

Billing Code 6820TD

ASSASSINATION RECORDS REVIEW BOARD

Xx CFR Part xxxx

*Rules Implementing the Freedom of Information Act*

**AGENCY:** Assassination Records Review Board.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Assassination Records Review Board (the "ARRB" or "Board") proposes the following set of regulations to discharge its responsibilities under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (as amended). The FOIA generally (1) establishes basic requirements regarding how the public may request access to agency records and regarding waiver or reduction of fees the agency would otherwise assess for the response to the records request, (2) establishes categories of records that are exempt for various reasons from public disclosure, and (3)

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*establishes basic requirements for federal agencies regarding their processing of and response to requests for agency records. The Board invites comments from interested groups and members of the public on these proposed regulations.*

**DATES:** *To be considered, comments must be mailed, delivered in person, or faxed to the address listed below by 5 p.m. on (Insert date 30 days after date of publication in the FEDERAL REGISTER).*

**ADDRESS:** *Comments on these proposed regulations should be mailed, faxed or delivered to the Assassination Records Review Board, 600 E Street NW, 2nd Floor, Washington, DC 20530. The Board's fax number is (202) 724-0457. All comments received within the comment period will be placed in the Board's public files and will be available for inspection between*

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10 a.m. and 3 p.m. Monday through Friday (except legal holidays), in the Board's public reading room at the same address. Persons wishing to inspect in person comments filed on these regulations are requested to call the Board's office beforehand at (202) 724-0088 for further information.

**FOR FURTHER INFORMATION CONTACT:**

Sheryl L. Walter, General Counsel, Assassination Records Review Board, 600 E Street NW, 2nd Floor, Washington, DC 20530, (202) 724-0088.

**SUPPLEMENTARY INFORMATION:**

Background and Statutory Authority

This proposed rule complies with the requirements of the FOIA, as amended by the Freedom of Information Reform Act of 1986, Pub. L. 99-570, Title I, sections 1802, 1803, 100 Stat. 3207-48, 3207-49, to issue

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implementing regulations. In particular, proposed §§XXXX.106 and XXXX.107 implement the Reform Act of 1986 and the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedules and Guidelines, 52 FR 10012. This proposed rule also incorporates President Clinton's Memorandum on the Administration of the Freedom of Information Act, issued on October 4, 1993, which calls upon agencies to comply with the letter and spirit of the Act's commitment to openness and to its sound administration.

Further, this proposed rule incorporates the presumption of openness that was a driving force behind enactment of the Board's enabling legislation, the "President John F. Kennedy Assassination Records Collection Act of 1992," 44 U.S.C. § 2701 note (1992). In that act, Congress prescribed the establishment of a collection of records to be known as the President

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John F. Kennedy Assassination Records Collection, to be housed at the National Archives and Records Administration (NARA) and currently located at NARA's facility in College Park, Maryland. Congress also mandated that the Board have an initial term of two years, with an option for the Board upon majority vote to extend for an additional year if its work is not completed within the two year period. *Id.* at Sec. 7(o)(1). Congress also required that "[u]pon termination and winding up, the Review Board shall transfer all of its records to the Archivist for inclusion in the Collection, and no record of the Review Board shall be destroyed." *Id.* at Sec. 7(o)(3). Thus, while the public may file FOIA requests with the Board during the term of its existence, the public should also be aware of the opportunity to examine and obtain copies of the Board's records as a part of the JFK Records Collection at the National Archives and Records Administration.

