

## § 1.550

### RELEASE OF INFORMATION FROM DEPARTMENT OF VETERANS AFFAIRS RECORDS OTHER THAN CLAIMANT RECORDS

NOTE: Sections 1.550 through 1.559 concern the availability and release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody other than those pertaining to claims under any of the laws administered by the Department of Veterans Affairs. As to the release of information from Department of Veterans Affairs claimant records, see §§1.500 through 1.527. Section 1.550 series implement the provisions of 5 U.S.C. 552.

[40 FR 12656, Mar. 20, 1975]

AUTHORITY: Sections 1.550 to 1.559 issued under 72 Stat. 1114; 38 U.S.C. 501.

#### § 1.550 General.

The Department of Veterans Affairs policy is one of disclosure of information from agency records to the extent permitted by law. This includes the release of information which the Department of Veterans Affairs is authorized to withhold under 5 U.S.C. 552(b) (see §1.554) if it is determined: (a) By the Secretary of Veterans Affairs or the Deputy Secretary that disclosure of such information will serve a useful purpose or (b) by an administration, staff office, or field facility head or designee under §1.556(a) that disclosure will not adversely affect the proper conduct of official business or constitute an invasion of personal privacy.

[40 FR 12656, Mar. 20, 1975]

#### § 1.551 [Reserved]

#### § 1.552 Public access to information that affects the public when not published in the Federal Register as constructive notice.

(a) All final orders in such actions as entertained by the Contract Appeals Board, those statements of policy and interpretations adopted by the Department of Veterans Affairs but not published in the FEDERAL REGISTER, and administrative manuals and staff instructions that affect any member of the public, unless promptly published and copies offered for sale, will be kept currently indexed by the office of primary program responsibility or the Manager, Administrative Services, as determined by the Secretary or des-

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ignee. Such index or indexes or supplements thereto will be promptly published, quarterly or more frequently, and distributed (by sale or otherwise) unless the Department of Veterans Affairs determines by order published in the FEDERAL REGISTER that publication would be unnecessary and impracticable, in which case the Department of Veterans Affairs will nonetheless provide copies of such index or indexes or supplements thereto on request at a cost not to exceed the direct cost of duplication. Both the index and the materials indexed as required by this paragraph will be made available to the public, for inspection and copying. Public reading facilities for this purpose will be maintained in Department of Veterans Affairs Central Office and Department of Veterans Affairs field facilities, open to the public during the normal duty hours of the office in which located. Orders made in the adjudication of individual claims under laws administered by the Department of Veterans Affairs are confidential and privileged by statute (38 U.S.C. 5701) and so are exempt from this requirement.

(b) The voting records of the Contract Appeals Board will be maintained in a public reading facility in the Office of the Board in Central Office and made available to the public upon request.

(c) When publishing or making available to the public any opinion, order, statement of policy, interpretation, staff manual or instruction to staff, identifying details will be deleted, and the deletion justified in writing, to the extent required to prevent a clearly unwarranted invasion of personal privacy.

(d) No final order, opinion, statement of policy, interpretation, staff manual or instruction which is issued, adopted, or promulgated after July 4, 1967, that affects any member of the public may be relied upon, used, or cited as precedent against any private party unless it has been indexed and either made available or published as provided in this section or unless that private party shall have actual and timely notice of the terms thereof.

[32 FR 10850, July 25, 1967, as amended at 40 FR 12657, Mar. 20, 1975]

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### § 1.553 Public access to other reasonably described records.

(a) Except for requests for records which are processed under §§1.551 and 1.552 of this part, unless otherwise provided for in title 38, Code of Federal Regulations, all requests for records shall be processed under paragraph (b) of this section, as well as under any other VA law or regulation governing access to or confidentiality of records or information. Records or information customarily furnished to the public in the regular course of the performance of official duties may be furnished to the public without reference to paragraph (b) of this section. To the extent permitted by other laws and regulations, VA will also consider making available records which it is permitted to withhold under the FOIA if it determines that such disclosure could be in the public interest.

