



Office of the Attorney General
Washington, D. C.

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TITLE 28 - JUDICIAL ADMINISTRATION

CHAPTER I - DEPARTMENT OF JUSTICE

PART 0 - ORGANIZATION OF THE
DEPARTMENT OF JUSTICE

PART 16 - PRODUCTION OR DISCLOSURE OF
MATERIAL OR INFORMATION

ORDER NO. 381-67

AMENDMENT OF REGULATIONS RELATING TO THE ORGANIZATION
OF THE DEPARTMENT OF JUSTICE AND THE
PRODUCTION OR DISCLOSURE OF DEPARTMENT
MATERIALS AND INFORMATION

On July 4, 1967, the effective date of these regulations, a new subsection (e) will be added to section 0.130 of Part 0, and the current provisions under Part 16 will be replaced by new Subparts A and B.

The amendment to Part 0 identifies, pursuant to 5 U.S.C. 552(a)(1)(A), the employees who are responsible for receiving submittals and requests.

Part 16, Subpart A, captioned "Production and Disclosure under 5 U.S.C. 552(a)," implements 5 U.S.C. 552 which amends section 3, the public information section of the Administrative Procedure Act, effective July 4, 1967. Subpart B, captioned "Production in Response to Subpenas or Demands of Courts or Other Authorities," is a revision of the current provisions of sections 16.1, 16.2, and 16.3.

Authority: These provisions are issued under R.S. 161, 5 U.S.C. 301; 5 U.S.C. 552; 65 Stat. 290, 31 U.S.C. 483a, 5 U.S.C. (1964 Ed.) 140; Section 2, Reorganization Plan No. 2 of 1950, 64 Stat. 1261, 3 C.F.R. 1949-1953 Comp., p. 1003.

Part 0

A new subsection (e) is hereby added to section 0.130 as follows:

(e) Except as otherwise provided in this Chapter, receive submittals and requests relative to the functions of his organizational unit.

Part 16

Part 16 is hereby amended to read as follows:

PART 16 - PRODUCTION OR DISCLOSURE OF
MATERIAL OR INFORMATION

SUBPART A - PRODUCTION OR DISCLOSURE UNDER 5 U.S.C. 552(a)

Sec.

- 16.1 Purpose and scope.
- 16.2 Public reference facilities.
- 16.3 Requests for identifiable records and copies.
- 16.4 Schedule of fees and services.
- 16.5 Exemptions.
- 16.6 Records of the Immigration & Naturalization Service
and of the Board of Immigration Appeals.
- 16.7 Administrative decision and review.
- 16.8 Effective date.

16.1 Purpose and scope. - This subpart contains the regulations of the Department of Justice implementing 5 U.S.C. 552. These regulations provide information concerning the procedures by which records may be obtained from all organizational units within the Department of Justice. Official records of the Department of Justice made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public only as prescribed by this subpart. Officers and employees of the Department may continue to furnish to the public, informally and without compliance with the procedures prescribed herein, information and records which prior to enactment of 5 U.S.C. 552 were furnished customarily in the regular performance of their duties. To the extent permitted by other laws, the Department

also will make available records which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

The Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act, which was published in June 1967 and is available from the Superintendent of Documents, should be consulted in considering questions arising under 5 U.S.C. 552.

16.2 Public reference facilities. - Each office listed below will maintain, in a public reading room or public reading area, the materials relating to that office which are required by 5 U.S.C. 552(a)(2) and 552(a)(4) to be made available for public inspection and copying:

United States Attorneys and United States Marshals

- at the principal offices of the United States Attorneys listed in the United States Government Organization Manual;

Bureau of Prisons and United States Board of Parole

- at the principal office of each of those agencies at 101 Indiana Avenue, N. W., Washington, D. C. 20537;

Community Relations Service - at 512 9th Street, N. W.,
Washington, D. C. 20530;

Internal Security Division (for registrations of foreign
agents and others pursuant to 28 C.F.R. Parts 5, 10,
11, and 12) - at Room 458, Federal Triangle Building,
315 9th Street, N. W., Washington, D. C. 20530;

Board of Immigration Appeals - at Room 316, 101 Indiana
Avenue, N. W., Washington, D. C. 20537;

All other Offices, Divisions, and Bureaus of the Department
of Justice (except for the Immigration & Naturalization
Service whose reading room facilities are covered in
8 C.F.R. 103.9(e)) - at Room 6311, Department of Justice,
10th Street and Pennsylvania Avenue, N. W., Washington,
D. C. 20530.