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*Other key aspects of this proposed rule include the following:*

*(1) The Board would establish, consistent with 5 U.S.C. § 552, two categories of ARRB agency records: records available through the public Reading Room (§XXXX.103(b)) and records not available through the public reading room (§XXXX.105).*

*(2) Procedures for requesting or examining public reading room records (§XXXX.103).*

*(3) Procedures for filing a FOIA request (§XXXX.104).*

*(4) Procedures, based upon the provisions of 5 U.S.C. § 552, for processing FOIA requests, including prescribed response times (§XXXX.108).*

*(5) Procedures for administrative appeal of denials of FOIA record requests or of requests for fee waivers or reductions. (§XXXX.109).*

*(6) Procedures for handling requests for classified information or (?)*

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*It is the Board's intention to implement these regulations so as to avoid any unnecessary barriers to public access to information and to ensure that principle of openness in government is applied in each and every decision made under the FOIA, while also minimizing the burden to the Board's small staff. It is also the Board's hope that persons seeking information or records from the Board will consult with the Designated FOIA Officer or other Board staff before invoking the procedures in the proposed regulations. To the extent permitted by law, the Board will make records available which it is otherwise authorized to withhold under 5 U.S.C. § 552 whenever it determines that such disclosure is in the public interest.*

### ***Paperwork Reduction Act Statement***

*The proposed rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. § 3501, et seq.) because it does not*

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contain any information collection requirements within the meaning of 44 U.S.C. § 3502(4).

**[Regulatory Flexibility Act Certification**

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C.

601-612), the Board certifies that this rule, if adopted, will not have a

substantial number of small entities and that, therefore, a regulatory

flexibility analysis need not be prepared, 5 U.S.C. 605(b). Whatever

economic impacts may result to small entities were already considered by

Congress in enacting and amending the FOIA or by OMB in Promulgating

the Uniform Fee Schedules and Guidelines.]

**List of Subjects in X CFR Part XXXX**

Freedom of Information.

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## *The Proposed Regulations*

*Accordingly, chapter XXXX of title XX of the Code of Federal Regulations is proposed to be amended by adding a new part XXXX to read as follows:*

### **PART XXXX--PUBLIC INFORMATION AND REQUESTS**

*Sec.*

*XXXX.101 Scope*

*XXXX.102 Definitions; words denoting number, gender and tense.*

*XXXX.103 Requests for Board records available through the public reading room.*

*XXXX.104 Board records exempt from public disclosure.*

*XXXX.105 Requests for Board records not available through the ARRB's public*

*reading room (FOIA requests).*

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XXXX.106 Requests for waiver or reduction of fees.

XXXX.107 Fees for record requests.

XXXX.108 Processing of FOIA requests.

XXXX.109 Procedure for appeal of denial of requests for Board records  
and denial of requests for fee waiver or reduction.

XXXX.110 Requests for classified records.

XXXX.111 Requests for privileged treatment of documents submitted to  
the Board.

XXXX.112 Computation of time.

§XXXX.101 Scope.

This part contains the Board's regulations implementing the Freedom of  
Information Act, 5 U.S.C. § 552.

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*§XXXX.102 Definitions; words denoting number, gender and tense.*

*(a) "Administrator" means the chief administrative officer of the Board.*

*(b) "Agency record" is a record in the possession and control of the Board*

*that is associated with Board business. Agency records do not include*

*records such as:*

*(1) Publicly available books, periodicals, films, sound or video*

*recordings, photographs, or other publications that are owned or*

*copyrighted by nonfederal sources;*

*(2) Personal records in the possession of Board personnel that*

*have not been circulated, were not required by the Board to be*

*created or retained, and may be retained or discarded at the*

*author's sole discretion, or records of a personal nature that are*

*not associated with any Board business; or*

(4) *Non-substantive information and information unrelated to Board business in the calendar or schedule books of the Chairman or Members of the Board, uncirculated except for typing or recording purposes.*

(c) *"Board" or "ARRB" means the Assassination Records Review Board.*

(d) *"Chairman" means the Chairman of the Board.*

(e) *"Designated FOIA Officer" means the person designated by the Board to administer the Board's activities pursuant to the regulations in this part.*

*The Designated FOIA Officer shall also be the Board officer having custody of or responsibility for agency records in the possession of the Board and shall be the Board officer responsible for authorizing or denying production of records upon request filed pursuant to §XXXX.105.*

(f) *"General Counsel" means the chief legal officer of the Board.*

(g) *"Member" means a member of the Board.*

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(hi) In determining the meaning of any provision of this part, unless the context indicates otherwise: the singular includes the plural; the plural includes the singular; the present tense includes the future tense; and words of one gender include the other gender.