(b) Reasonably described records in VA custody, or copies thereof, other than records made available to the public under provisions of §§1.551 and 1.552 of this part, or unless otherwise provided for in title 38, Code of Federal Regulations, requested in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, will be made promptly available, except as provided in §1.554 of this part, to any person upon request. Such request must be in writing, over the signature of the requester and must contain a reasonable description of the record desired so that it may be located with relative ease. The request should be made to the office concerned (having jurisdiction of the record desired) or, if not known, to the Director or Veterans Services Officer in the nearest VA regional office; the Director, or Chief, Medical Administration Service, or other responsible official of VA medical facility where most recently treated; or to the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420. Personal contacts should normally be made during the regular duty hours of the office concerned, which are 8 a.m. to 4:30 p.m. Monday through

Friday for VA Central Office and most field facilities.

(Authority: 5 U.S.C. 552(a)(3))

[53 FR 10377, Mar. 31, 1988]

### § 1.553a Time limits for Department of Veterans Affairs response to requests for records.

(a) When a request for records made under §1.551, §1.552 or §1.553 is received it will be promptly referred for action to the proper employee designated in accordance with §1.556 to take initial action on granting or denying requests to inspect or obtain information from or copies of the records described.

(b) Any such request will then be promptly evaluated and a determination made within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of the request whether the Department of Veterans Affairs will comply with the request. Upon determination to comply or deny the request the person making the request will be notified immediately of the determination and the reasons therefor, and of the right of the person to appeal to the Secretary of Veterans Affairs any adverse determination. Records to be furnished will be supplied promptly.

(c) Upon receipt of such an appeal from an adverse determination it will be evaluated and a further determination made within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the appeal. If on appeal the denial is in whole or in part upheld the Department of Veterans Affairs will notify the requester of the provisions for judicial review of this determination. (See §§1.557 and 1.558.)

(d) In unusual circumstances, specifically as follows, the time limits in paragraphs (b) and (c) of this section may be extended by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. The date specified will not result in an extension for more than 10 working days. *Unusual circumstances* will be interpreted to mean,

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but only to the extent reasonably necessary to the proper processing of the particular request, as follows:

(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 Department of Veterans Affairs having substantial subject-matter interest therein.

(e) Pursuant to section 552(a)(6), title 5 U.S.C., any person making a request to the Department of Veterans Affairs for records under section 552(a) (1), (2) or (3) (see §§ 1.551, 1.552 and 1.553) will be deemed to have exhausted his or her administrative remedies with respect to such request if the Department of Veterans Affairs fails to comply with the applicable time limit provisions of this section. If, however, the Government can show exceptional circumstances exist and that the Department of Veterans Affairs is exercising due diligence in responding to the request, the statute also permits the court to retain jurisdiction and allow the Department of Veterans Affairs additional time to complete its review of the records.

(f) Requests for the release of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody pertaining to claims under any of the laws administered by the Department of Veterans Affairs (covered by §§ 1.500 through 1.527) may also be initiated under 5 U.S.C. 552. Such requests will also be evaluated, a determination made within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of the request whether the Department of Veterans Affairs will comply with the request, and the requester notified immediately of the determination and the reasons therefor, and of the right of the person

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to appeal to the Secretary of Veterans Affairs any adverse determination. Records to be furnished will be supplied promptly.

[40 FR 12657, Mar. 20, 1975]

### § 1.554 Exemptions from public access to agency records.

(a) The exemptions in this paragraph constitute authority to withhold from disclosure certain categories of information in Department of Veterans Affairs records except that 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 paragraph.

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

(2) Related solely to internal Department of Veterans Affairs personnel rules and practices.

(3) Specifically exempted from disclosure by statute other than 5 U.S.C. 552b, provided that such statute:

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

(ii) 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 any person and privileged or confidential.

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the Department of Veterans Affairs.

(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:

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

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(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 national security intelligence investigation, information furnished by a confidential source;

(v) 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

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

(Authority: 5 U.S.C. 552(b)(7))

(8) 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.

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

(b) Information in the categories exempted under paragraph (a) of this section, other than in paragraph (a)(3) which is applicable to Department of Veterans Affairs claimant records, will be released only as authorized in § 1.550. The release of information from Department of Veterans Affairs claimant records will be made only in accordance with §§ 1.501 through 1.526.

