute;

(d) trade secrets and commercial or financial information obtained from a person and privileged and confidential;

(e) interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(f) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) would reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, information furnished by a confidential source;

(v) would disclose techniques and procedure for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) could reasonably be expected to endanger the life or physical safety of any individual.

(h) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; and

(i) geological and geophysical information and data (including maps) concerning wells.

§212.42 Exemption from 5 U.S.C. 552.

Whenever a request is made which involves access to records described in paragraph (g) of §212.41 and the investigation or proceedings involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

#### Subpart F - Opening of Records for Nonofficial Research Purposes

§212.51 General Policy.

(1) The Agency will open its records on an equitable basis to all individuals engaged in private research as soon as such action may be taken without adversely affecting the national security, the maintenance of friendly relations with other nations, the efficient operation of the Agency, or the administrative feasibility of servicing requests for access to such records.

(2) Access for research purposes to the classified foreign policy records in the Agency's custody will be governed by the regulations of the Department of State with respect thereto, as set forth in Part 6, Chapter II of Title II of the Code of Federal Regulations. Application for such access may be made to the Chief, Information and Records Division\*, at the address listed in §212.33(a) of this part. That officer, or his/her designee, in consultation with the Director, Historical Office, Department of State, or his/her designee, will determine the action to be taken and will so advise the researcher.

\* This passage represents recent organizational and/or locational changes which have not yet been published and finalized in the Federal Register. We are currently in the process of preparing a public notice for the Federal Register.

\*\* This passage has been superseded by the Electronic Freedom of Information Act Amendments of 1996. The passage should read "twenty working days." We are currently revising our regulations for publication in the Federal Register. This change will be reflected in the revised regulations.

\*\*\* This passage has been superseded by the Electronic Freedom of Information Act Amendments of 1996. The passage should read "thirty working days." We are currently revising our regulations for publication in the Federal Register. This change will be reflected in the revised regulations.

## USAID FOIA Handbook

### Fact Sheet: How to Make a FOIA Request for USAID Records

#### Submitting Your Request

The Information and Records Division (IRD) is the central processing point for requests for USAID records in Washington and overseas.

Your request must be submitted in writing. While our FOIA Specialists are happy to answer questions about our program or help you formulate your request over the phone, we do not accept FOIA requests over the phone or by e-mail.

Mail your request to the following address:

Ms. Willette L. Smith, Chief  
Information & Records Division  
Office of Administrative Services  
United States Agency for International Development  
Room 2.07C, RRB  
Washington, D.C. 20523-2701

Please mark your envelope with the notation "FOIA REQUEST."

You may fax your request. Our fax number is 202-216-3070. If you fax your request, you normally do not have to mail us the original copy. However, there are some cases in which we need both the faxed version and the signed original version. You should send both versions if your request is both a FOIA request and a Privacy Act request for records about you. We also need both versions if a third-party (an attorney, for example) requests records about you on your behalf. When a third-party makes such a request on your behalf, we need an original consent letter signed by you which gives us authorization to release records about you to the third-party.

If you have your request delivered by a commercial courier service, the address and phone number that you should give to the service are as follows:

U.S. Agency for International Development  
Ronald Reagan Building  
1300 Pennsylvania Avenue NW  
Room 2.07C  
Washington, D.C. 20534  
Telephone: 202-712-0960

## **Formulating Your Request**

Our ability to respond expeditiously and responsively to your request is dependent upon the clarity of your request. Please provide as much descriptive information as possible. List the types of documents that you want and the timeframe of the documents that should govern our search. If you know which USAID offices have the documents that you are looking for, please identify the offices.

We receive many requests for procurement documents: solicitations, proposals, and contracts. Sometimes our requesters only provide us with the solicitation number. If possible, when you are requesting winning proposals and resulting awards please provide the following additional information: the office that issued the solicitation, the title of the solicitation, the name of the successful bidder, and the number of the resulting award.

The FOIA allows agencies to charge requesters for FOIA search, review, and copying services. In your request letter, please indicate your willingness to pay processing fees and the dollar amount you are willing to pay.

**Please remember to give us a phone number in your request letter that we can use if we have questions about your request.**

Several characteristics of the FOIA should be kept in mind. As a general rule, agencies are not required to create records in order to respond to FOIA requests. Nor are agencies required to answer questions posed as FOIA requests. Please remember that the FOIA pertains only to existing records and that requests cannot be made for "future" records not yet created.

**If you need help in formulating your request, call us. Our number is 202-712-0960.**

# USAID FOIA Handbook

## Fact Sheet: Fees and Fee Waivers for FOIA Processing

### Fees

The FOIA allows agencies to charge requesters for FOIA search, review, copying, and other special services such as courier deliveries. USAID's fee practices are governed by the FOIA and by the Office of Management and Budget's (OMB) Uniform Freedom of Information Act Fee Schedule and Guidelines.

Note: There are no fees for filing a PA request (unless a second copy of the material is requested, which will be provided at a charge of \$ .20/page).

There are four government-wide requester categories: Commercial Use Requesters; Educational and Non-Commercial Scientific Institution Requesters; Representatives of the News Media; and All Other Requesters.

If you would like to for a cost estimate, USAID's FOIA staff will attempt to let you know roughly what your fees will be before they process your request. However, it is often difficult to estimate the costs until a search for the requested documents is actually accomplished.

USAID's Service Fees are as follows:

#### (1) Commercial Use Requesters:

Search: \$20.82 per hour

Search costs will be assessed even though no records may be found or even if, after review, there is no disclosure or records.