**§XXXX.103 Requests for Board records available through the Public Reading Room.**

(a) A public reading room will be maintained at the Board's headquarters and will open between [10 a.m. and 3 p.m.,] Monday through Friday, except on legal holidays. Documents may be obtained in person or by written, faxed or telephonic request from the public reading room by reasonably describing the records sought.

(b) The public records of the Board that are available for inspection and copying upon request in the Public Reading Room include:

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(1) The Board's rules and regulations;

(2) Statements of policy adopted by the Board.

(3) Transcripts of public hearings and any Board correspondence related thereto;

(4) Board orders, decisions, notices, and other actions in a public hearing;

(5) Board correspondence, except that which is exempt from mandatory public disclosure under §XXXX.104.

(6) Copies of the filings, certifications, pleadings, records, briefs, orders, judgments, decrees, and mandates in court proceedings to which the Board is a party and the correspondence with the courts or clerks of court;

(7) Index of the documents identified in this section, but not including drafts thereof; and

(8) Annual report to Congress in which the Board's operations during a past fiscal year are described.

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§XXXX.104 *Board records exempt from public disclosure.*

*The following records are exempt from public disclosure:*

*(a)(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and*

*(2) Which are in fact properly classified pursuant to such Executive Order;*

*(b) Records related solely to the internal personnel rules and practices of an agency;*

*(c) Records specifically exempted from disclosure by statute, provided that such statute:*

*(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or*

*(2) Establishes particular criteria for withholding or refers to particular*

types of matters to be withheld;

(d) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Board;

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

(1) Could reasonably be expected to interfere with enforcement proceedings,

(2) Would deprive a person of a right adjudication,

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(4) 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,

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*in the case of a record of 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,*

*(5) 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 rush circumvention of the law, or*

*(6) Could reasonably be expected to endanger the life or physical safety of any individual.*

**§XXXX.105 Requests for board records not available through the Public Reading Room (FOIA Requests).**

*(a) Upon the request of any person, the Board shall make available for public inspections and copying any reasonably described agency record in*

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the possession and control of the Board, but not available through the Public Reading Room, subject to the provisions of this Part. If a member of the public files a request with the Board under the FOIA for records that the Board determines are available through the Public Reading Room, the Board will treat the request under the simplified procedures of §XXXX.103.

(b)(1) A person may request access to Board records that are not available through the Public Reading Room by using the following procedures:

(i) The request must be in writing and must describe the records requested to enable Board personnel to locate them with a reasonable amount of effort.

Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be

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supplied by the requester, including the names and titles of any Board personnel who have been contacted regarding the request prior to the submission of the written request.

(ii) A request for all records falling within a reasonably specific and well-defined category shall be regarded as conforming to the statutory requirement that records be reasonably described. The request must enable the Board to identify and locate the records by a process that is not unreasonably burdensome or disruptive of Board operations.

(2) The request should be addressed to the Designated FOIA Officer and clearly marked "Freedom of Information Act Request." The address for such requests is : Designated FOIA Officer, Assassination Records Review Board, 600 E Street, 2nd Floor, Washington, D.C. 20530. For purposes of calculating the time for response to the request under §XXXX.108, the request shall not be deemed to have been received until it is in the

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*possession of the Designated POIA Officer or his delegee.*

*(3) The request must include:*

*(i) A statement by the requester of a willingness to pay the fee applicable under §XXXX.107(b), or to pay that fee not to exceed a specific amount, or*

*(ii) A request for waiver or reduction of fees.*

*No request shall be deemed to have been received until the Board has received a statement of willingness to pay, as indicated in paragraph (b)(3)(i), of this section or has received and approved a request for waiver or reduction of fees.*

*(c) With respect to records in the files of the Board that have been obtained from other federal agencies:*

*(1) Where the record originated in another federal agency, the Designated FOIA Officer shall refer the request that agency and so inform the requester, unless the originating agency agrees to direct release by the*

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Board.