(c)(1) Whenever a request is made which involves access to records described in paragraph (a)(7)(i) of this section and

(i) The investigation or proceeding involves a possible violation of criminal law, and

(ii) There is reason to believe that

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) 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 Department 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.

(Authority: 5 U.S.C. 552(c)(1) and (c)(2))

[32 FR 10850, July 25, 1967, as amended at 40 FR 12657, Mar. 20, 1975; 42 FR 37976, July 26, 1977; 53 FR 9442, Mar. 23, 1988]

### § 1.554a Predisclosure notification procedures for confidential commercial information.

(a) *General.* During the conduct of its business the Department of Veterans Affairs (VA) may acquire records which contain confidential commercial information, as defined in paragraph (b) of this section. Such records will not be released in response to a Freedom of Information Act (FOIA) request, except under the provisions of this section. This section establishes uniform VA procedures for giving submitters predisclosure notice of requests for their records which contain confidential commercial information that may be exempt from disclosure under 38 CFR 1.554(a)(4). These procedures are required by Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, dated June 23, 1987.

(b) *Definitions*—(1) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552 (b)(4), as implemented by § 1.554 of this part, 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 government. The term “submitter” includes, but is not limited to corporations, State governments, and foreign governments.

(c) *Notification to submitters of confidential commercial information.* When a request is received, for a submitter’s record(s), or information which contains confidential commercial information, and the request is being processed under the FOIA, 5 U.S.C. 552, the submitter will be promptly notified in writing of the request when required by paragraph (d) of this section. The notification will advise the submitter that a request for its record(s) has been received and is being processed under the FOIA. The notice will describe the exact nature of the record(s) requested or will provide to the submitter copies of the record(s) or portions thereof containing the requested confidential commercial information. It will also inform the submitter of the opportunity to object to the disclosure in writing within 10 working days, and of the requirements for such a written objection, as described in paragraph (f) of this section. The notification will be sent by certified mail, return receipt requested.

(d) *When notification is required.* (1) For confidential commercial information submitted to VA prior to January 1, 1988, notification to submitters is required whenever:

(i) The records are less than 10 years old and the requested information has been designated by the submitter as confidential commercial information; or

(ii) VA facility, administration, or staff office which has custody of the requested records has reason to believe that disclosure of the requested information could reasonably be expected to cause substantial competitive harm.

(2) For confidential commercial information submitted to VA on or after January, 1, 1988, notification is required whenever:

(i) The submitter has in good faith designated the requested records as confidential information in accordance with paragraph (e) of this section; or

(ii) VA facility, administration, or staff office which has custody of the re-

quested records has reason to believe that disclosure could reasonably be expected to cause substantial competitive harm.

(e) *Designation by submitters of information as confidential commercial information.* (1) When business records are provided to VA, the submitter may appropriately designate any records or portions thereof which contain confidential commercial information, the disclosure of which could reasonably be expected to cause substantial competitive harm. This designation may be made at the time the information or record is given to VA or within a reasonable period of time thereafter, but not later than 60 days after receipt of the information by VA. Information so designated will be clearly identified by marking it with the words “confidential commercial information” or by an accompanying detailed written description of the specific kinds of information that is designated. If a complete document or record is designated, the cover page of the document or record will be clearly marked “This entire (document, record, etc.) consists of confidential commercial information.” If only portions of documents are designated, only those specific designated portions will be conspicuously annotated as “confidential commercial information.”

(2) A designation described in paragraph (e)(1) of this section will remain in effect for a period of not more than 10 years after submission to VA, unless the submitter provides acceptable justification for a longer specific period. If a shorter designation period is adequate, the submitter’s designation should include the earlier expiration date. Whenever possible, the submitter’s designation should be supported by a statement or certification by an officer or authorized representative of the submitter that the records are in fact confidential commercial information and have not been published or made available to the public.

