CHAPTER 7 FREEDOM OF INFORMATION ACT

Secs.
700 Freedom of Information Act Requests
701 - 702 [Reserved]
703 FOIA Time Limitations
704 FOIA Exemptions from Disclosure
705 FOIA Fees

700 FREEDOM OF INFORMATION ACT REQUESTS

700.1 This chapter shall apply to all Freedom of Information Act (FOIA) requests for access to or copies of Commission records made pursuant to D.C. Law 1-96, D.C. Code §§1-1521 through 1-1529 (1981 Ed.).

700.2 The General Counsel shall be designated as the FOIA Officer of the Commission.

700.3 Any person requesting copies of Commission records, or access to Commission records, pursuant to the FOIA, shall submit the request to the General Counsel.

700.4 For the purposes of this chapter, a "request" means a single demand for any number of documents made at one time to the General Counsel.

700.5 When a request is made in writing, both the envelope and the letter shall clearly indicate that the subject is a freedom of information request.

700.6 While oral requests may be honored, a person may be asked to submit in writing a request for records not customarily made available.

700.7 A request shall reasonably describe the desired record. Where possible, specific information regarding dates, files, titles, file designation, or other identifying information, shall be supplied.

700.8 Where the information supplied by the requesting party is not sufficient to permit the identification and location of the record without an unreasonable amount of effort, the person requesting the record shall be contacted and asked to supply the necessary information. Every reasonable effort shall be made by the Commission's employees to assist in the identification and location of requested records.

700.9 Commission employees may continue to furnish to the public, informally and without compliance with these procedures, information and records which they customarily furnish in the regular performance of their duties.

700.10 The Secretary of the Commission shall maintain for public inspection a FOIA Docket. Except as provided in §700.11 the docket shall contain the following information:

(a) The FOIA request and its date of receipt;

(b) A copy of all correspondence relating to the request;

(c) The General Counsel's disposition of the request;

(d) If denied, in whole or in part, the exemption invoked;

(e) The date of the General Counsel's response; and

(f) The amount of fees collected for services rendered.

700.11 Where the release of the identity of the person requesting the record, or other identifying details related to the request would constitute a clearly unwarranted invasion of personal privacy, the Secretary shall delete identifying details from the copies of the documents maintained in the public files.

700.12 On or before the 31st day of March of each calendar year, the Secretary shall compile and submit to the Commission a FOIA report containing the following information:

(a) Total number of requests made to the General Counsel;

(b) The number of requests granted and denied, in whole or in part;

(c) The number of times each exemption was invoked as the basis for non-disclosure; and

(d) The amount of fees collected, and the amount of fees for duplication and search waived by the General Counsel.

700.13 When a requested record has been identified and is available, the General Counsel shall notify the person requesting the record as to where and when the record is available for inspection or copies will be available. The notification shall also advise the person of any applicable fees.

700.14 A response denying a written request for a record shall be in writing and shall include the following information:

(a) A reference to the specific exemption or exemptions authorizing the withholding of the record with a brief explanation of how each exemption applies to the record withheld and a statement of the public interest considerations which establish the need for withholding the record. Where more than one (1) record has been requested and is being withheld, the foregoing information shall be provided for each record withheld; and

(b) A statement of the appeal rights provided by the FOIA.

700.15 When a request for records has been denied in whole or in part by the General Counsel the person requesting the record may, pursuant to D.C. Code §1-1527 (1981 Ed.), appeal the denial to the Mayor or may seek immediate judicial review of the denial in the Superior Court.

700.16 If a requested record cannot be located from the information supplied or is known to have been destroyed or otherwise disposed of, the requesting party shall be so notified.

AUTHORITY: Unless otherwise noted, the authority for this chapter is the Title 11 of the District of Columbia Administrative Procedure Act, P.L. 90-614, as amended by §2 of the Freedom of Information Act of 1976, D.C. Law 1-96, D.C. Code §1-1521 *et seq.* (1981 Ed.).

SOURCE: Final Rulemaking published at 33 DCR 7053 (November 14, 1986).

701 - 702 [RESERVED]

703 FOIA TIME LIMITATIONS

703.1 Within ten (10) days (excluding Saturdays, Sundays, and legal public holidays) of the receipt of a request, the General Counsel shall determine whether to comply with or to deny the request and shall dispatch his or her determination to the requesting party, unless an extension is made under §§703.2 and 703.3.

703.2 In unusual circumstances as specified in §703.4 the agency may extend the time for initial determination on a request up to a total of ten (10) days (excluding Saturdays, Sundays, and legal public holidays).

703.3 Extensions shall be made by written notice to the person requesting the record. The notice shall set forth the reason for the extension and the date on which a determination is expected.