Review: \$35.90 per hour

Duplication: \$ .20 per page

#### (2) Educational & Non-Commercial Scientific Institutions

Search: No fee

Review: No fee

Duplication: \$ .20 per page after the first 100 pages

#### (3) Representatives of the News Media

Search: No fee

Review: No fee

Duplication: \$ .20 per page after the first 100 pages

(4) All Others

Search: Same as "Commercial Users" except the first two hours shall be furnished without charge.

Review: No fee

Duplication: \$ .20 per page after the first 100 pages

USAID does not charge a processing fee if the total processing cost of a request is \$14.99 or less.

**Applicable Definitions**

"SEARCH" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Line-by-line search will not be done when duplicating an entire document would prove the less expensive and quicker method of complying with a request.

"REVIEW" is the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing documents for disclosure, e.g., doing all that is necessary to redact those documents of exempt material and otherwise preparing them for release. Review fees do not include time spent resolving general legal or policy issues regarding the application of exemptions.

"DUPLICATION" is the process of making a copy of a document available to the FOIA requester. Copies can take the form of paper copy, microfilm or audiovisual materials (among others) and will be in a form that is reasonably usable by requesters.

"COMMERCIAL USE REQUEST" refers to a request from or on behalf of one who seeks information for a use or purpose that is related to commerce, trade, or the profit interest of the requester or of the person on whose behalf the request is made. In determining whether a request properly belongs in this category, the Agency will determine the use to which a requester will put the documents requested. Where the Agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Agency may seek additional clarification before assigning the request to a specific category.

"EDUCATIONAL INSTITUTION" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education which operates a program or programs of scholarly research. A student who makes a request in

furtherance of the completion of a course of instruction in carrying out an individual research goal does not qualify as an EDUCATIONAL INSTITUTION requester.\*

"NON-COMMERCIAL SCIENTIFIC INSTITUTION" refers to an institution that is not operated on a "commercial" basis as that term is referenced in the above definition for COMMERCIAL USE REQUEST above and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.\*

\* To be eligible for inclusion, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the requests is from a non-commercial scientific institution) research.

"REPRESENTATIVE OF THE NEWS MEDIA" refers to a person actively gathering news for an entity that is organized and operated to publish or broadcast 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 (but only in those instances when they can qualify as disseminators of "news" who make their products available for purchase or subscription by the general public). These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g. electronic dissemination of newspapers through telecommunication services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a sound basis for expecting publication through such an organization, even though not actually employed by it. A publication contract would be the clearest evidence, but the Agency may also look to the past publication record of the requester in making this determination.

"ALL OTHERS" refers to requesters that do not fit into any of the other requester categories.

### **Important Payment Practices**

**PAYMENTS:** (a) Payments will be in U.S. Dollars in the form of either a check or bank draft drawn on a bank in the United States or a money order. (b) The check or money order should be made payable to the order of the U.S. Treasury and mailed to the Chief, Information and Records Division, U.S. Agency for International Development, Room 2.7C, Ronald Reagan Building, Washington, D.C. 20523-2701

**ADVANCE PAYMENT OR CONFIRMATION:** When USAID estimates or determines that allowable charges to a requester are likely to exceed \$250.00, USAID will require a requester to make an advance payment of the entire estimated charges before continuing

to process the request. Where the estimated charges are in the \$25.00 to \$250.00 range, then USAID in its discretion, before processing the request, may require either (a) an advance deposit of the entire estimated charges or (b) written confirmation of the requester's willingness, when billed, to pay such charges.

**AGGREGATING REQUESTERS:** When USAID reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Agency will aggregate any such requesters and charge accordingly.

**NONPAYMENT OF FEES:** USAID will begin assessing interest charges on the thirty-first day following the day on which the requester is advised of the fee charge. Interest will be at the rate prescribed in 31 U.S.C. 3717.

Where a requester has previously failed to pay a fee charged in a timely fashion (i.e. within thirty days of the billing date), USAID will require the requester to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the remaining estimated fee before USAID begins to process a new request or continues processing a then-pending request from the requester. The administrative response time limits prescribed in subsection (a)(6) of the FOIA will begin only after the Agency has received fee payments described in this section.

**EFFECT OF THE DEBT COLLECTION ACT OF 1982 (PUB. L.97-365):** USAID will use the authorities the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

### **Waiving or Reducing Fees**

In accordance with section (4)(A)(iii) of the FOIA, USAID will furnish documents without 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 is not primarily in the commercial interest of the requester.

You should make your request for a waiver or reduced fees at the same time you make your initial request for records. If your waiver or fee reduction request is not granted, the waiver/fee reduction denial letter sent to you will designate an appeal officer.

In determining whether a waiver or reduction should be granted because the release will be in the public interest, USAID takes many factors into consideration:

1. Whether the subject matter of the request specifically concerns identifiable operations or activities of the government.

2. Whether the release of the disclosable portions of the requested records will be informative regarding the particular government activities or operations that are connected to the subject matter of the request.
3. Whether the requested information is already in the public domain, either in a duplicative or a substantially identical form.
4. Whether the disclosure will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.

Note: An important factor taken into consideration is the requester's identity and qualifications -- e.g., expertise in the subject area and ability and intention to disseminate the information to the general public is evaluation.

5. Whether an identifiable contribution to public understanding of government operations or activities will be a "significant" one, i.e., such that the general public's understanding of the subject matter in question will likely be enhanced by the disclosure to a significant extent.

Once the public interest requirement for a waiver or fee reduction has been met, then a determination of whether disclosure of the requested information is primarily in the commercial interest of the request is made. If it is determined that there is a commercial interest, a waiver or fee reduction is granted when the public interest in disclosure is greater in magnitude than the requester's commercial interest.

