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**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

36 CFR Part 1250

[FDMS No. NARA-17-0001]; Agency No. NARA-2017-019

RIN 3095-AB93

**NARA Records Subject to FOIA**

**AGENCY:** National Archives and Records Administration

**ACTION:** Direct final rule.

**SUMMARY:** We are amending our Freedom of Information Act (FOIA) regulations on access to NARA's archival holdings and our operational records to make them consistent with the FOIA Improvement Act of 2016, and a few small administrative changes to remain current. The rule affects individuals and organizations that file FOIA requests for access to NARA operational records and archival holdings.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless we receive adverse written comment by [INSERT DATE 20 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If we receive such comments, we will withdraw the rule.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Keravuori, by telephone at 301-837-3151, by e-mail at [regulation\\_comments@nara.gov](mailto:regulation_comments@nara.gov), or by mail at Kimberly Keravuori, External Policy Program Manager; Strategy Division (MP), Suite 4100; NARA; 8601 Adelphi Road; College Park, MD 20740-6001.

**SUPPLEMENTARY INFORMATION:** We are revising our FOIA regulations to make them consistent with the FOIA Improvement Act of 2016 (Public Law 114-185)

and to keep them up to date with small administrative changes. The revisions include: (a) changing the appeal period from 60 to 90 calendar days; (b) clarifying access procedures to records of NARA's Office of Inspector General; (c) clarifying procedures for sending in FOIA requests; (d) deleting language that civilian personnel records transfer 62 years after date of separation from Federal service because not all civilian personnel folders are permanent and some thus do not transfer; (e) changing the General Records Schedule (GRS) number from 14 to 4.2 to reflect GRS revisions; (f) updating references from "twentieth-century" records to "twentieth- and twenty-first-century" records; and (g) reflecting the Office of Government Information Services' expanded role in the process.

### **Regulatory review information**

This rule is not a significant regulatory action for the purposes of E.O. 12866 and has been reviewed by the Office of Management and Budget (OMB). It is also not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, we certify that this rule will not have a significant impact on a substantial number of small entities. It only clarifies the already-existing processes by which individuals or entities request access to NARA records, and updates them to reflect changes in Federal requirements to make access easier.

This rule is effective upon publication for good cause as permitted by the Administrative Procedure Act (5 U.S.C. 553(d)(3)). NARA believes a public comment period is unnecessary as this rule implements statutory requirements and makes only minor updates. This rule also does not have any Federalism implications.

### **List of Subjects in 36 CFR Part 1250**

Administrative practice and procedure, Archives and records, Confidential business

information, Freedom of information, Information, Records, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Archives and Records Administration amends 36 CFR part 1250 as follows:

**PART 1250—NARA RECORDS SUBJECT TO FOIA**

1. Revise the authority to read as follows:

**Authority:** 44 U.S.C. 2104(a) and 2204 (3)(c)(1); 5 U.S.C. 552; Public Law 114-185; E.O. 13526; E.O. 12600; 52 FR 23781; 3 CFR, 1987 Comp., p. 235.

2. "

**2. In § 1250.8, revise paragraphs (a), (b) introductory text, and (b)(1) to read as follows:**

**§ 1250.8 Does NARA provide access under FOIA to all the executive branch records housed at NARA facilities?**

(a) NARA provides access under FOIA to the records NARA creates (*operational* records) and records originating in the executive branch that have been transferred to the legal custody of the Archivist of the United States (*archival* records). The NARA Office of Inspector General (OIG) is an independent unit within NARA that controls access under FOIA to the operational records that OIG creates. NARA OIG handles FOIA requests it receives separately and independently from FOIA requests to NARA.

(b) NARA's National Personnel Records Center (NPRC), located in St. Louis, Missouri, is the repository for twentieth- and twenty-first-century personnel and medical records of former members of the military and personnel records of former civilian employees of the Federal Government.

(1) Those official personnel and medical files that have been transferred to NARA's legal custody are processed by NARA according to this part, at §§ 1250.20 through 1250.32.

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§ 1250.14 [Amended]

3. In § 1250.14, remove "General Records Schedule 14" and add in its place "General Records Schedule 4.2."
4. In § 1250.20, revise the introductory text to read as follows:

**§ 1250.20 What do I include in my FOIA request?**

In your FOIA request, which must be submitted in writing:

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§ 1250.22 [Amended]

5. § 1250.22(a), amend the table by removing the heading "Mail/submit request to or call:" and add in its place the heading, "Mail or email request to:".

6. In § 1250.26, revise paragraph (h) to read as follows:

**§ 1250.26 How does NARA process my FOIA request?**

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(h) *Complex processing schedule.* If NARA needs to extend the deadline for more than an additional 10 working days due to the complexity of a request or as a result of unusual circumstances, we ask if you wish to modify your request so that we can answer the request sooner. If you do not wish to modify your request, we work with you to arrange an alternative schedule for review and release. We will also notify you that the Office of Government Information Services (OGIS) is available to provide dispute resolution

services, and how to contact them.

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7. In § 1250.30, revise paragraph (b) to read as follows:

**§ 1250.30 How does NARA respond to my request?**

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(b) If we deny any part of your request, our response will explain the reasons for the denial, which FOIA exemptions apply to withhold records, your right to appeal that determination, and your right to seek dispute resolution services from the FOIA Public Liaison or OGIS.

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8. In § 1250.32, revise paragraph (a) to read as follows:

**§ 1250.32 How may I request assistance with the FOIA process?**

(a) For assistance at any point in the FOIA process, you may contact the NARA FOIA Public Liaison. That individual is responsible for assisting you to reduce delays, increase transparency and understanding of the status of requests, and resolve any FOIA disputes. You can find a list of our FOIA Public Liaisons at

<http://www.archives.gov/foia/contacts.html>.

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9. In § 1250.72, revise paragraphs (a) introductory text and (b)

**§ 1250.72 How do I file an appeal?**

(a) You may submit your appeal via mail or electronically. All appeals must be in writing and received by NARA within 90 calendar days from the date of our determination letter.

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(b) In your appeal correspondence, clearly identify NARA's initial determination letter (including the assigned request number, if known) from which you are appealing. Please explain why you believe our response does not meet the requirements of the FOIA, including why we should release the records, grant your fee waiver request, or expedite the processing of your request. If we were not able to find the records you wanted, explain why you believe NARA's search was inadequate. If we denied you access to records and told you that those records were not subject to FOIA, please explain why you believe the records are subject to FOIA.

10. In § 1250.74, revise paragraphs (a) introductory text, (a)(2) and (c) introductory text to read as follows:

**§ 1250.74 How does NARA process appeals?**

(a) We respond to your appeal within 20 working days after the appeal official designated in 36 CFR 1250.72(a)(1)(i) and (ii) receives it. NARA has adopted the practice of generally handling backlogged appeals on a first-in, first-out basis.

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(2) In the event you decide to file a FOIA lawsuit, NARA will administratively close your request.

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(c) We also inform you that OGIS offers dispute resolution services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Dispute resolution is a voluntary process. If we agree to participate in the dispute resolution services provided by OGIS, we will actively engage as a partner to the

process in an attempt to resolve the dispute. You may contact OGIS in any of the following ways:

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Dated: January 3, 2017

DAVID S. FERRIERO

Archivist of the United States.

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