(f) *Opportunity to object to disclosure.* (1) When notification to a submitter is made pursuant to paragraph (c) of this section, the submitter or designee may object to the disclosure of any specified portion of the record(s). Such objection will be in writing, will be addressed to

the VA official who provided notice, will identify the specific record(s) or portion(s) of records that should not be disclosed, will specify all grounds upon which disclosure is opposed, and will explain in detail why the information is considered to be a trade secret or confidential commercial information, i.e., why disclosure of the specified records could reasonably be expected to cause substantial competitive harm. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) Any objection to disclosure must be submitted within 10 working days after receipt by the submitter of notification as provided for in paragraph (c) of this section.

(3) If an objection to disclosure is received within the 10 working day time period, careful consideration will be given to all specified grounds for non-disclosure prior to making an administrative determination whether to disclose the record. When it is determined to disclose the requested record(s) or portions of records which are the subject of an objection, the submitter will be provided a written statement of the VA decision, the reason(s) that the submitter's objections to disclosure were overruled, a description or copy of the exact information or record(s) to be disclosed which were the subject of an objection, and the specified date of disclosure. The date of disclosure will not be less than 10 working days from the date this notice is placed into mail delivery channels.

(g) *Notices to requester.* (1) When a request is received for records that may contain confidential commercial information protected by FOIA exemption (b)(4), 5 U.S.C. 552(B)(4), the requester will be notified that the request is being processed under the provisions of this regulation and, as a consequence, there may be a delay in receiving a response.

(2) Whenever a submitter is notified, pursuant to paragraph (c) of this section, that VA has received a request for records which had been provided by such submitter, and that such request was being processed under the FOIA, the requester will be notified that the submitter is being provided an oppor-

tunity to comment on the request. The notice to the requester should not include any of the specific information contained in the records being requested.

(3) Whenever VA notifies a submitter of a final decision, the requester will also be notified by separate correspondence. This notification to the requester may be contained in VA's FOIA decision.

(h) *Notices of lawsuit.* Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information, the submitter of the information will be promptly notified.

(i) *Exceptions to the notification requirements.* The predisclosure notification requirements in paragraph (c) of this section need not be followed if:

(1) It is determined that the record(s) or information should not be disclosed;

(2) The record(s) requested have been published or have been officially made available to the public;

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

(4) Disclosure is required by an Agency rule that:

(i) Was adopted pursuant to notice and public comment;

(ii) Specifies narrow classes of records submitted to VA 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;

(5) The record(s) requested are not designated by the submitter as exempt from disclosure in accordance with paragraph (e) of this section, and the submitter had an opportunity to do so at the time of submission of the record(s) or a reasonable time thereafter, and VA does not have substantial reason to believe that disclosure of the information would result in competitive harm; or

(6) The designation made by the submitter in accordance with paragraph (e) of this section appears obviously frivolous, except that, in such case, VA

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must still provide the submitter with advance written notice of any final administrative disclosure determination not less than 10 working days prior to the specified disclosure date.

(Approved by the Office of Management and Budget under control number 2900-0393)

(Authority: 38 U.S.C. 501; 5 U.S.C. 552(b)(4); E.O. 12600 (52 FR 23781))

[57 FR 2229, Jan. 21, 1992]

### § 1.555 Fees.

(a) *Definitions of terms.* For the purpose of this section, the following definitions apply:

(1) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. To determine whether a request properly belongs in this category, consideration must be given to the use to which a requester will put the documents requested. Where the use of the records sought is not clear in the request or where there is reasonable cause to doubt the use to which the requester will put the records sought, additional information may be sought from the requester before assigning the request to a specific category.

(2) *Direct costs* means those expenditures which VA actually incurs in searching for and duplicating (and in the case of commercial use requests, reviewing) documents to respond to a Freedom of Information Act (FOIA) request. Direct costs include, for example, the salary of the employee performing work, i.e., the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits, and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting of the facility in which the records are stored.

(3) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audiovisual materials or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a

form that is reasonably usable by requesters.

(4) *Educational institution* means 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 or programs of scholarly research. To determine whether a request properly belongs in this category, the request must be evaluated to ensure that it is apparent from the nature of the request that it serves a scholarly research goal of the institution, rather than an individual goal of the requester or a commercial goal of the institution.

(5) *Non-commercial scientific institution* means an institution that is not operated on a *commercial* basis (as that term is referenced under *Commercial use request* of this paragraph) 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.

