

investments and other financial interests such as pensions; retirement; group life, health, or accident insurance; and profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer. He is not required to list precise amounts of investments.

#### §1100.27 Exceptions to specific appointees.

The Commissioner may grant an exception to a specific appointee from completing that part of the statement of employment and financial interests relating to his investments or other financial interests referred to in §1100.26, upon making of a determination that this information is not relevant in light of the duties the appointee is to perform.

#### §1100.28 Supplementary statement.

Changes in or additions to the information contained in an employee's statement of employment and financial interests shall be reported as of June 30 of each year. Even though no changes or additions occur, a negative report is required. The supplementary statement, negative or otherwise, will be submitted by July 31 of each year. Notwithstanding the filing of the annual report, Section personnel shall at all times avoid acquiring a financial interest that could result, or taking action that would result, in a violation of the conflict-of-interest provisions of 18 U.S.C. 208 or this order.

#### §1100.29 Interests of employee's relatives.

The interests of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this order, 'member of an employee's immediate household, means those blood relatives who are residents of the employee's household.

#### §1100.30 Information not required to be submitted.

An employee is not required to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interests in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic or political organization or a similar organization not conducted as a business enterprise. For the purpose of this order, educational and other institutions doing research and development or related work involving grants of money from

or contracts with the Government are deemed 'business enterprises' and are required to be included in an employee's statement of employment and financial interests.

#### §1100.31 Information not known to employees.

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but known to another person, the employee shall request that other person to submit the information on his behalf.

#### §1100.32 Confidentiality of employee's statements.

Each statement of employment and financial interests, and each supplementary statement, will be held in confidence. The Section may not disclose information from a statement except as the Commissioner or the Civil Service Commission may determine for good cause. Persons designated to review the statements are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from the statement except to carry out the purpose of this order, or Federal laws or regulations.

#### §100.33 Effect of employee's statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

### PART 1102—FREEDOM OF INFORMATON ACT

- Sec.
- 1102.1 Purpose.
- 1102.2 Definitions.
- 1102.3 Procedures for requesting access to records or information.
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- 1102.8 Examination of records.

AUTHORITY: (5 U.S.C. 552), Pub. L. 93-502.

SOURCE: 41 FR 8474, Feb. 27, 1976, unless otherwise noted.

### §1102.2 Purpose.

The purpose of these regulations is to prescribe rules, guidelines and procedures to implement the Freedom of Information Act, 5 U.S.C. 552, as amended on November 21, 1974, by Pub. L. 93-502.

### §1102.2 Definitions.

(a) "The Section" means United States Section, International Boundary and Water Commission, United States and Mexico.

(b) "Act" means the Freedom of Information Act, as amended, 5 U.S.C. 552.

(c) "Records" and/or "information" are defined as all books, papers, manuals, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Section under the Federal law or in connection with the transaction of public business or in carrying out its treaty responsibilities and obligations, and preserved or appropriate for preservation by the Section as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of the data in them, but does not include books, magazines or other material acquired solely for library purposes and through other sources, and does not include analyses, computations, or compilations of information not extant at the time of the request. The term "record" does not include objects or articles such as structures, furniture, paintings, sculptures, three-dimensional models, vehicles and equipment.

(d) "Request" means a letter or other written communication seeking records or information under the Freedom of Information Act.

(e) "Person" includes any individual firm, corporation, organization or other entity.

(f) All terms used in these regulations which are defined in 5 U.S.C. 551 shall have the same meaning herein.

### §1102.3 Procedures for requesting access to records or information.

(a) A request for any information or records shall be addressed to the Comptroller, United States Section, International Boundary and Water Commission, room 212 IBWC Building, 4110 Rio Brava, El Paso, Texas 79998. The envelope and the letter shall be clearly marked "Freedom of Information Request" or "Request for Records," or the equivalent, to

distinguish it from other mail to the Section. If the request is not so marked and addressed, the 10-day time limit described in the Act will not begin to run until the request has been received by the Comptroller in the normal course of business. In each instance where a request is received in the normal course of business, the Comptroller shall notify the requester that its request was improperly addressed and the date the request was received.

(b) In order for the Section to locate records or information and make them available, it is necessary that it be able to identify the specific record or information sought. Persons wishing to inspect or obtain copies of records or information should, therefore, seek to identify them as fully and accurately as possible. In cases where requests are submitted which are not sufficient to permit identification, the Comptroller will endeavor to assist the persons seeking the records or information in filling in necessary details. In most cases, however, persons seeking records or information will find that time taken in trying to identify materials in the beginning is well worth their while in enabling the Section to respond promptly to their request.