# USAID FOIA Handbook

## Fact Sheet: 1998 Annual Report

### U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT FY98 FOIA ANNUAL REPORT

(Covers October 1, 1997 through September 30, 1998)

#### I. Basic Information Regarding Report

A. Name, title, address, and telephone number of person(s) to be contacted with questions about the report.

Joanne Paskar, Public Affairs Specialist  
U.S. Agency for International Development  
Information and Records Division  
Room 2.7C  
Washington, DC 20523-2701  
Telephone: 202-712-1217

B. Electronic address for report on the World Wide Web.

<http://www.info.usaid.gov/about/foia>

C. How to obtain a copy of the report in paper form.

Contact Ms. Joanne Paskar at the address or telephone number given in Section I.A. above.

#### II. How to make a FOIA Request

A. Names, addresses, and telephone numbers of all individual agency components and offices that receive FOIA requests.

Initial Requests:

U. S. Agency for International Development  
Information and Records Division  
Room 2.07C  
Washington, DC 20523-2701  
TELEPHONE: 202-712-0960  
TELEPHONE FAX: 202-216-3070

Appeals:

U.S. Agency for International Development  
Director of the Office of Administrative Services  
Room 4.06B  
Washington, DC 20523-4601  
TELEPHONE: 202-712-4410  
TELEPHONE FAX: 202-216-3369

B. Brief description of the agency's response-time ranges.

During FY98, the median processing time for initial requests was 36 days. Not all requests took 36 days to process. Requests for readily available documents that involved little or no review were processed much faster - within a few days in some cases. Other requests took longer to process for a variety of reasons. Some requesters asked for a large volume of documents that had to be located, photocopied, and reviewed. USAID is an international organization that has many overseas offices. Delays in our response time occurred when documents had to be transported from the overseas offices to Washington. USAID received many requests for procurement-related documentation, especially for contract and grant proposals. Such requests were often time-consuming and labor-intensive because they involved repeated discussions with contractors/grantees concerning the competitive ramifications of releasing the requested information.

C. Brief description of why some requests are not granted.

USAID sometimes was required to withhold requested information under one or more of the FOIA's exemptions. The number of instances in which USAID used an exemption in FY98 are listed in Section V.B.3. Exemptions 3 and/or 4 normally were used to protect commercial or financial information provided by contractors and grantees. Exemption 5 was used to protect vital deliberative-process information or attorney-client information. Exemption 6 was used to protect the privacy of individuals named in documents. At times, a request is not fulfilled for an administrative reason. The various types of administrative reasons are listed in Section V.B.4.

### III. Definitions of Terms and Acronyms Used in the Report

A. Agency-specific acronyms or other terms.

IRD - Information and Records Division

USAID - U.S. Agency for International Development

B. Basic terms, expressed in common terminology.

1. FOI/PA request -- Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning

oneself; such requests are also treated as FOIA requests. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)

2. Initial Request -- a request to a federal agency for access to records under the Freedom of Information Act.

3. Appeal -- a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.

4. Processed Request or Appeal -- a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.

5. Multi-track processing -- a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first-out basis. A requester who has an urgent need for records may request expedited processing (see below).

6. Expedited processing -- an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.

7. Simple request -- a FOIA request that an agency using multi-track processing places in its fastest (nonexpedited) track based on the volume and/or simplicity of records requested.

8. Complex request -- a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.

9. Grant -- an agency decision to disclose all records in full in response to a FOIA request.

10. Partial grant -- an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entireties, but to withhold others in whole or in part.

11. Denial -- an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as because no record is located in response to a FOIA request).

12. Time limits -- the time period in the Freedom of Information Act for an agency to respond to a FOIA requests (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).

13. "Perfected" request -- a FOIA request for records which adequately described the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.

14. Exemption 3 statute -- a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).

15. Median number -- the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.

16. Average number -- the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example of 3, 7, and 14, the average number is 8.

#### IV. Exemption 3 Statutes

A. List of Exemption 3 statutes relied on by agency during current fiscal year.

41 U.S.C. 253b(m)

National Security Act of 1947

1. Brief description of type(s) of information withheld under each statute.

41 U.S.C. 253b(m) - Prohibits release of proposal information submitted by a contractor in response to the requirements of a competitive solicitation unless the proposal information is set forth or incorporated by reference in a resulting contract.

National Security Act of 1947 - protects from disclosure intelligence sources and methods.

2. Statement of whether a court has upheld the use of each statute.

USAID has not been involved in litigation involving the use of the above two statutes.

#### V. Initial FOIA/PA Access Requests

A. Numbers of initial requests.

1. Number of requests pending as of end of FY97: 68

2. Number of requests received during FY98: 294

3. Number of requests processed during FY98: 263

4. Number of requests pending as of end of FY98: 99

B. Disposition of initial requests.

1. Number of total grants: 117
2. Number of partial grants: 76
3. Number of denials: 70

a. number of times each FOIA exemption used (counting each exemption once per request)

- (1) Exemption 1: 3
- (2) Exemption 2: 0
- (3) Exemption 3: 15
- (4) Exemption 4: 51
- (5) Exemption 5: 17
- (6) Exemption 6: 39
- (7) Exemption 7(A): 1
- (8) Exemption 7(B): 0
- (9) Exemption 7(C): 5
- (10) Exemption 7(D): 1
- (11) Exemption 7(E): 0
- (12) Exemption 17(F): 0
- (13) Exemption 8: 0
- (14) Exemption 9: 0

4. Other reasons for nondisclosure (total): 76

- a. no records: 34
- b. referrals: 0
- c. request withdrawn: 17
- d. fee-related reason: 18
- e. records not reasonably described: 0
- f. not a proper FOIA request for some other reason: 0
- g. not an agency record: 2
- h. duplicate request: 1
- i. other reasons: 4

Reasons: merging of requests; provision of requested information by another USAID source.