(2) Requests for Board records containing information received from another agency, or records prepared jointly by the Board another agencies, shall be treated as requests for Board records. The Designated FOIA Officer shall, however, coordinate with he appropriate official of the other agency. The notice of determination to the requester, in the event part or all of the record is recommended for denial by the other agency, shall cite the other agency Denying Officials as well as the Designated FOIA Officer if a denial by the Board is also involved.

(d) If a request does not reasonably described the records sought, as provided in paragraph (b) of this section, the Board response shall specify the reasons why the request failed to meet those requirements and shall offer the requester the opportunity to confer with knowledgeable Board personnel in an attempt to restate the request. if additional information is

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needed from the requester to render the records reasonably described, any restated request submitted by the requester shall be treated as an initial request for purpose of calculating the time for response under §XXXX.108.

**§XXXX.106 Request for waiver or reduction of fees.**

(a) The Board shall collect fees for record request made under §XXXX.105 as provided in § XXXX.107(b), unless a requester submits a request in writing for a waiver or reduction fees. The Designated FOIA Officer shall make a determination on a fee waiver or reduction request within five working days of the request coming into his possession. No determination shall be made that a fee waiver or reduction request should be denied, until the Designated FOIA Officer has consulted with the General Counsel's Office. If the determination is made that the written request for a waiver or reduction of fees does not meet the requirements of this section, the Designated FOIA Officer shall inform the requester that the request for

waiver or reduction of fees is being denied and set forth his appeal rights under §XXXX.109.

(b) A person requesting the Board to waive or reduce search, review, or duplication fees shall:

(1) Describe the purpose for which the requester intends to use the requested information;

(2) Explain the extent to which the requester will extract and analyze the substantive content of the agency record;

(3) Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;

(4) Describe the likely impact of disclosure of the requested records on the public's understanding of the subject as compared to the level of

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*understanding of the subject existing prior to disclosure;*

*(5) Describe the size and nature of the public to whose understanding a contribution will be made;*

*(6) Describe the intended means of dissemination to the general public;*

*(7) Indicate if public access to information will be provided free of charge or provided for an access or publication fee; and*

*(8) Describe any commercial or private interest the requester or any other party has in the agency records sought.*

*(c) The Board shall waive or reduce fees, without further specific information from the requester if, from information provided with the request for agency records made under §XXXX.105, it can determine that disclosure of the information in the agency records 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*

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*commercial interest of the requester.*

*(d) In making a determination regarding a request for a waiver or reduction of fees, the Board shall consider the following factors:*

*(1) How the subject of the requested agency records concerns the operations or activities of the Government;*

*(2) If disclosure is likely to contribute significantly to public understanding of Government operations or activities;*

*(3) If, and the extent to which, the requester has a commercial interest that would be furthered by the disclosure of the requested agency records;*  
*and*

*(4) If the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.*

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*(§XXXX.107) Fees for record requests.*

*(a) Fees for the record available through the Public Reading Room.*

*(1) With the exception of copies of transcripts of Board public hearings addressed in paragraph (a)(2) of this section, the fees charged shall be limited to costs of duplication of the requested records or have them duplicated. If the Board duplicates the records, it shall not charge the requester for the associated labor costs. A schedule of fees for this duplication service shall be prescribed in accordance with paragraph (b)(7) of this section. A person may obtain a copy of the schedule of fees in person or by mail from the public Reading Room. There shall be no charge for responses consisting of ten or fewer pages.*

*(2) Transcripts of Board public hearings are made by private contractors. Interested persons may obtain copies of public hearing transcripts from the contractor at prices set in the contract, or through*

the duplication service noted in paragraph (a), of this section, if the particular contract so permits. Copies of the contracts shall be available for public inspection in the Public Reading Room.

(3) Requests for certification of copies of official Board records must be accompanied by a fee of (\$) per document. Inquiries and orders may be made to the Public Reading Room in person or by mail.

(b) Fees for records not available through the Public Reading Room (FOIA requests).