(c) A person submitting a request should—

(1) Indicate the specific event or action, if any or if known, to which the request has reference.

(2) Designate the Division, Section, Branch, or Project of the Section which may be responsible for or may have produced the record or information requested.

(3) Furnish the date of the record or information or the date or period to which it refers or relates, if known.

(4) Name the character of record or information, such as a contract, an application, or a report.

(5) List the Section's personnel who may have prepared or have knowledge of the record or information.

(6) Furnish the reference material such as newspapers or publications which are known to have made a reference to the record or information desired.

(7) If the request relates to a matter in pending litigation or one which has been litigated, supply the Court location and case style and number.

(8) Describe, when the request includes more than one record or source of information, specifically each record or information so that availability may be separately determined.

(9) Clearly indicate whether the request is an initial request or an appeal from a denial of a record or information previously requested.

(10) Identify, when the request concerns a matter about the Section's personnel, the person as follows: First name, middle name or initial and surname; date and place of birth; and social security account number, if known.

(d) No particular format is needed for the request, except that it (1) must be in writing; (2) must describe the records or information sought with sufficient detail to permit identification; (3) should state willingness to pay fees, if any; and (4) must include the name, address and telephone number of the person submitting the request.

**§1102.4 Schedule of fees and method of payment for services rendered.**

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

(1) Searching for records, per hour or fraction thereof per individual:	
(i) Professional.....	\$11.00
(ii) Clerical .....	6.00
Search costs are due and payable even if the records or information which were requested cannot be located after all reasonable efforts have been made, or if the Section determines that a record which has been requested, but which is exempt from disclosure under these regulations, is to be withheld.	
(2) Computer service charges per second for actual use of the computer central process unit .....	0.25
(3) Copies made by photostat or otherwise (per page) maximum of 5 copies will be provided .....	Actual cost
(4) Certification of each record as a true copy .....	1.00
(5) Certification of each record as a true copy under official seal .....	1.50
(6) For each signed statement of negative result of search for record .....	1.00
(7) For each signed statement of nonavailability of record .....	No fee
(8) Duplication of architectural photographs and drawings:	
(i) From available tracing or reproducible, per square foot .....	0.10
(ii) If intermediate negative and reproducible required .....	2.00
Plus for tracing, per square foot .....	1.00
(9) Postage and handling .....	Actual costs

It will be up to the person requesting the records or information to designate how the material is to be mailed or shipped. In the absence of such instruction, no records or information will be sent to a foreign address and records and information will be sent to

domestic addresses utilizing first class certified mail, return receipt requested.

(b) If records or information requested are stored elsewhere than the headquarters of the Section at El Paso, Texas, the special costs of returning such records to the headquarters office shall be included in the search costs. These costs will be computed at the actual cost of transportation and other incidental expenses incurred in order to obtain the requested records or information from the place where they are stored and to the Section's headquarters. The most economical means of transportation available and consistent with the purpose of incurring special costs shall be utilized. Special costs are due and payable even if the record which was requested cannot be located after all reasonable efforts have been made, or if the Section determines that a record which has been requested, but which is exempt from disclosure, is to be withheld.

(c) Where it is anticipated that the fees chargeable under this section will amount to more than \$25 and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the anticipated fee or such portion thereof as can readily be estimated. In appropriate cases, an advance deposit may be required.

(d) When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the amount or size or type thereof, the Comptroller is authorized to establish an appropriate fee pursuant to the criteria established in Bureau of Budget Circular No. A-25, entitled "User Charges."

(e) Fees must be paid in full prior to issuance of requested copies.

(f) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, a postal money order, or cash. Remittances shall be made payable to the order of the Treasury of the United States and mailed to the Comptroller, United States Section, International Boundary and Water Commission, Room 212 IBWC Building, 4110 Rio Bravo, El Paso, Texas 79998. The Section will assume no responsibility for cash which is lost in the mail. Notwithstanding the foregoing, materials may be furnished without charge or a reduction in charge to foreign governments, other Government agencies or units, non-profit educational organizations, or any other applicant whenever the

Comptroller determines that such action is considered as primarily benefitting the general public.

#### §1102.5 The Section's determination.

Upon receipt of any request for records or information under the Act the following guidelines shall be followed:

(a) The Comptroller will determine within 10 days (excepting Saturdays, Sundays and legal holidays) after the receipt of any such request whether to comply with such request and will immediately notify the person making such request of such determination, the reasons therefor, and of the right of such person to appeal to the United States Commissioner any adverse determination.