## VI. Appeals of Initial Denials of FOIA/PA Requests

A. Number of appeals.

1. Number of appeals received during FY98: 8
2. Number of appeals processed during FY98: 9

B. Disposition of appeals.

1. Number completely upheld: 3
2. Number partially reversed: 4
3. Number completely reversed: 2

a. number of times each FOIA exemption used (counting each exemption once per appeal)

- (1) Exemption 1: 0
- (2) Exemption 2: 0
- (3) Exemption 3: 0
- (4) Exemption 4: 1
- (5) Exemption 5: 2
- (6) Exemption 6: 1
- (7) Exemption 7(A): 0
- (8) Exemption 7(B): 0
- (9) Exemption 7(C): 0
- (10) Exemption 7(D): 0
- (11) Exemption 7(E): 0
- (12) Exemption 7(F): 0
- (13) Exemption 8: 0
- (14) Exemption 9: 0

4. Other reasons for nondisclosure (total): 4

- a. no records: 2
- b. referrals: 0
- c. request withdrawn: 2
- d. fee-related reason: 0
- e. records not reasonably described: 0
- f. not a proper FOIA request for some other reason: 0
- g. not an agency record: 0
- h. duplicate request: 0
- i. other (specify): 0

VII. Compliance with Time Limits Status of Pending Requests

A. Median processing time for requests processed during the year.

1. Simple requests (if multiple tracks used) - Multiple tracks not used.
2. Complex requests (specify for any and all tracks used)
  - a. number of requests processed: 263
  - b. median number of days to process: 36
3. Requests accorded expedited processing.
  - a. number of requests processed: 0

b. median number of days to process: N/A

B. Status of pending requests.

1. Number of requests pending as of end of current fiscal year (Number from Line V.A.4.): 99
2. Median number of days that such requests were pending as of that date: 149

VIII. Comparison with Previous Year(s) (Optional):

For the FY98 FOIA Annual Report, USAID is not providing a comparison with prior-year performance information. The statistical performance measurements that are now used are very different from prior-year measurements. Any comparison would be of little value.

IX. Costs/FOIA Staffing

A. Staffing levels.

1. Number of full-time FOIA personnel: 6
2. Number of personnel with part-time or occasional FOIA duties (in total work-years): 1.5
3. Total number of personnel (in work-years): 7.5

B. Total costs (including staff and all resources).

1. FOIA processing (including appeals): \$393,200.00
2. Litigation-related activities (estimated): Not tracked
3. Total costs: \$393,200.00
4. Comparison with previous year(s) (including percentage of change) (optional) - Data not available.

X. Fees

This includes charges for search, review, document duplication, and any other direct costs permitted under agency regulations.

A. Total amount of fees collected by agency for processing requests: \$443.00

B. Percentage of total costs: .0011266%

XI. FOIA Regulations and Fee Schedule

## USAID FOIA Handbook

### **Fact Sheet: What is the Privacy Act (PA)?**

The Privacy Act of 1974 regulates Federal recordkeeping and disclosure practices, allowing most individuals to seek access to Federal records about themselves while restricting disclosure to others. The Act specifies that personal information in agency files must be accurate, must be obtained directly from the subject of the record, and may not be used for anything other than its original purpose. Individuals are guaranteed the right to correct personal information and obtain legal enforcement of the provisions of the Act. Agencies are required to publish a description of every system of records (a group of records from which information is retrieved by name, Social Security number, or other identifying symbol assigned to an individual) that contains personal information. This is to make sure no secret records are kept. Agencies may be subject to penalties if they don't comply with the Act.

There are no fees for filing a PA request (unless a second copy of the material is requested, which will be provided at a charge of \$ .20/page).

# USAID FOIA Handbook

## Fact Sheet: Privacy Act Text

### THE PRIVACY ACT OF 1974

5 U.S.C. § 552a

As Amended

§ 552a. Records maintained on individuals

(a) Definitions

For purposes of this section--

(1) the term "agency" means agency as defined in section 552(f) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13;

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term "matching program"--

(A) means any computerized comparison of--

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of--

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include--

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches--

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel; or

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel; or

(vii) matches performed incident to a levy described in section 6103(k)(8) of the Internal Revenue Code of 1986;

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of disclosure

No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the

prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be--

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(e) of Title 31.

(c) Accounting of Certain Disclosures

Each agency, with respect to each system of records under its control, shall--

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of--

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to records

Each agency that maintains a system of records shall--

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and--

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either--

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency requirements

Each agency that maintains a system of records shall--

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by Executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual--

(A) the authority (whether granted by statute, or by Executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include--

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) Agency rules

In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall--

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) Civil remedies

Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of--

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability

of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of legal guardians

For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) Criminal penalties

Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) General exemptions

The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is--

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which 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 (A) 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; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) 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.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific exemptions

The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within

the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is--

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of Title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) 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 the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) 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; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(1) Archival records

(1) Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of Title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m) Government contractors

(1) When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of Title 31 shall not be considered a contractor for the purposes of this section.

(n) Mailing lists

An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Matching agreements--

(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying--

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to--

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel, that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall--

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if--

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) Verification and Opportunity to Contest Findings

(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until--

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that--

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of--

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) Sanctions

(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless--

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) Report on new systems and matching programs

Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) Biennial report

The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report--

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding two years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t) Effect of other laws

(1) No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) Data Integrity Boards

(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board--

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including--

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that--

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver.

(7) In the reports required by paragraphs (3)(D) and (6), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) Office of Management and Budget Responsibilities

The Director of the Office of Management and Budget shall--

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

The following section was originally part of the Privacy Act but was not codified; it may be found at § 552a (note).