(6) *Representative of the news media* means 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. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media will be included in this category. *Freelance* journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the requester's past publication history can

be considered also. In any case, freelancers who do not qualify for inclusion in the *representative of the news media* category may seek a reduction or waiver of fees under paragraph (f) of this section.

(7) *Review* means the process of examining documents located in response to a *commercial use request* (see definition of commercial use request in this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure in response to a *commercial use request*, e.g., doing all that is necessary to excise them and otherwise prepare them for release. The term *review* does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means all the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programs. The most efficient and least expensive manner of searching for material will be used to minimize costs to VA and the requester. For example, line-by-line searches will not be conducted when duplicating an entire document is the least expensive and quicker method of complying with a request. The term *search* does not cover the time spent to review documents to determine whether all or portions thereof can be withheld under one of the nine categories of exemptions identified in § 1.554 of this part.

(b) *Fees to be charged.* (1) Except as provided in paragraphs (c), (d), (f) and (g) of this section, the Department of Veterans Affairs will charge fees that recoup the full allowable direct costs for responding to each request from the public. Such fees will be charged in accordance with the schedule of fees in paragraph (e) of this section, and other requirements or restrictions in this regulation. The most efficient and least costly methods will be used to comply with requests for documents made under the FOIA.

(2) If it is estimated that charges for duplication determined by using the fee schedule in § 1.555(e) of this part are likely to exceed \$25, the requester will

be notified of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with Department personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) Each administration and staff office upon approval of the Secretary is authorized to contract with private sector services to locate, reproduce, and disseminate records in response to FOIA requests when that is the most efficient and least costly method. If a contractor is used, the ultimate cost to the requester can be no greater than it would if the administration, staff office, or field facility performed the task, itself. In no case may a administration, staff office, or field facility contract out responsibilities which the FOIA provides that they alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(4) When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, in which the agency is required to set the level of fees for particular types of records, such as the National Technical Information Service or the Government Printing Office, the requester of such documents will be informed of the steps necessary to obtain records from those sources, rather than from VA.

(c) *Restrictions on assessing fees.* With the exception of commercial use requests no charges will be assessed for the first 100 pages of duplication and the first two hours of search time. Moreover, no fees are to be charged any requester, including commercial use requesters, if the cost of collecting the fee is equal to or greater than the fee itself. These provisions work together so that, except for commercial use requests, fees will not be assessed until the free search and duplication have been provided. For example, if a request takes two hours and ten minutes of search time and results in 105 reproduced pages of documents, fees can be charged for only 10 minutes of search



time and for only five pages of reproduction. If this cost were equal to or less than the cost to VA of billing the requester and processing the fee collected, no charges would be assessed. (NOTE: The cost of collecting fees are VA's administrative costs of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account. The cost is determined to be negligible. The per-transaction costs to the Treasury to handle such remittances is negligible and will not be considered in the Department's determination.)

(1) For purposes of the restriction on assessing fees, the word *pages* refers to one-sided paper copies of the standard sizes 8½" × 11" or 8½" × 14" or 11" × 14". Accordingly, requesters will not be entitled to 100 microfiche or 100 computer disks free. One microfiche containing the equivalent of 100 pages or 100 pages of computer printout might meet the terms of the restriction.

(2) The term *search time* in this context is based on manual searches. To calculate the *computer search time* for the purpose of applying the two-hour search restriction, the hourly cost of operating the computer's central processing unit will be combined with the operator's hourly salary, plus 16 percent of the salary. When the cost of the search (including the operator time and the cost of the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, charges will begin to be assessed for a computer search.

(d) *Categories of requesters and fees to be charged each category.* There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutional requesters; requesters who are representatives of news media; and all other requesters. Specific levels of fees will be charged for each of these categories as follows:

(1) *Commercial use requesters.* When a request for documents for commercial use is received, the full direct costs of searching for, reviewing for release, and duplicating the records sought will be charged to the requester. Commercial use requesters are not entitled to

two hours of free search time nor 100 free pages of reproduced documents. Moreover, the commercial use requester will be charged the cost of searching for and reviewing records even if there is ultimately no disclosure of records. The requester must reasonably describe the records sought.

