



SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

5 CFR Part 9301

Freedom of Information Act and Privacy Act Procedures

RIN 3460-AA00

AGENCY: Special Inspector General for Afghanistan Reconstruction.

ACTION: Correcting amendments.

SUMMARY: On June 11, 2012 (77 FR 34179) the Special Inspector General for Afghanistan Reconstruction published a final rule, revising its regulations establishing procedures for the public to obtain information from the Special Inspector General for Afghanistan Reconstruction under the Freedom of Information Act (FOIA) and the Privacy Act of 1974. These procedures will facilitate public interaction with SIGAR. The June 11, 2012 final rule inadvertently omitted several amendments in response to the public comments SIGAR received. The purpose of this document is to make the necessary corrections.

DATES: This final rule is effective [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Kate Gastner, Public Information Manager, at (703)545-5993, e-mail: mary.k.gastner.civ@mail.mil.

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. No. 110-181), which created the Special Inspector General for Afghanistan Reconstruction (SIGAR). In order to establish procedures to facilitate public interaction with SIGAR, the agency is issuing final regulations under the FOIA and the Privacy Act.

On June 11, 2012 (77 FR 34179) SIGAR published a final rule revising its regulations, 5 CFR Chapter LXXXIII part 9301, establishing procedures for the public to obtain information from the Special Inspector General for Afghanistan Reconstruction under the Freedom of Information Act (FOIA) and the Privacy Act of 1974.

Unfortunately, SIGAR inadvertently omitted several amendments which specifically addressed several public comments the agency received during the interim rule phase.

List of Subjects in 5 CFR Part 9301

Administrative practice and procedure, Freedom of Information, Privacy.

Accordingly, 5 CFR part 9301 is corrected by making the following correcting amendments:

PART 9301—[AMENDED]

1. The authority citation for part 9301 continues to read as follows:

Authority: 5 U.S.C. 552; Pub. L. No. 110-175, 121 Stat. 2524 (2007); 5 U.S.C. 301 and 552; Exec. Order 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; Exec. Order No. 13392, 70 FR 75373-75377, 3 CFR, 2006 Comp., pp. 216-200.

2. Section 9301.1 is revised to read as follows:

§ 9301.1 In general.

This information is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. This subpart should be read in conjunction with the FOIA. The Freedom of Information Act applies to third-party requests for documents concerning the general activities of the government and of SIGAR in particular. When a U.S. citizen or an individual lawfully admitted for permanent residence requests access to his or her own records, it is considered a Privacy Act request. Such records are maintained by SIGAR under the individual's name or personal identifier. Although requests are considered either FOIA requests for Privacy Act requests, agencies process requests in accordance with both laws, which provides the greatest degree of lawful access while safeguarding an individual's privacy.

3. Section 9301.4 is revised to read as follows:

§ 9301.4 Availability of records.

SIGAR provides records to individual requesters in response to FOIA requests. Records that are required by the FOIA to be made available for public inspection and copying are accessible on SIGAR's Web site, <http://www.sigar.mil>. SIGAR will also identify records of interest to the public that are appropriate for public disclosure, and then post these records.

4. Section 9301.6 is amended by revising paragraphs (c) (1) and (d) to read as follows:

§ 9301.6 Requesting records.

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(c) *Response to requests* –(1) *Processing*. SIGAR will provide an individualized tracking number, and estimated date of completion, and a brief description of the subjects of the request in an acknowledgement letter to the requester. The FOIA Officer shall determine within 20 days (except Saturdays, Sundays, and federal holidays) after receiving a request for records, whether it is appropriate to grant or deny the request. The 20-day period may be tolled once if the FOIA Officer requests information from the requestor or if additional time is necessary to clarify issues with the requestor regarding a fee assessment.

(i) *Request granted*. If the FOIA Officer decides to grant the request, either in-full or in-part, the FOIA Officer shall promptly provide the requester written notice of the decision. The FOIA Officer shall include with the notice both the requested records and a copy of the decision. The notice shall also describe the procedure for filing an appeal.

(ii) *Request denied.* If the FOIA Officer denies the request, in full or part, the FOIA Officer shall provide the requester written notice of the denial together with the approximate number of pages of information withheld and the exemption under which the information was withheld. SIGAR will indicate, if technically feasible, the amount of information deleted and the exemption under which the deletion is made at the place in the record where the deletion was made. SIGAR will also indicate the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemptions. The notice shall also describe the procedure for filing an appeal.