Sec. 7 (a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to--

(A) any disclosure which is required by Federal statute, or

(B) any disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

The following sections were originally part of P.L. 100-503, the Computer Matching and Privacy Protection Act of 1988; they may be found at § 552a (note).

Sec. 6 Functions of the Director of the Office of Management and Budget.

(b) Implementation Guidance for Amendments-- The Director shall, pursuant to section 552a(v) of Title 5, United States Code, develop guidelines and regulations for the use of agencies in implementing the amendments made by this Act not later than 8 months after the date of enactment of this Act.

Sec. 9 Rules of Construction.

Nothing in the amendments made by this Act shall be construed to authorize--

(1) the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by other Federal agencies;

(2) the direct linking of computerized systems of records maintained by Federal agencies;

(3) the computer matching of records not otherwise authorized by law; or

(4) the disclosure of records for computer matching except to a Federal, State, or local agency.

Sec. 10 Effective Dates.

(a) In General-- Except as provided in subsection (b), the amendments made by this Act shall take effect 9 months after the date of enactment of this Act.

(b) Exceptions-- The amendment made by sections 3(b) [Notice of Matching Programs - Report to Congress and the Office of Management and Budget], 6 [Functions of the Director of the Office of Management and Budget], 7 [Compilation of Rules and Notices] and 8 [Annual Report] of this Act shall take effect upon enactment.

# USAID FOIA Handbook

## Fact Sheet: Privacy Act Regulations

Code of Federal Regulations (CFR)

22 CFR 215

REGULATIONS FOR IMPLEMENTATION OF PRIVACY ACT OF 1974

### 215.1 General Provisions

(a) This section prescribes how the U.S. Agency for International Development (USAID) will collect, maintain, provide access to, and disclose information about individuals kept in its systems of records. It also explains how individuals can identify, gain access to, obtain disclosure of, and ensure the accuracy of information about them in USAID records.

(b) It is USAID policy to manage its systems of records in a way which ensures that the privacy of individuals is scrupulously protected. Information about individuals in USAID records will only be accessible or disclosed to persons authorized to receive it under the Privacy Act and these regulations. At the same time, USAID will provide individuals with prompt access to and the ability to correct information about them in agency records in order to ensure that decisions based on such information are properly informed and that authorized disclosures reflect the most accurate information available.

(c) Requests from individuals relating to Privacy Act records should be addressed to USAID as follows:

(1) Requests for identification of records, access to records, disclosure of records, or to amend records:

Mail Address: Chief, M/AS/IRD  
U.S. Agency for International Development  
Ronald Reagan Building, Room 2.7C  
1300 Pennsylvania Ave., N.W.  
Washington, D.C. 20523-2701  
Facsimile number: (202) 216-3070

(2) Appeals of decisions of the Chief, M/AS/IRD, relating to access to, disclosure of, or amendment of records:

Mail Address: Director, M/AS  
U.S. Agency for International Development  
Ronald Reagan Building, Room 4.6B  
1300 Pennsylvania Ave. N.W.  
Washington, D.C. 20523-4601  
Facsimile number: (202) 216-3369

### 215.2 Definitions

(a) "Privacy Act" means the Privacy Act of 1974, 5 U.S.C. 552a, 88 Stat. 1896, as amended from time to time.

(b) "Individual" or "person" means a citizen of the United States or an alien lawfully admitted for permanent residence in the United States.

(c) "Record" means any item, collection, or grouping of information about an individual that is maintained by USAID including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. It includes data maintained in an electronic format, such as in e-mails or computer data files.

(d) "Routine Use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(e) "Statistical Record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. §8.

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

### 215.3 Obtaining Information About Individuals in USAID's Systems of Records

#### 215.31 Identification of Records

(a) USAID Systems of Records. USAID currently maintains over two dozen systems of records which contain information about individuals. These systems are identified and described in the Agency's listing of systems of records published in the Federal Register. A copy of the current listing may be obtained at USAID's "public reading room" facility located at the USAID Public Information Center, Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, Room M.01, Washington, D.C.; or may be found in the electronic reading room located on USAID's external website, [www.info.usaid.gov](http://www.info.usaid.gov).

(b) How to Request Identification of Records. Individuals may request that USAID determine if records or information about them exist in any of its systems of records. Requests for identification of records or information located in USAID's offices in Washington, D.C., should be submitted in writing to the Chief, Information & Records Division, Office of Administrative Services, Bureau for Management(M/AS/IRD), by mail or facsimile at the address or telephone number provided in §215.1(c)(1) above. Requests for identification of information located in USAID missions and offices outside the United States should be submitted in writing to the director of that mission or office. A listing of USAID missions abroad and their addresses can be found on USAID's external website, [www.info.usaid.gov](http://www.info.usaid.gov).

Requesters can facilitate the location of records or information about them by providing USAID with as much identifying information about themselves (e.g., social security number, dates of employment) and the records sought (approximate date, originating office) as is possible. The request should also include a telephone number at which the requester may be reached during normal USAID business hours(8:45 a.m.- 5:30 p.m. Eastern Time, daily, except for Saturdays, Sundays, and legal holidays), so that USAID can get additional information from the requester, if required.

(c) Processing of the Request. The office receiving a request will forward it to the appropriate records system manager(s) within USAID for search and identification of records; and will be responsible for notifying the requester in writing as promptly as possible of the results of the search.

#### 215.32 Access to Records

(a) How to Get Access. Upon request, USAID will provide a person with access to any record or information pertaining to him or her which is contained in any of its systems of records. The requester may review the record and have a copy made of all or part of it. The requester may be accompanied during any review by a person of the requestor's choosing. Before granting access, USAID may require that the requester provide a written statement authorizing discussion of the requester's record in the presence of the accompanying person.