(2) *Educational and non-commercial scientific institution requesters.* These requesters will be charged only for the cost of reproduction, excluding charges for the first 100 pages. In order to be considered a member of this category, a requester 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. If the request is from an educational institution, the requester must show that the records sought are in furtherance of scholarly research. If the request is from a non-commercial scientific institution, the requester has to show that the records are sought in furtherance of scientific research. Information necessary to support a claim of being categorized as an educational or non-commercial scientific institution requester will be provided by the requester, and the requester must reasonably describe the records sought.

(3) *Representatives of news media.* These requesters will be charged for the cost of reproduction, only, excluding charges for the first 100 pages. To be included in this category, a requester must fall within the definition of a representative of the news media specified in paragraph (a)(vi) of this section, and the request must not be made for commercial use. A request for records supporting the news dissemination function of the requester will not be considered to be a request that is for commercial use. Requesters must reasonably describe the records sought.

(4) *All other requesters.* Any requester that does not fit into any of the categories in this section will be charged fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished

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without charge. In addition, under certain circumstances specified in paragraph (f) of this section, fees will be waived or reduced at the discretion of field facility heads, their designee, or responsible Central Office officials. Requests from VA beneficiaries, applicants for VA benefits, or other individuals for records retrievable by their name or other personal identifier will initially be processed under 38 U.S.C. 5701 and 5 U.S.C. 552a and will be as-

sessed fees in accordance with the applicable fee provisions of §1.526(i) or §1.577(f) of this part. To the extent that records are not disclosable under these provisions, the disclosure of such records will be evaluated under §§1.550 through 1.559 of this part, and fees will be assessed under paragraph (e) of this section. Requesters must reasonably describe the records sought.

(e) *Schedule of fees:*

Activity	Fees
(1) Duplication of documents by any type of reproduction process to produce plain one-sided paper copies of a standard size (8½" × 11"; 8½" × 14"; 11" × 14").	\$0.15 per page.
(2) Duplication of non-paper records, such as microforms, audiovisual materials (motion pictures, slides, laser optical disks, video tapes, audiotapes, etc.) computer tapes and disks, diskettes for personal computers, and any other automated media output.	Actual direct cost to the Agency. (See paragraph (a)(2) of this section and, if costs are likely to exceed \$25.00, paragraph (b)(2) of this section.
(3) Duplication of documents by any type of reproduction process not covered by paragraphs (e)(1) and (2) of this section to produce a copy in a form reasonably usable by the requester.	Actual direct cost to the Agency. (See paragraph (a)(2) of this section and, if costs are likely to exceed \$25.00, paragraph (b)(2) of this section.
(4) Document search by manual (non-automated) methods .....	Basic hourly salary rate of the employee(s) performing the search, plus 16 percent. (If costs are likely to exceed \$25.00, see paragraph (g)(2) of this section.)
(NOTE— If a department, staff office or field station uses exclusively a single class of personnel, e.g., all administrative/clerical or all professional/executive, an average rate for the range of grades involved may be used).	
(5) Document search using automated methods, such as by computer .....	Actual direct cost to perform search. (See paragraph (c)(2) of this section, and, if costs are likely to exceed \$25.00, see paragraph (g)(2) of this section.)
(6) Document review (use only for commercial use requesters) .....	Basic hourly salary rate of employee(s) performing initial review to determine whether to release document(s) or portions of records, plus 16 percent.
(NOTE.— Charge for document reviews covers only the time spent reviewing the document(s) at the initial administrative level to determine applicability of a specific FOIA exemption to a particular record or portion of a record. It does not cover any review incurred at the administrative appeal level once the initial exemptions are applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The cost for such a subsequent review may be properly assessed).	
(7) Other charges: Certifying that records are true copies; Sending records by special methods such as express mail.	Where applicable, assess under provisions of §§ 1.526(i) and (j) of this part, otherwise actual direct cost of service performed.

(f) *Waiving or reducing fees.* (1) Fees for records and services provided in response to a FOIA request will be waived or reduced when it is determined by responsible Central Office officials or field station heads or their designee that furnishing the document(s) is in the public interest be-

cause 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.