Each of these public reference facilities will maintain and make
available for public inspection and copying a current index of
the materials available at that facility which are required to
be indexed by 5 U.S.C. 552 (a)(2).

16.3 Requests for identifiable records and copies. -

(a) A request for a record of the Department which is
not customarily made available, which is not available in a
public reference facility as described in section 16.2 above,
and which is not a record maintained by the Immigration &

Naturalization Service or the Board of Immigration Appeals, shall be made on Form D.J. 118, copies of which may be obtained from any of the offices listed in section 16.2 above. The request form may be presented during normal business hours at any of the offices listed in section 16.2 above, or it may be mailed, with the payment of charges prescribed in section 16.4 below, to the Deputy Attorney General, Washington, D. C. 20530. A separate Form D.J. 118 must be submitted for each record requested.

(b) Each executed Form D.J. 118 submitted shall contain in the space provided a description of the record requested which is sufficiently specific with respect to names, dates, subject matter, and location to permit the record to be identified and located.

(c) Charges for work done in processing requests filed on Form D.J. 118 will be made in accordance with the schedule set forth in section 16.4 below. Such charges are payable in advance of the performance of the work involved. Because storage facilities in the Department of Justice are limited, many of its records are stored at Federal Records Centers operated by the General Services Administration. All costs assessed by

the General Services Administration for making such records available to the Department for the purposes of this subpart will be added to the charges assessed against the person submitting the Form D.J. 118.

(d) Except where circumstances require special processing, executed Forms D.J. 118 will be processed in the order in which they are received. Efforts will be made to make records which have been requested and identified available as promptly as is reasonable under the particular circumstances.

(e) Where a requested record cannot be located from the information on Form D.J. 118 or is known to have been destroyed or otherwise disposed of, the person making the request will be appropriately notified.

(f) Many of the records in the files of the Department are obtained from other agencies for litigation or other purposes.

Where the question of the availability of such record is determined to be primarily the responsibility of such other agency, the request will be referred to that agency for processing in accordance with that agency's regulations, and the person submitting the request shall be so notified. The decision of the responsible officer of that agency with respect to such record will be honored by this Department.

(g) When a requested record has been identified and is available, the person who filed the Form D.J. 118 will be notified as to where and when the record will be available for inspection. Upon payment of the necessary fees, a copy of an available record may be furnished to the requester in person or by mail.

16.4 Schedule of fees and services. - For the services listed below expended in locating or making available records or copies thereof under 5 U.S.C. 552, the following user charges are deemed fair and equitable and shall be assessed against the person who requests a record.

(a) Each Form D.J. 118 shall be accompanied by payment of\$3.00

This charge will be retained by the Department whether or not an identified record is located.

(b) For each one quarter man-hour or fraction thereof spent in excess of the first quarter hour in searching for or producing a requested record.....\$1.00

(c) For each one quarter hour or fraction thereof spent in monitoring the requester's examination of materials.....\$1.00

(d) For copies of documents: first page.....\$0.50

each additional page.....\$0.25

(e) Maximum number of copies furnished of any document.....10

(f) For certification of true copies, each.....\$1.00

(g) For attestation under the seal of the Department, each.....\$3.00

Payment under this section shall be made in cash, by United States postal money order, or by check payable to the Treasurer of the United States. Postage stamps will not be accepted.

Where the estimated fee paid in advance by the person submitting a Form D.J. 118 exceeds the fee chargeable under this schedule, the balance will be refunded. The fee schedule for the Immigration & Naturalization Service is found at 8 C.F.R. 103.7.

16.5 Exemptions. - 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in subsection (b). These categories include such matters as national defense and foreign policy information, investigatory files, internal procedures and communications, materials exempted from disclosure by other statutes, information given in confidence, and matters involving personal privacy. The scope of the exemptions is discussed in the Attorney General's Memorandum referred to in section 16.1 above.

16.6 Records of the Immigration & Naturalization Service and of the Board of Immigration Appeals. -

(a) Requests for records of the Immigration & Naturalization Service (the "Service") or the Board of Immigration Appeals (the "Board") shall be made in accordance with the regulations of the Service found in 8 C.F.R. 103.10.