Requests for access to records located in USAID/Washington offices should be made to the Chief, M/AS/IRD, in writing by mail or facsimile at the address or facsimile number provided in §215.1(c)(1); or, in the case of records located in USAID missions and offices outside the United States, by written request addressed to the mission or office director. If the requester is unsure where the records are located, the request should be submitted to the Chief, M/AS/IRD.

(b) If Access is Granted. USAID will normally provide access within 30 days (excluding Saturdays, Sundays and legal public holidays) of receipt of a request. If USAID is unable, for good cause, to provide access within that period (e.g., records are in inactive storage and not readily available), the requester will be notified and told when it is anticipated that access will be provided. If no reasonable means exist for the requester to have access to his or her record in person, or if more convenient to the requester and USAID, written copies of records may be provided to the requester at no cost in lieu of providing physical access.

(c) If Access is Denied. If USAID denies access, it will inform the requester in writing and explain the reasons for the denial. The requester may appeal this denial in writing to the Director, Office of Administrative Services, Bureau for Management (M/AS), by mail or facsimile at the address or telephone number provided in §215.1(c)(2). The Director, M/AS, will act on the appeal within thirty days of its receipt and promptly notify the requester in writing of the action taken. If the reviewing official determines that access should be denied, the requester will be told the reasons for that and advised of the provisions for judicial review of that determination.

(d) Access Not Required. USAID is not required to provide an individual with access to any information compiled in reasonable anticipation of a civil action or proceeding.

#### 215.32 Disclosure of Information

(a) Limits on Disclosure. USAID will not disclose any Privacy Act record contained in a USAID system of records by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the information in that record is otherwise permitted under the Privacy Act. The Privacy Act permits disclosure of information about individuals in USAID records:

- (1) to officers and employees of USAID who have a need for the record in performance of their official duties;
- (2) when required under the Freedom of Information Act (FOIA) or any other provisions of 5 U.S.C. §552;
- (3) for routine use as defined under the Privacy Act (see §215.2(d) and described in USAID's published list of Privacy Act record systems (see §215.8(a));
- (4) for Bureau of the Census purposes;
- (5) for statistical research and reporting purposes (provided the record is not individually identifiable);
- (6) to the National Archives and Records Administration if the record has or may have historical or other value warranting continued preservation;
- (7) to government agencies or instrumentalities for civil or criminal law enforcement purposes;
- (8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual (provided the subject of the information is notified of disclosure (see §215.32(j)));
- (9) to either House of Congress or their committees or subcommittees;
- (10) to the Comptroller General or any of his authorized representatives, in the course of performance of the duties of the General Accounting Office;
- (11) pursuant to the order of a court of competent jurisdiction; and
- (12) to a consumer reporting agency in accordance with 31 U.S.C. §3711(e).

(b) How to Make Requests for Disclosure. Individuals should submit requests for disclosure to the Chief, M/AS/IRD, in writing by mail or facsimile using the address or facsimile number provided in §215.1(c)(1), regardless of where the information may be located. Individuals located in foreign countries with USAID missions or offices may submit requests to those organizations for forwarding to the Chief, M/AS/IRD, but the various time periods prescribed in these rules will not be deemed to start running until the request is received by the Chief, M/AS/IRD. Requests should describe records sought in enough detail to enable USAID personnel to locate the system(s) of records containing them with a reasonable amount of effort.

(c) Identification Required to Obtain Records. Requesters asking that copies of records be sent to them by mail must include in their requests information verifying their identity, including the requester's full name, current address, and date and place of birth. The request must be signed and the signature must either be notarized or submitted by the requester under 28 U.S.C. 1746, which permits a statement to be made under penalty of perjury as a substitute for notarization. A sample request form showing how un-notarized statements may be submitted can be obtained from USAID's public reading room or electronic reading room at [www.info.usaid.gov](http://www.info.usaid.gov). The requests must also include a telephone number at which the requester may be reached during usual USAID business hours so that any further verification information may be obtained, if needed. Persons asking to pick up copies of records in person will normally be required, at a minimum, to present a picture identification document (driver's license, government ID card, passport) prior to any release of documents to them.

(d) Processing of Requests. USAID will promptly acknowledge receipt of all requests for disclosure by sending a letter to the requester. The letter will assign a control number to the request and seek confirmation of the requester's willingness to pay any required fees. USAID will, at the same time, process the request under the Freedom of Information Act (FOIA) and a FOIA control number will also be assigned to it.

The Chief, M/AS/IRD, will then cause a search to be made of all USAID records systems and other agency records likely to contain the requested information. Ordinarily, this search will include only those records in existence as of the date the search is started. If another date is used, the requester will be notified. The Chief, M/AS/IRD, will determine whether information found as the result of the search is responsive to the request and may be released to the requester. The requester will be promptly notified of the determination made. If any of the requested information cannot be released, the reasons for that will be explained in the notification to the requester.

(e) How to Appeal Denials of Disclosure. If USAID refuses to release, in whole or in part, any information responsive to the request, the requester may, within 30 days from the date of the denial, appeal that decision. Appeals must be submitted in writing to the Director, M/AS, by mail or facsimile using the address or facsimile number provided in §215.1(c)(2). The Director will act upon the appeal within 60 days of its receipt and notify the requester in writing of the results. If the Director, M/AS, denies disclosure, the requester will be advised of the provisions for judicial review of this determination.

(f) Access in Lieu of Disclosure. USAID may also disclose records by granting the requester physical access to them. Persons granted access will be required to identify themselves by presenting, at a minimum, a picture identification document.