(1) *Definitions.* For the purpose of paragraph (b) of this section:

*Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers commercial, trade, or profit interests as these phrases are commonly known or have been interpreted by the courts in the context of the FOIA;

*Direct costs* means those expenditures which the Board incurs in search,

review and duplication, as applicable to different categories of requests, to respond to requests under § XXXX.105. Direct costs include, for example, the average hourly salary and projected benefits costs of Board employees applied to time spent in responding to the request and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as cost of space, and heating or lighting the facility in which the Board records are stored.

*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, and an institution of vocational education, which operates a program of scholarly research;

*Noncommercial scientific institution* refers to an institution that is not operated on a commercial basis 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;

*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 the periodicals can qualify as disseminations 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 may be included in this category. A "freelance"

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journalist may be regarded as working for a news organization if the journalist can demonstrate a solid basis for expecting publication through that organization, even though the journalist is not actually employed by the news organization. A publication contract would be the clearest proof, but the Board may also look to the past publication record of a requester in making this determination.

(2) *Fees.* (i) If documents are requested for commercial use, the Board shall charge the average hourly pay rate for Board employees, plus the average hourly projected benefits cost, for document search time and for document review time, and the costs of duplication as established in the schedule of fees referenced in paragraph (b)(7) of this section.

(ii) If documents 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, the Board's charges shall be limited to the direct costs of duplication as established in the schedule of fees referenced in paragraph (b)(7) of this section. There shall be no charge for the first 100 pages of duplication.

(iii) For a request not described in paragraphs (i) or (ii) of this paragraph the Board shall charge the average hourly pay rate for Board employees, plus the average hourly projected benefits cost, for document search time, and the direct costs of duplication as established in the schedule of fees referenced in paragraph (b)(7) of this section. There shall be no charge for document review time and the first 100 pages of reproduction and the first two hours of search time will be furnished without charge.

(iv) If documents are mailed, requesters shall be charged fees based on the current postage or express delivery service rates.

(v) The Board, or its designee, may establish minimum fees below which

no charges will be collected, if it determines that the costs of routine collection and processing of the fees are likely to equal or exceed the amount of the fees. If total fees determined by the Board for a Freedom of Information Act request would be less than the appropriate threshold, the Board shall not charge the requesters.

(vi) Payment of fees must be by check or money order made payable to the U.S. Treasury.

(vii) Requesters may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment fees. When the Board reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of request for the purpose of evading assessment of fees, the Board may aggregate any such requests and charge the requester accordingly. The Board shall not, however, aggregate multiple request on

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unrelated subjects from a requester.

(viii) Whenever the Board estimates that duplication or search costs are likely to exceed (\$), it shall notify the requester of the estimated costs, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester an opportunity to confer with the Board personnel with the object of reformulating the request to meet the requester's needs at a lower cost.

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

(4) *Advance Payments.* (i) If the Board estimates or determines that allowable charges that a requester may be required to pay are likely to exceed (\$), the Board shall notify such requester of the estimated cost and either require satisfactory assurance of full payment where the requester

has a history of prompt payment of fees, or require advance payment of the charges if a requester has no payment history.

(ii) If a requester has previously failed to pay a fee charged in a timely fashion, the Board shall require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Board will begin to process a new request or pending request from that requester.

(iii) When the Board requires advance payment under this paragraph, the administrative time limits prescribed in §XXXX.108(b) will begin only after the Board has received the fee payments.

(5) *Debt collection.* The Board shall refer unpaid FOIA invoices to the General Services Administration, or other federal agency performing financial management services for the Board, for collection.

(6) *Annual adjustment of fees.* (i) *Update and publication.* The Board, by

its designed, the (?), shall promulgate a schedule of fees and the average hourly pay rates and average hourly projected benefits cost and will update that schedule once every twelve months. The (?) shall publish the schedule for public comment in the **Federal Register**.

(ii) *Payment of updated fees.* The fee applicable to a particular Freedom of Information Act request will be the fee in effect on the date that the request is received.

#### §XXXX.108 *Processing of FOIA requests*

(a) Where a request complies with §XXXX.105 as to specificity and statement of willingness to pay or request for fee waiver or reduction, the Designated FOIA Officer shall acknowledge receipt of the request and commence processing of the request. The Designated FOIA Officer shall prepare a written response:

(1) *Granting the request,*

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(2) Denying the request,

(3) Granting or denying it in part,

(4) Stating that the request has been referred to another agency under §XXXX.105, or

(5) Informing the requester that responsive records cannot be located or do not exist.

(b) Action pursuant to this section to provide access to requested records shall be taken within ten working days of receipt of a request for Board records, as defined in §XXXX.105, except that, if unusual circumstances require an extension of time before a decision on a request can be reached and the person requesting records is promptly informed in writing by the Designated FOIA Officer of the reason for such extension and the date on which a determination is expected to be made, the Designated FOIA Officer may take an extension not to exceed ten working days. In the event of a

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request for fee waiver or reduction, the period for action under this paragraph begins to run from the date that the Designated FOIA Officer grants the waiver or reduction request.

(c) For purposes of this section and §XXX.109, the term "unusual circumstances" may include but is not limited to the following:

(i) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which may be responsive to a single request; or

(ii) The need for consultation, which shall be conducted with all practicable speed, with another agency pursuant to §XXXX.105(d).

(d) If no determination has been made at the end of the ten day period, or the last extension thereof, the requester may deem his administrative remedies to have been exhausted, giving rise to a right of review in a district court of the United States as specified in 5 U.S.S. 552(a)(4). When

no determination can be made within the applicable time limit, the Board will nevertheless continue to process the request. If the Board is unable to provide a response within the statutory period, the Designated FOIA Officer shall inform the requester of the reason for the delay; the date on which a determination may be expected to be made; and that the requester can seek remedy through the courts, but ask the requester to forgo such action until a determination is made.

(e) Nothing in this part shall preclude the Designated FOIA Officer and a requester from agreeing to an extension of time for the initial determination on a request. Any such agreement shall be confirmed in writing and shall clearly specify the total time agreed upon.

§XXXX.109 Procedure for appeal of denial of requests for Board records and denial of requests for fee waiver or reduction.

(a)(1) A person whose request for access to records or request for fee

waiver or reduction is denied in whole or in part may appeal that determination to the General Counsel within 30 days of the determination. Appeals filed pursuant to this section must be in writing, directed to the General Counsel at the address indicated in §XXXX.105(b)(2) and clearly marked "Freedom of Information Act Appeal." Such an appeal received by the Board not addressed and marked as indicated in this paragraph will be so addressed and marked by Board personnel as soon as it is properly identified and then will be forwarded to the General Counsel. Appeals taken pursuant to this paragraph will be considered to be received upon actual receipt by the General Counsel.

(2) The General Counsel shall make a determination with respect to any appeal within 20 working days after the receipt of such appeal. If, on appeal, the denial of the request for records of fee reduction is in whole or in part upheld, the General Counsel shall notify the person making such

request of the provisions for judicial review of that determination.

(b) In unusual circumstances, as defined in §XXXX.108(c), the time limits prescribed for deciding an appeal pursuant to this section may be extended by up to ten working days, by the General Counsel, who will send written notice to the requester setting forth the reasons for such extension and the date on which a determination or appeal is expected to be dispatched.

**§XXXX.110 Requests for classified records.**

The Board may at any time be in possession of classified records received from other federal agencies. The Board shall refer requests under §XXXX.105 for such records or information to the originating agency without making an independent determination as to the releasability of such documents. The Board shall refer requests for classified records in a manner consistent with Executive Order 12356, "National Security Information," 3 CFR, 1982 Comp, p. 166 or any superseding Executive



*Order.*

**§XXXX.112** *Computation of time.*

*In computing any period of time under this Part, the day of the Board's action is not included. The last day of the period is included unless it is a Saturday, Sunday or legal holiday, in which case the period runs until the end of the next working day. Whenever a person has the right or is required to take some action within a prescribed period after notification by the Board and the notification is made by mail, five days shall be added to the prescribed period. Only two days shall be added when a notification is made by express mail.*

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