703.4 For purposes of this section, "unusual circumstances" means, but only to the extent necessary to the proper processing of the request, either of the following:

(a) 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

(b) The need for consultation with another agency having a substantial interest in the determination of the request or for coordination among two (2) or more Offices of the Commission having substantial interest in the subject matter of the request.

703.5 If no determination has been dispatched at the end of the ten (10) day period, or the extension thereof, the requesting party may deem his or her request denied, and exercise a right of appeal in accordance with §700.15 or 700.16.

703.6 When no determination can be dispatched within the applicable time limit, the General Counsel shall continue to process the request. On expiration of the time limit, the General Counsel shall inform the person requesting the record of the following:

(a) The reason for the delay;

(b) The date on which a determination may be expected;

(c) His or her right to treat the delay as a denial; and

(d) The appeal rights provided by the FOIA.

703.7 The General Counsel may ask the person requesting the record to forego appeal until a determination is made.

703.8 Any failure on the part of the General Counsel to comply with a request under §700, and within the time provisions of §703, shall be deemed a denial of the request.

703.9 The person making the request shall be deemed to have exhausted his or her administrative remedies with respect to that request, unless the person chooses to appeal to the full Commission pursuant to §700.15 or petition the Mayor pursuant to D.C. §1-1527 (1981 Ed.).

SOURCE: Final Rulemaking published at 33 DCR 7053, 7056 (November 14, 1986).

704 FOIA EXEMPTIONS FROM DISCLOSURE

704.1 The classes of records authorized to be exempted from disclosure under this chapter shall be the same as those provided in D.C. Code §1-1524 (1981 Ed.), as amended.

704.2 Any reasonably separable portion of a record shall be provided to any person requesting the record after deletion of those portions which are exempt under this section.

704.3 Any document filed under seal which is alleged by a party to contain proprietary information shall be deemed excepted from disclosure pursuant to D.C. Code §1-1524(a)(1) (1981 Ed.), unless the Commission, after notice to the affected party and opportunity to be heard, orders that D.C. Code §1-1524(a)(1) (1981 Ed.), does not apply. An application for reconsideration of an order shall act as a stay of the order pending reconsideration.

704.4 When alleged proprietary information is the subject of a FOIA request, the following procedures shall apply:

(a) The General Counsel shall notify the requesting party that the information requested is alleged to be proprietary;

(b) The General Counsel shall notify the party whose alleged proprietary information is the subject of a FOIA request, and inform the party of its right to file, within five (5) days of notification, the basis of its proprietary claim;

(c) Within five (5) days of service of the party's basis of proprietary claim, the requesting party may file a response detailing why the requested information is not proprietary and why the information should be disclosed; and

(d) Within ten (10) days of the date the response is required to be filed, the Commission shall issue an order regarding whether the alleged proprietary information is exempt from disclosure.

SOURCE: Final Rulemaking published at 33 DCR 7053, 7056 (November 14, 1986); as amended by Final Rulemaking published at 34 DCR 2195 (April 3, 1987).

705 FOIA FEES

705.1 Charges for services rendered in response to FOIA requests shall be as follows:

(a) Searching for records, after the first hour, shall be one dollar and fifty cents ($1.50) per quarter hour (maximum of ten dollars ($10) for each request); and

(b) Fifteen cents (15¢) per page reproduction fee for each copy made.

705.2 When a response to a request requires services or materials for which no fee has been established, the direct cost of the services or materials to the Commission may be charged, but only if the person making the request has been notified of the cost before it is incurred.

705.3 Where an extensive number of documents are identified and collected in response to a request, and the person making the request has not indicated in advance his or her willingness to pay fees as high as are anticipated for copies of the document, the General Counsel shall inform the person that the documents are available for inspection and for copying at the established rate.

705.4 A charge of one dollar ($1) shall be made for each certification of true copies of Commission records.

705.5 Search costs, not to exceed ten dollars ($10) for each request, may be imposed even if the requested record cannot be located.

705.6 Fees shall be paid in full prior to the issuance of requested copies.

705.7 Remittances shall be in the form either of a personal check or bank draft on a bank in the United States, a postal money order, or cash. Remittance shall be made payable to the order of the D.C. Treasurer and mailed or delivered to the Secretary of the Commission. The Secretary shall not assume responsibility for cash which is lost in the mail.

705.8 A receipt for fees paid shall be given only upon request. No refund shall be made for services rendered.

705.9 The General Counsel may waive all or part of any fee when it is deemed to be either in the Commission's interest or in the interest of the public.

SOURCE: Final Rulemaking published at 33 DCR 7053, 7056 (November 14, 1986).