(g) Notice of Disputed Information. If the accuracy of information to be disclosed to any person or other agency is disputed, i.e., is the subject of a statement of disagreement submitted to the agency in accordance with §215.4(c), that portion of the record which is disputed will be clearly noted at the time disclosure is made and a copy of the statement will be provided to the requester. USAID may also provide with the disclosure a concise statement of the reasons why it has not made the requested amendments.

(h) Accounting for Disclosures. M/AS shall be responsible for keeping an accurate accounting for all disclosures of Privacy Act records, except for disclosures made to USAID officials and employees for official purposes and those required under the FOIA or any other provisions of 5 U.S.C. §552. This accounting will include (1) the date, nature, and purpose of each disclosure to any person or other agency;

and (2) the name and address of the person or agency to whom the disclosure is made. The accounting will be maintained for at least five years after the disclosure for which the accounting is made, or the life of the record, whichever is longer.

(i) How to Get Copies of Accountings. The individual named in a record may request a copy of the accounting showing disclosures of that record. Requests should be made in writing to the Chief, M/AS/IRD, at the mailing address or facsimile number provided in §215.1(c)(1). If the Chief, M/AS/IRD, declines to provide an accounting record, the requester may appeal the decision to the Director, M/AS. The appeal will be processed in accordance with the same procedures as used for appeals of disclosure decisions(see §215.32(e)). USAID is not required to provide an accounting of disclosures made to government agencies for civil and criminal law enforcement purposes.

(j) Notices of Disclosures Under Special Circumstances. M/AS/IRD will make reasonable efforts to serve notice on an individual when any record pertaining to such individual must be made available to any person under court order or when disclosure is made under emergency circumstances( see §215.32(a)(8)). If disclosure is required by court order, notice will be given promptly after the order becomes public and will include a copy of the court order. Notices will include a description of the nature of the information disclosed; the person, organization or agency to which it was disclosed; the date of disclosure; and the reasons for disclosure. Service will normally be made by certified mail sent to the last known address of the individual.

#### 215.4 Amendment or Correction of Privacy Act Records

(a) How to Request Amendments. An individual may request correction or amendment of a record pertaining to him or her. Requests must be made in writing to the Chief, M/AS/IRD, by mail or facsimile at the address or facsimile number provided in §215.1(c)(1).

(b) Processing of Requests. USAID will acknowledge receipt of requests for amendment or correction in writing no later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after date of receipt. Review of the request will be completed as soon as reasonably possible, normally within 30 days(excluding Saturdays, Sundays and legal public holidays). If completion of the review will require more time, the requester will be advised of the delay and when a response may be expected.

USAID will respond to the request by either making the amendment or correction requested or by informing the individual that the record will not be changed. If amendment or correction is refused, the requester will be notified of the reasons why, how to request a review of that decision, and the name and address of the reviewing official.

(c) How to Appeal a Refusal to Amend or Correct. An individual may appeal a refusal to amend or correct his or her record to the Director, M/AS, who shall review the appeal and make a final determination on it not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the appeal unless, for good cause shown, the USAID Administrator extends the review period. All appeals must be submitted in writing and addressed to the Director, M/AS, using the mail address or facsimile number provided in §215.1(c)(2). If, after review, the reviewing official refuses to amend or correct the record, the requester will be notified in writing of the reasons why; the requestor's right to file a concise statement of the requester's reasons for disagreeing with the decision; the procedures for filing a statement of disagreement; that the statement of disagreement will be made available to anyone to whom the record is subsequently disclosed, together with brief statement by the agency summarizing its reasons for refusing to amend the record; and that the requester has the right to seek judicial review of USAID's refusal to amend.

(d) Notification of Amendment or Correction. Within 30 days of the amendment or correction of a record, M/AS/IRD will notify all persons, organizations, or agencies to which the record was previously disclosed that the record has been amended or corrected, if an accounting for the disclosure was required.

#### 215.5 Collection and Maintenance of Information in Privacy Act Records

USAID offices and employees collecting or maintaining information about individuals in systems of records will:

(a) collect such information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(b) maintain in their records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by Executive order of the President;

(c) inform individuals from whom information is requested, on the form used to collect the information or on a separate form that can be retained by the individual:

(1) the legal authority which authorizes the solicitation of the information and whether disclosure is mandatory or voluntary;

(2) the principal purpose or purposes for which the information is intended to be used;

(3) the routine uses which may be made of the information; and

(4) the effects on the individual, if any, of not providing all or any part of the requested information;

(d) maintain all records used in making determinations about any individual with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(e) prior to disseminating any record about an individual to any person other than an agency or disclosures required under §215.32(a)(2) above, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for USAID purposes; and

(f) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

#### 215.6 Security of Privacy Act Records

Each manager of a USAID system of records containing information about individuals shall establish administrative and physical controls to prevent unauthorized access to its system of records, to prevent unauthorized disclosure of records, and to prevent physical damage to or destruction of records. The stringency of these controls shall correspond to the sensitivity of the records that the controls protect. At a minimum, these controls shall ensure that:

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form.

#### 215.7 Contracts for the Operation of Systems of Records

Any approved contract for the operation of a record system will contain the standard contract requirements issued by the General Services Administration to ensure compliance with the requirements of the Privacy Act for that record system. The USAID manager for the record system and the contracting officer responsible for administration of the contract will ensure that the contractor complies with these contract requirements.

#### 215.8 Publication of List of Systems of Records; Exemption of Certain Systems of Records from Privacy Act Requirements

(a) M/AS shall be responsible for publishing in the Federal Register a notice of the existence and character of all systems of records maintained by the Agency as required by the Privacy Act, 5 U.S.C. §552a(e)(4), and for ensuring that this information is included in its current form at all times in the USAID Electronic Reading Room. If the Agency decides to publish a notice of any new use or intended use of information in a system of records, at least 30 days prior to that publication it will publish a notice of intent to do so in the Federal Register and will provide an opportunity for interested persons to submit written data, views, or arguments to the Agency.

(b) Under 5 U.S.C. §552a(j) and (k), certain systems of records may be categorically exempted from various requirements of the Privacy Act. The Director, M/AS, in conjunction with the manager of each Agency system of records and GC/EA, shall determine which Agency systems of records meet the criteria for exemption in the Privacy Act. The listing of Agency systems of records published under §215.8(a) will identify those systems which have been exempted and the reasons why the system is considered exempt.

#### 215.9 Fees for Copies of Privacy Act Records

(a) Requesters will be charged at the rate of \$0.20 per page for copies of records and documents, except that no fee will be charged for the first copy of a record or any portion of a record provided to the person to whom the record pertains. If copies of records are provided in other than paper format (such as on microfiche or as electronic data files), or special handling or other than first-class mail is requested or required, the requester will be charged the actual cost of providing these additional services.

(b) Payment of fees will be in U.S. dollars by check, bank draft, or money order drawn on a U.S. financial institution, made payable to the Treasurer of the United States. A receipt for fees paid will be provided only upon request.

#### 215.10 Mailing lists; Use of Social Security Numbers

(a) An individual's name and address may not be sold or rented by USAID unless such action is specifically authorized by law. This does not require the withholding of names or addresses otherwise permitted to be made public.

(b) No individual will be denied any right, benefit, or privilege provided by law because of such individual's refusal to disclose his or her social security account number, unless (1) such disclosure is required by Federal statute, or (2) such disclosure was required and made under a statute or regulation adopted prior to January 1, 1975, to verify the identity of an individual. If an individual is asked to disclose his or her social security account number, that person will be informed whether the disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

## USAID FOIA Handbook

### **Fact Sheet: How to File a FOIA or Privacy Act Appeal**

Freedom of Information Act and Privacy Act appeals should be sent to the address below.

Director  
Office of Administrative Services  
U.S. Agency for International Development  
Room 4.6B, RRB  
Washington, DC 20523-4601

Please mark your envelope with the notation, "FOIA APPEAL" or "PRIVACY ACT APPEAL."

You may fax your appeal to the following number: 202-216-3369.

If you have your appeal delivered by a commercial courier service, the address and phone number that you should give to the service are as follows:

Margaret Thome  
U.S. Agency for International Development  
Ronald Reagan Building  
1300 Pennsylvania Avenue NW  
Room 4.6B  
Washington, D.C. 20534  
Telephone: 202-712-4410

Sorry, appeals are not accepted by e-mail.

# USAID FOIA Handbook

## Fact Sheet: Information Resources at USAID

### **The Center of Development Information and Evaluation (CDIE)**

<http://cdie.usaid.gov/>

CDIE maintains USAID's "institutional memory" of development experience documents; makes it available to the Agency, development partners, and the public; and draws on this experience to provide reference and research services that enable lessons learned to be reflected in policy formulation and program planning and implementation. The Center establishes means of measuring program performance, evaluates performance, and analyzes performance information. CDIE maintains the DEXS.

### **Development Experience System (DEXS)**

<http://cdie.usaid.gov/document/default.shtml>

The DEXS, available on the web and on CD, is an electronic library catalog including records for about 100,000 Agency technical and programmatic documents dating from USAID's inception. The documents include studies, evaluations, conference proceedings, surveys, and contractor deliverables for USAID's programs on democracy and governance, population and health, economic growth, agriculture and food security, the environment, education and training, humanitarian assistance, and others. Some of the documents are available in Word or PDF; paper copies of all others may be ordered.

### **Automated Directives System (ADS)**

<http://www.info.usaid.gov/pubs/ads/>

The ADS sets forth all Agency policies and procedures in a standard format. There are six series (100: Organization and Executive Management, 200: Program Assistance, 300: Acquisition and Assistance Agreements, 400: Personnel, 500: Management Services, 600: Budget and Finance), each of which contain numerous chapters on individual subjects. It is available on the web and on CD.

### **Publications and Partner Resources**

<http://www.info.usaid.gov/pubs/>

This page provides a list of Agency publications and other resources containing information on USAID activities, lessons learned, results, and policies to improve coordination and information sharing with development partners and the international development assistance community. There is information on partnering, USAID strategic objectives, R4 report preparation resources, links to USAID's databases, results and technical reports, and evaluation and performance measurement publications.

### **The Office of Procurement**

[http://www.info.usaid.gov/procurement\\_bus\\_opp/](http://www.info.usaid.gov/procurement_bus_opp/)

The Office of Procurement provides information on USAID solicitations, procurement announcements, and mailing lists.

### **The Office of the Inspector General**

<http://www.info.usaid.gov/oig/>

The USAID Inspector General heads an independent organization responsible for audits and investigations relating to USAID's programs and operations.

### **The Office of Small and Disadvantaged Business Utilization**

[http://www.info.usaid.gov/procurement\\_bus\\_opp/osdbu/](http://www.info.usaid.gov/procurement_bus_opp/osdbu/)

The Office of Small and Disadvantaged Business Utilization/Minority Resource Center (OSDBU/MRC) is the Agency's advocate for U.S. small businesses, small disadvantaged businesses, and women-owned small businesses. Contains material such as the "Guide to Doing Business with USAID."

### **USAID Missions**

<http://www.info.usaid.gov/missions.shtml>

These USAID missions have websites available to the public. Other missions will be posting material in the future, so check back regularly for new sites.