(2) The following factors will be considered in sequence in determining whether disclosure of information is in

the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government:

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

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

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(3) The following factors will be considered in sequence in determining whether disclosure of information is primarily in the commercial interest of the requester:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(4) An appeal from an adverse fee waiver or reduction determination will be processed in the same manner as described in § 1.557 of this part.

(g) *Other administrative considerations to improve assessment and collection of fees*—(1) *Charging interest—notice and rate.* The Department of Veterans Affairs may charge interest to those requesters who fail to timely pay fees assessed in accordance with these regulations. Determination to charge interest will be made by the responsible Central Office official or field facility head or designee. Interest will be assessed on the unpaid bill beginning on the 31st day following the day on which the

original building was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C., and will accrue from the date of the billing. Accounting procedures ensure that a requester who has remitted the full amount within the time period is properly credited with the payment. The fact that the fee has been received by VA, even if not processed, will suffice to stay the accrual of interest.

(2) *Charges for unsuccessful search.* When it is determined by the responsible Central Office official or field facility head or designee, charges for searching may be assessed, even if records are not located to satisfy a request or if records located are determined to be exempt from disclosure. If it is determined that search charges are likely to exceed \$25, the requester will be notified of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice will offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Aggregating requests.* When the responsible Central Office official or field facility head or designee reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the responsible Central Office official, or field facility head or designee may aggregate (combine) any such requests and charge accordingly. One element to consider in determining whether a belief would be reasonable is the time period in which the requests occurred. For example, it is reasonable to presume that multiple requests within a 30-day time period that seek portion(s) of the same document(s) is an attempt to avoid payment of charges. For requests made over a longer period, however, such presumption becomes harder to sustain. In each case, there must be a solid basis for determining that aggregation is warranted. Caution will be exercised before aggregating requests from more than one requester. There must be a concrete basis on which to

conclude that the requesters are acting in concert and are acting specifically to avoid payment. In no case will multiple requests on unrelated subjects from one requester be aggregated.

(4) *Advance payments.* The Department of Veterans Affairs may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(i) The allowable charges that a requester may be required to pay are likely to exceed \$250. Then, the Department of Veterans Affairs should either notify the requester of the likely cost and obtain satisfactory assurance of full payment, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(ii) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing). Then, the Department of Veterans Affairs may require the requester to pay the full amount owed, plus any applicable interest as provided in paragraph (g)(1) of this section, or to demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the estimated fee before the Department begins to process a new request or a pending request from that requester.

(iii) If a requester is required to make advance payments, as described in this section, the time limits prescribed in §1.553a of this part, for responding to initial requests and appeals from initial denials, will begin only after the Department has received the advance fee payments.

(5) *Debt collection.* In the event of non-payment of billed charges for disclosure of records, the procedures authorized by the Debt Collection Act of 1982 (Pub. L. 97-365) may be used. This may include disclosure to consumer reporting agencies and use of collection agencies.

(Authority: 5 U.S.C. 552(a)(4)(A))  
[53 FR 10377, Mar. 31, 1988]

#### § 1.556 Requests for other reasonably described records.

Each administration, staff office, and field facility head will designate an employee(s) who will be responsible for initial action on (granting or denying) requests to inspect or obtain information from or copies of records under their jurisdiction and within the purview of §1.553. This responsibility includes maintaining a uniform listing of such requests. Data logged will consist of: Name and address of requester; date of receipt of request; brief description of request; action taken on request, granted or denied; citation of the specific section when request is denied; and date of reply to the requester. In the field a denial of any such request may be made only by the Director or the designated employee and in Central Office only by the administration or staff office head or designee. The letter notifying the requester of the denial will be signed by the official making the denial decision. Any legal question arising in a field station concerning the release of information will be referred to the appropriate Regional Counsel for disposition as contemplated by §13.401\* of this chapter. In Central Office such legal questions will be referred to the General Counsel. Any administrative question will be referred through administrative channels to the appropriate administration or staff office head. All denials or proposed denials at the Central Office level will be coordinated with the Director, Information Service as well as the General Counsel.