(b) The Service is authorized to grant a request for a record filed on Form N-585 to the extent set forth in section 103.10 of its regulations. A request on Form N-585 involving any other Service or Board record shall be forwarded by the

Service to the Deputy Attorney General together with (1) a copy of any identified record and a recommendation as to whether it shall be made available, or (2) a brief summary of what has been done to identify or find a record which could not be identified or found. The forwarding office will be notified promptly following the decision of the Deputy Attorney General and will give prompt notice thereof to the person submitting the request. Where appropriate, such notice will recite the place, time, and manner in which a record will be made available.

(c) Notwithstanding the provisions of this section 16.6 or of any other regulation, no officer or employee of the Service or of the Board shall make available any record which the Attorney General has determined shall not be made available.

16.7 Administrative decision and review. -

(a) All Forms D.J. 118 received at any of the offices listed in section 16.2 shall be forwarded to the Deputy Attorney General. If the office receiving the request also has possession of the record or a copy thereof, there shall be included with the forwarded Form D.J. 118 a copy of the record and a recommendation by that office whether the requested record should be made available.

(b) The Deputy Attorney General shall grant or deny each request made on a Form D.J. 118 or on a Form N-585 forwarded pursuant to section 16.6(b). The denial of each request shall be in writing and shall contain a simple statement of reasons for the denial. The decision of the Deputy Attorney General shall be final, subject only to review as provided in subsection (c) of this section.

(c) Review of the decision of the Deputy Attorney General may be requested by the person submitting the Form D.J. 118 or N-585 within thirty days after the date of the notice advising him of the decision. The filing of a request for review may be accomplished by mailing to the Attorney General, Department of Justice, Washington, D. C. 20530, by certified mail, a copy of the written denial issued under subsection (b) of this section and a statement of the circumstances, reasons or arguments advanced for insistence upon disclosure of the originally requested record. The decision after review will be promptly communicated to the person requesting review, and will constitute the final action of the Department.

16.8 Effective date. - The regulations of this subpart A are effective July 4, 1967.

SUBPART B. PRODUCTION IN RESPONSE TO SUBPENAS
OR DEMANDS OF COURTS OR OTHER
AUTHORITIES

Sec.

- 16.11 Purpose and scope.
- 16.12 Production prohibited unless approved by the Attorney General.
- 16.13 Procedure in the event of a demand for production or disclosure.
- 16.14 Procedure in the event of an adverse ruling.
- 16.15 Effective date.

16.11 Purpose and scope. - This subpart contains the regulations of the Department of Justice concerning procedures to be followed when a subpoena, order, or other demand (hereinafter in this subpart referred to as a "demand") of a court or other authority is issued for the production or disclosure of (1) any material contained in the files of the Department, (2) any information relating to material contained in the files of the Department, or (3) any information or material acquired by any person while such person was an employee of the Department as a part of the performance of his official duties or because of his official status. For the purposes of this subpart, the term "employee of the Department" includes all officers

and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of, the Attorney General of the United States, including United States Attorneys, United States Marshals, and members of the staffs of those officials.

16.12 Production prohibited unless approved by the Attorney General. - No employee or former employee of the Department of Justice shall, in response to a demand of a court or other authority, produce any material contained in the files of the Department of Justice or disclose any information relating to material contained in the files of the Department of Justice or disclose any information or produce any material acquired as a part of the performance of his official duties or because of his official status without the prior approval of the Attorney General.

16.13 Procedure in the event of a demand for production or disclosure. -

(a) Whenever a demand is made upon an employee or former employee of the Department of Justice for the production of material or the disclosure of information described in section 16.11 of this subpart, he shall immediately notify the Attorney General and the United States Attorney for the district where

the issuing court or other authority is located. The United States Attorney shall immediately request instructions from the Attorney General. If possible, the Attorney General shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before the instructions from the Attorney General are received, the United States Attorney or other attorney as may be designated for the purpose, shall appear with the employee or former employee of the Department upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the Attorney General. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Attorney General.

16.14 Procedure in the event of an adverse ruling. - If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with section 16.13(b) pending receipt of instructions from the Attorney General, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Attorney General not to produce the material or

disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand (United States ex rel Touhy v. Ragen, 340 U.S. 462).

16.15 Effective date. - The regulations of this subpart B are effective July 4, 1967.

Dated: *June 24, 1967*

Lanney Clark

Attorney General