(b) All appeals should be addressed to the United States Commissioner, International Boundary and Water Commission, P.O. Box 20003, El Paso, Texas 79998, and should be clearly identified as such on the envelope and in the letter of appeal by using the marking "Freedom of Information Appeal" or "Appeal for Records" or the equivalent. Failure to properly address and appeal may defer the date of receipt by the Section to take into account the time reasonably required to forward the appeal to the United States Commissioner. In each instance when an appeal is incorrectly addressed to the United States Commissioner, he shall notify the person making the appeal that his appeal was improperly addressed and of the date the appeal was received by the United States Commissioner. The United States Commissioner will make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of an appeal. If on appeal the denial of the request is in whole or in part upheld, the United States Commissioner will notify the person making such request of the provisions for judicial review under the Act. An appeal must be in writing and filed within 30 days from receipt of the initial determination (in cases of denials of an entire request), or from receipt of any records being made available pursuant to the initial determination (in case of partial denials). In those cases where a request or appeal is not addressed to the proper official, the time limitations stated above will be computed from the receipt of the request or appeal by the proper official.

(c) In unusual circumstances, as set forth in Item (d) below, the time limits for responding to the original request or the appeal may be

extended by not more than an additional 10 working days by written notice to the person making a request. This notice must be sent within either the 10- or 20-day time limit and will specify the reason for the extension and the date on which a determination is expected to be dispatched. The extension may be invoked only once during the consideration of a request, either during the initial consideration period or during consideration of an appeal, but not both.

(d) The unusual circumstances are:

(1) 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.

(2) 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

(3) 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.

(e) If the Comptroller receives a request which is of proper concern of an agency or entity outside the Section, it will be returned to the person making the request, advising the requester to rer it to the appropriate agency or entity if requester desires, and providing the requester with the name or title, address and other appropriate information. An information copy of the request and the letter of referral will be forwarded promptly to the agency or entity outside the Section that may expect the request. In the event the Comptroller receives a request to make available a record or provide information which is of interest to more than one agency (Federal, State, municipal, or legal entity created thereby), the Comptroller will retain and act upon the request if the Section is one of the interested agencies and if its interest in the record is paramount.

(f) The United States Commissioner's determination on an appeal shall be in writing and when it denies records in whole or in part, the letter to the person making a request shall include:

(1) Notation of the specific exemption or exemptions of the Act authorizing the withholding; a brief explanation of how the exemption applies, and, when relevant, a statement as to why a discretionary release is not appropriate.

(2) A statement that the decision is final for the Section.

(3) Advice that judicial review of the denial is available in the district in which the person making the request resides or has his principal place of business, the district in which the Section's records are situated, or the District of Columbia.

(4) The names and titles or positions of each official responsible for the denial of a request.

(g) In those cases where it is necessary to find and examine records before the legality or appropriateness of their disclosure can be determined, and where after diligent effort this has not been achieved within the required period, the Comptroller may advise the person making the request that a determination to presently deny the request has been made because the records or information have not been found or examined, that the determination will be reconsidered when the search or examination is completed and the time within which completion is expected, but that the person making the request may immediately file an administrative appeal to the United States Commissioner.

#### §1102.6 Exemptions.

The provisions of the Act which require that agencies make their records available to public inspection and copying do not apply to matters which are:

(a)(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (2) are in fact properly classified pursuant to such Executive Order.

(b) Related solely to the internal personnel rules and practices of an agency.

(c) Specifically exempted from disclosure by statute.

(d) Trade secrets and commercial or financial information obtained from a person and privileged or 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) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4)

disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in a course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel.

(h) 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.

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

#### §1102.7 Annual report to Congress.

(a) On or before March 1 of each calendar year the United States Commissioner shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include:

(1) The number of determinations made by the Section not to comply with request for records made to the Section under the Act and these regulations and the reasons for each such determination.

(2) The number of appeals made by persons under the Act and these regulations, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information.

(3) The names and title or positions of each person responsible for the denial of records requested under the Act, and the number of instances of participation for each.

(4) The results of each proceeding conducted pursuant to 552(a)(4)(F) of the Act, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(5) A copy of these regulations.

(6) A copy of the fee schedule and the total amount of fees collected by the Section for making records available under the Act.

(7) Such other information as indicates efforts to administer fully the Act.

(b) A copy of each such report to the Congress made pursuant to paragraph (a) of this section will be made available for public inspection and copying in the office of the

Comptroller, United States Section, International Boundary and Water Commission, 212 IBWC Building, 4110 Rio Bravo, El Paso, Texas.

**§1102.8 Examination of records.**

When a request to examine records is ap-

proved by the Comptroller, every reasonable effort will be made to provide facilities for the purpose of such examination. "On the spot" copying will be available if the Comptroller decides there will be no interference with ordinary activities or routine business of the Section.