[40 FR 12658, Mar. 20, 1975]

#### § 1.557 Administrative review.

(a) Upon denial of a request, the responsible Department of Veterans Affairs official or designated employee will inform the requester in writing of the denial, cite the specific exemption in §1.554 upon which the denial is based, set forth the names and titles or positions of each person responsible for the denial of such request, and advise

\*EDITORIAL NOTE: At 42 FR 41410, Aug. 17, 1977, §13.401 was removed.

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that the denial may be appealed to the General Counsel.

(b) The final agency decision in such appeals will be made by the General Counsel or the Deputy General Counsel.

[40 FR 12658, Mar. 20, 1975, as amended at 55 FR 21546, May 25, 1990]

**§§ 1.558–1.559 [Reserved]**

**SAFEGUARDING PERSONAL INFORMATION  
IN DEPARTMENT OF VETERANS AFFAIRS  
RECORDS**

NOTE: Sections 1.575 through 1.584 concern the safeguarding of individual privacy from the misuse of information from files, records, reports, and other papers and documents in Department of Veterans Affairs custody. As to the release of information from Department of Veterans Affairs claimant records see §1.500 series. As to the release of information from Department of Veterans Affairs records other than claimant records see §1.550 series. Section 1.575 series implement the provisions of Pub. L. 93–579, December 31, 1974, adding a section 552a to title 5 U.S.C. providing that individuals be granted access to records concerning them which are maintained by Federal agencies, and for other purposes.

SOURCE: 40 FR 33944, Aug. 12, 1975, unless otherwise noted.

**§ 1.575 Social security numbers in veterans' benefits matters.**

(a) Except as provided in paragraph (b) of this section, no one will be denied any right, benefit, or privilege provided by law because of refusal to disclose to the Department of Veterans Affairs a social security number.

(b) VA shall require mandatory disclosure of a claimant's or beneficiary's social security number (including the social security number of a dependent of a claimant or beneficiary) on necessary forms as prescribed by the Secretary as a condition precedent to receipt or continuation of receipt of compensation or pension payable under the provisions of chapters 11, 13 and 15 of title 38, United States Code, provided, however, that a claimant shall not be required to furnish VA with a social security number for any person to whom a social security number has not been assigned. VA may also require mandatory disclosure of an applicant's social security number as a condition for re-

ceiving loan guaranty benefits and a social security number or other taxpayer identification number from existing direct and vendee loan borrowers and as a condition precedent to receipt of a VA-guaranteed loan, direct loan or vendee loan, under chapter 37 of title 38, United States Code. (Pub. L. 97–365, sec. 4)

(c) A person requested by VA to disclose a social security number shall be told, as prescribed by §1.578(c), whether disclosure is voluntary or mandatory. The person shall also be told that VA is requesting the social security number under the authority of title 38 U.S.C., or in the case of existing direct or vendee loan borrowers, under the authority of 26 U.S.C. 6109(a) in conjunction with sections 145 and 148 of Pub. L. 98–369, or in the case of loan applicants, under the authority of section 4 of Pub. L. 97–365. The person shall also be told that it will be used in the administration of veterans' benefits in the identification of veterans or persons claiming or receiving VA benefits and their records, that it may be used in making reports to the Internal Revenue Service where required by law, and to determine whether a loan guaranty applicant has been identified as a delinquent taxpayer by the Internal Revenue Service, and that such taxpayers may have their loan applications rejected, and that it may be used to verify social security benefit entitlement (including amounts payable) with the Social Security Administration and, for other purposes where authorized by both title 38 U.S.C., and the Privacy Act of 1974, (Pub. L. 93–579), or, where required by another statute. (Pub. L. 97–365, sec. 4)

(Authority: 38 U.S.C. 5101)

[44 FR 22068, Apr. 13, 1979, as amended at 51 FR 21750, June 16, 1986; 56 FR 25044, June 3, 1991]

**§ 1.576 General policies, conditions of disclosure, accounting of certain disclosures, and definitions.**

(a) The Department of Veterans Affairs will safeguard an individual against an invasion of personal privacy. Except as otherwise provided by law or regulation its officials and employees will: