

(j) Upon receipt of a statement of willingness to pay assessable fees or the payment from the requester, the FOIA office shall notify the NSA/CSS component to search for the appropriate documents.

(1) The component conducting the search shall advise the FOIA office of the types of files searched (*e.g.*, electronic records/e-mail, video/audio tapes, paper), the means by which the search was conducted (*e.g.*, subject or chronological files, files retrievable by name or personal identifier) and any key words used in an electronic search.

(2) If the search does not locate the requested records, the Director of Policy shall so advise the requester and offer appeal rights.

(3) If the search locates the requested records, the holding organization shall furnish copies of these records immediately to the FOIA office. The Director of Policy shall make a determination as to the releasability of the records in consultation with the GC, the Legislative Affairs Office (if any information relates to members of Congress or their staffs) and other Agency components, as appropriate. This determination shall also state, with particularity, that a search reasonably calculated to locate responsive records was conducted and that all reasonably segregable, non-exempt information was released. The located records will be handled as follows:

(i) All exempt records or portions thereof shall be withheld and the requester so advised along with the statutory basis for the denial; the volume of material being denied, unless advising of the volume would harm an interest protected by exemption (see 5 U.S.C. 552); and the procedure for filing an appeal of the denial.

(ii) All segregable, non-exempt records or portions thereof shall be forwarded promptly to the requester.

(k) Records or portions thereof originated by other agencies or information of primary interest to other agencies found in NSA/CSS records shall be handled as follows:

(1) The originating agency's FOIA Authority shall be provided with a copy of the request and the stated records.

(2) The requester shall be advised of the referral, except when notification would reveal exempt information.

(l) Records of portions thereof originated by a commercial or business submitter and containing information that is arguably confidential commercial or financial information as defined in Executive Order 12600 (52 FR 23781, 3 CFR, 1987 Comp., p. 235) shall be handled as follows:

(1) The commercial or business submitter shall be provided with a copy of the records as NSA/CSS proposes to release them, and the submitter shall be given an opportunity to inform the FOIA office about its objections to disclosure in writing.

(2) The Director of Policy or his/her designee shall review the submitter's objections to disclosure and, if DC3 decides to release records or portions thereof to the requester, provide the submitter with an opportunity to enjoin the release of such information.

(m) Records may be located responsive to an FOIA request which contain portions not responsive to the subject of the request. The non-responsive portions shall be processed as follows:

(1) If the information is easily identified as releasable, the non-responsive portions shall be provided to the requester.

(2) If additional review or coordination with other NSA/CSS elements or other government agencies or entities is required to determine the releasability of the information, and the processing of the material would be facilitated by excluding those portions from review, the requester should be consulted regarding the need to process those portions. If the requester states that he is interested in the document in its entirety, including those portions not responsive to the subject of his request, the entire document shall be considered responsive and reviewed accordingly.

(3) If the conditions as stated in paragraph (m)(2) of this section pertain, but it is not a simple matter to contact and/or reach an agreement with the requester, the non-responsive portions shall be marked to differentiate the removal of non-responsive material from the removal of exempt portions. The requester shall be advised that portions were removed as non-responsive. In addition, he/she shall be given an indication of the manner in which those portions would be treated if responsive (*e.g.*, the information would be protected by exemptions, would require extensive review/consultation). Such a response is not considered an adverse determination. If the requester informs the FOIA office of his interest in receiving the non-responsive portions, the request shall be placed in the same location within the processing queue as the original request and those portions of the documents shall be processed.

(4) If the requester states in his initial request that he/she wants all non-responsive portions contained within documents containing responsive

information, then the documents shall be processed in their entirety.

(n) Any person advised of an adverse determination shall be notified of the right to submit an appeal postmarked within 60 days of the date of the response letter and that the appeal must be addressed to the NSA/CSS FOIA Appeal Authority, National Security Agency, Ft. George G. Meade, MD 20755-6248. The following actions are considered adverse determinations:

(1) Denial of records or portions of records;

(2) Inability of NSA/CSS to locate records;

(3) Denial of a request for the waiver or reduction of fees;

(4) Placement of requester in a specific fee category;

(5) Amount of estimate of processing costs;

(6) Determination that the subject of a request is not within the purview of NSA/CSS and that a search for records shall not be conducted;

(7) Denial of a requester for expeditious treatment; and

(8) Non-agreement regarding completion date of request.

(o) The GC or his designee shall process appeals and make a recommendation to the Appeal Authority.

(1) Upon receipt of an appeal regarding the denial of information or the inability of the Agency to locate records, the GC or his designee shall provide a legal review of the denial and/or the adequacy of the search for responsive material, and make other recommendations as appropriate.

(2) If the Appeal Authority determines that additional information may be released, the information shall be made available to the requester within 20 working days from receipt of the appeal. The conditions for responding to an appeal for which expedited treatment is sought by the requester are the same as those for expedited treatment on the initial processing of a request. (See paragraph (f) of this section.)

(3) If the Appeal Authority determines that the denial was proper, the requester must be advised within 20 days after receipt of the appeal that the appeal is denied. The requester likewise shall be advised of the basis for the denial and the provisions for judicial review of the Agency's appellate determination.

(4) If a new search for records is conducted and produces additional material, the additional records shall be forwarded to the Director of Policy, as the IDA, for review. Following his/her review, the Director of Policy shall return the material to the GC with his/her recommendation for release or