(iii) *Consultations and referrals:* When SIGAR receives a request for a record in its possession, it will determine whether another agency of the Federal Government, is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be disclosed as a matter of administrative discretion. If SIGAR determines that it is best able to process the record in response to the request, then it will do so. If SIGAR determines that it is not best able to process the record, then it will either:

(A) Respond to the request regarding that record, after consulting with the agency best able to determine whether to disclose it and with any other agency that has a substantial interest in it; or

(B) Refer the responsibility for responding to the request regarding that record to the agency that originated the record (but only if that agency is subject to the FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

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(d) *Appeals* —(1) *Initiating appeals.* Requesters not satisfied with the FOIA Officer's written decision may request SIGAR's FOIA Appellate

Authority to review the decision. Appeals must be delivered in writing within 60 days of the date of the decision and should be addressed to the FOIA Appellate Authority, Office of Privacy, Records & Disclosure, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to FAX appeals to (703) 601-3804 or email to sigar.pentagon.gen-coun.mbx.foia@mail.mil. An appeal shall include a statement specifying the records that are the subject of the appeal and explaining why the Appellate Authority should grant the appeal.

(2) *Appeal decisions.* The Appellate Authority shall decide the appeal within 20 days (except Saturdays, Sundays and federal holidays) from the date it receives the appeal. If the Appellate Authority denies the appeal in full or part, the Appellate Authority shall promptly notify the requester in writing of the Appellate Authority's decision and the provisions for judicial review. If the Appellate Authority grants the appeal, the FOIA Officer shall notify the requester in writing and shall make available to the requester copies of the releasable records once the requester pays any fees that SIGAR assesses under §§9301.8 through 9301.10.

(3) *Mediation.* A response to an appeal will advise the requester that the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. A requester may contact OGIS in any of the following ways: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740; E-mail: ogis@nara.gov; Telephone: 202-741-5770; Facsimile: 202-741-5769; Toll-free: 1-877-684-6448.

5. Section 9301.7 is revised as follows:

§ 9301.7 Definitions.

For purposes of this subpart:

(a) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's or other person's commercial, trade, or profit interests.

(b) *Direct costs* means those costs incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) documents to respond to a FOIA request. Direct costs include, for example, salaries of employees who perform the work and costs of conducting large-scale computer searches.

(c) *Duplicate* means to copy records to respond to a FOIA request. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

(d) *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, that operates a program or programs of scholarly research.

(e) *Fee category* means one of the three categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication.

(f) *Fee waiver* means the waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied.

(g) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis and that operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(h) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

(i) *Review* means to examine a record to determine whether any portion of the record may be withheld and to process a record for disclosure, including by redacting it.

(j) *Search for* means look for and retrieve records covered by a FOIA request, including by looking page-by-page or line-by-line to identify responsive material within individual records.

6. Section 9301.8 is amended by revising the introductory text and paragraph (d) to read as follows:

§ 9301.8 Fees in general.

SIGAR shall charge reasonable fees that recoup the full allowable direct costs it incurs in responding to FOIA requests. SIGAR will provide an estimated amount of fees, including a breakdown of the fees for search, review, and/or duplication. SIGAR may assess charges for time spent search-

ing for records even if SIGAR is unable to locate the records or if the records are located and determined to be exempt from disclosure. In general, SIGAR shall apply the following fee schedule, subject to §§9301.9 through 9301.11:

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(d) *Duplication.* Fees for copying paper records or for printing electronic records shall be assessed at a rate of \$.10 per page. For other types of copies such as disks or audio visual tapes, SIGAR shall charge the direct cost of producing the document(s). If duplication charges are expected to exceed \$25, the FOIA Officer shall notify the requester, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated.

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7. Section 9301.10 is amended by revising paragraph (c) as follows:

§ 9301.10 Other charges.

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(c) *Aggregating requests.* When the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests within a 30 day period for the purpose of avoiding fees, the FOIA Officer shall aggregate those requests and charge accordingly.

8. Section 9301.11 is amended by revising paragraph (b) to read as follows:

§ 9301.11 Payment and waiver.

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(b) *Waiver.* SIGAR may waive all or part of any fee provided for in §§9301.8 through 9301.9 when the FOIA Officer deems that as a matter of administrative discretion or disclosure of the information is in the general public's 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 commercial interest of the requester. Requesters may request a waiver in their initial FOIA request letter. Requests for a fee waiver should explain how the information requested contributes to the public's understanding of the operations or activities of the government. In determining whether a fee should be waived, the FOIA Officer may consider whether:

- (1) The subject matter specifically concerns identifiable operations or activities of the government;
- (2) The information is already in the public domain;
- (3) Disclosure of the information would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population;
- (4) Disclosure of the information would significantly enhance the public's understanding of the subject matter;
- (5) Disclosure of the information would further a commercial interest of the requester; and

(6) The public's interest is greater than any commercial interest of the requester.

Dated: June 21, 2012.

Steven J Trent, Acting Inspector General, Special Inspector General for Afghanistan Reconstruction.

[FR Doc. 2012-15665 Filed 06/26/2012 at 8:45 am; Publication Date: 06/27/2012]