

§ 16.1

Sec.
16.208 Annual report.

AUTHORITY: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552; 31 U.S.C. 483a unless otherwise noted.

Subpart A—Production or Disclosure Under 5 U.S.C. 552(a)

EDITORIAL NOTE: Nomenclature changes to Subpart A, appear in Order No. 803-78, 43 FR 45992, Oct. 5, 1978.

§ 16.1 Purpose and scope.

(a) This subpart contains the regulations of the Department of Justice implementing 5 U.S.C. 552. The regulations of this subpart provide information concerning the procedures by which records may be obtained from all divisions 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 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. Persons seeking information or records of the Department of Justice may find it useful to consult with the Department's Office of Public Affairs before invoking the formal procedures set out below. 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.

(b) 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, may be consulted in considering questions arising under 5 U.S.C. 552. After appropriate coordination the Office of Legal Policy is authorized from time to time to undertake training activities for Department personnel to maintain and improve the quality of administration under 5 U.S.C. 552.

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[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 803-78, 43 FR 45992, Oct. 5, 1978; Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 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—at its principal office at 101 Indiana Avenue, N.W., Washington, D.C. 20537;
United States Parole Commission—at its principal office at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815-7286;
Foreign Claims Settlement Commission—See 45 CFR 503.1(g).
Federal Bureau of Investigation—at the J. Edgar Hoover Bldg., 9th and Pennsylvania Avenue, N.W., Washington, D.C. 20535;
Community Relations Service—at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815-7286;
Criminal Division, Internal Security Section (for registrations of foreign agents and others pursuant to 28 CFR Parts 5, 10 and 12) at Room 458, Federal Triangle Building, 315 Ninth Street, N.W., Washington, D.C. 20530;
Board of Immigration Appeals—at Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia 22041;
Immigration and Naturalization Service—see 8 CFR 103.9;
Office of Justice Assistance, Research and Statistics—at 633 Indiana Avenue, N.W., Washington, D.C. 20530;
All other Offices, Divisions, and Bureaus of the Department of Justice—at the Department of Justice, 10th & Pennsylvania Avenue, N.W., Washington, D.C. 20530.

[Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.3 Requests for identifiable records and copies.

(a) *How made and addressed.* A request for a record of the Department which is not customarily made available and which is not available in a public reference facility as described in § 16.2, shall be made in writing, with the envelope and the letter clear-

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ly marked "FREEDOM OF INFORMATION REQUEST" or "INFORMATION REQUEST." All such requests shall be addressed to the Assistant Attorney General for the Office of Legal Policy, Department of Justice, Washington, D.C. 20530, except that requests for records of the following divisions shall be addressed as follows:

Bureau of Prisons (including Federal Prison Industries)—Director, Bureau of Prisons, 320 First Street NW., Washington, D.C. 20534.

Board of Immigration Appeals—Chairman, Board of Immigration Appeals, Department of Justice, Washington, D.C. 20530.

Office of Justice Assistance, Research and Statistics—Director, Office of Justice Assistance, Research and Statistics, 633 Indiana Ave. NW., Washington, D.C. 20531.

Immigration and Naturalization Service—As set forth in 8 CFR Part 103.

Any request for information not marked and addressed as specified in this paragraph will be so marked by Department personnel as soon as it is properly identified, and forwarded immediately to the appropriate office as specified above. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in 5 U.S.C. 552(a)(6)(A)(i) until forwarding to the appropriate office has been effected, or until such forwarding would have been effected with the exercise of due diligence by Department personnel. On receipt of an improperly addressed request forwarded as set forth above to the appropriate office, such office shall notify the requester of the date on which the time period commenced to run.

(b) *Request should reasonably describe the records sought.* A request for access to records should sufficiently identify the records requested to enable Department personnel to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester. If the request relates to a matter in pending litigation, the court and its location should be identified.

(c) *Form may be requested.* Where the information supplied by the requester is not sufficient to permit loca-

tion of the records by Department personnel with a reasonable amount of effort, the requester may be sent and asked to fill out and return a Form D.J. 118, which is designed to elicit the necessary information.

(d) *Categorical Requests—(1) Records must be reasonably described.* A request for all records falling within a reasonably specific category shall be regarded as conforming to the requirement that records be reasonably described if it enables the records requested to be identified by any process that is not unreasonably burdensome or disruptive of Department operations.

(2) *Assistance in reformulating non-conforming requests.* If it is determined that a request does not reasonably describe the records sought, as specified in paragraph (d)(1) of this section, the response denying the request on that ground shall specify the reasons why the request failed to meet the requirements of paragraph (d)(1) of this section and shall extend to the requester an opportunity to confer with Department personnel in order to attempt to reformulate the request in a manner which will meet the needs of the requester and the requirements of paragraph (d)(1) of this section.

[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 596-75, 40 FR 6496, Feb. 12, 1975; Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.4 Requests referred to division primarily concerned.

(a) *Referral to responsible division.* The Assistant Attorney General, Office of Legal Policy, shall, promptly upon receipt of a request for Department records, forward the request to the division of the Department which has primary concern with the records requested. As used in this subpart, the term "division" includes all divisions, bureaus, offices, services, administrations, and boards of the Department, the Pardon Attorney and Federal Prison Industries, except as otherwise expressly provided. As used in this subpart, the term "responsible division" means, with respect to a particular request, the division to which the Assistant Attorney General, Office of

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Legal Policy, forwards the request pursuant to this paragraph or, if the request is not one which is to be addressed to the Assistant Attorney General, Office of Legal Policy, under § 16.3(a), the division to which the request is properly addressed thereunder.

(b) *Assistant Attorney General, Office of Legal Policy, shall assure timely response.* The Assistant Attorney General, Office of Legal Policy, shall periodically review the practices of the divisions in meeting the time requirements set out in § 16.5, including the granting of extensions of time, and shall take such action to promote timely responses as he deems appropriate. Such action may include, but is not limited to, removal from a division of a request or class of requests or removal of the authority of a division to grant extensions, as specified in § 16.5(f).

(c) *Records to be kept by Assistant Attorney General, Office of Legal Policy.* The Assistant Attorney General, Office of Legal Policy, shall retain or be furnished with a file copy of each request which is required to be addressed to him pursuant to § 16.3(a). With respect to such requests he shall maintain records to show the date of receipt by the Department (and, in the case of improperly addressed requests, the date of receipt by the appropriate office after forwarding pursuant to § 16.3(a)), the responsible division to which it was forwarded under this section, and the date of such forwarding. The Board of Immigration Appeals, the Bureau of Prisons, the Immigration and Naturalization Service and the Office of Justice Assistance, Research and Statistics, respectively, shall retain or be furnished with file copies of requests required to be addressed to them pursuant to § 16.3(a), and shall maintain records to show the date of receipt by the Department (and, in the case of improperly addressed requests, the date of receipt by the appropriate office after forwarding pursuant to § 16.3(a)).

[Order No. 596-75, 40 FR 7263, Feb. 19, 1975, as amended by Order 960-81, 46 FR 52356, Oct. 27, 1981]

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§ 16.5 Prompt response by responsible division.

(a) *Response within ten days.* Within ten days (excluding Saturdays, Sundays and legal public holidays) of the receipt of a request by the Department (or, in the case of an improperly addressed request, of its receipt by the appropriate office after forwarding pursuant to § 16.3(a)) the responsible division shall determine whether to comply with or to deny such request and dispatch such determination to the requester unless an extension is made under paragraph (c) of this section.

(b) *Authority to deny request.* Unless otherwise specified by division regulation, only the head of a division may deny a request, and is the "person responsible for the denial" within the meaning of 5 U.S.C. 552(a). When a denial is made at the request of another agency or division, and out of regard for its primary interest or expertise, the person in that agency or division responsible for the request to deny may also be a "person responsible for the denial" if, before his final recommendation is accepted, he is advised that he will be so designated under § 16.6(b)(2).

(c) *Extension of time.* In unusual circumstances as specified in this paragraph, the head of a division may extend the time for initial determination on requests up to a total of ten days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be granted in increments of five days or less and shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the request—

(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 or another division having substantial interest in the determination of the request, or the need for consultation among two or more components of the responsible division having substantial subject matter interest therein.

(d) *Treatment of delay as a denial.* If no determination has been dispatched at the end of the ten-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal in accordance with § 16.7. When no determination can be dispatched within the applicable time limit, the responsible division shall nevertheless continue to process the request; on expiration of the time limit it shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the Attorney General in accordance with § 16.7; and it may ask the requester to forego appeal until a determination is made.

(e) *Removal by Assistant Attorney General, Office of Legal Policy.* The Assistant Attorney General, Office of Legal Policy may remove any request or class of requests from the division to which it is referable under this part. The Assistant Attorney General, Office of Legal Policy may remove from a division the authority to grant extensions of time under this section. In event of such action the Assistant Attorney General, Office of Legal Policy shall perform the functions of the head of that division with respect to the removed requests or authority.

[Order No. 596-75, 40 FR 7263, Feb. 19, 1975, as amended by Order No. 877-80, 45 FR 20800, Mar. 31, 1980; Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.6 Responses by divisions: Form and content.

(a) *Form of grant.* When a requested record has been identified and is available, the responsible division shall notify the requester as to where and when the record is available for inspection or copies will be available.

The notification shall also advise the requester of any applicable fees under § 16.9 hereof.

(b) *Form of denial.* A reply denying a written request for a record shall be in writing, signed by the head of the responsible division (or other person authorized by regulation to deny requests) and shall include:

(1) *Exemption category.* A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record, a brief explanation of how the exemption applies to the record withheld, and, where relevant, a brief statement of why a discretionary release is not appropriate; and

(2) *Person responsible.* The name and title or position of the person or persons responsible for the denial under § 16.5(b): *Provided,* That no person not an employee of the responsible division shall be so designated unless he has been advised that he will be so designated before his final recommendation is accepted; and

(3) *Administrative appeal and judicial review.* A statement that the denial may be appealed under § 16.7(a) within thirty days by writing to the Attorney General (Attention: Office of Legal Policy), Department of Justice, Washington, D.C. 20530 that the envelope and letter should be clearly marked: "Office of Legal Policy," and that judicial review will thereafter be available in the district in which the requester resides or has his principal place of business or the district in which the agency records are situated or the District of Columbia.

(c) *Record cannot be located or does not exist.* If a requested record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of, the requester shall be so notified.

[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 596-75, 40 FR 7263, Feb. 19, 1975; Order No. 877-80, 45 FR 20800, Mar. 31, 1980; Order No. 900-80, 45 FR 43703, June 30, 1980; Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.7 Appeals to the Attorney General from initial denials.

(a) *Appeals to the Attorney General.* When a request for records has been

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denied in whole or in part by a head of a division or other person authorized to deny requests, the requester may, within thirty days of its receipt, appeal the denial to the Attorney General. Appeals to the Attorney General shall be in writing, addressed to the Attorney General (Attention: Office of Legal Policy), Department of Justice, Washington, D.C. 20530, and both the envelope and the letter shall be clearly marked: "Office of Legal Policy". An appeal not so addressed and marked will be so marked by Department personnel as soon as it is properly identified, and forwarded immediately to the Office of Legal Policy. An appeal improperly addressed will not be deemed to have been received for purposes of the time period set forth in 5 U.S.C. 552(a)(6)(A)(ii) and for purposes of paragraph (b) of this section until the Office of Legal Policy receives the request or would have done so with the exercise of due diligence by Department personnel.

(b) *Action on Appeals by the Assistant Attorney General, Office of Legal Policy.* Unless the Attorney General otherwise directs, the Assistant Attorney General, Office of Legal Policy, shall act on behalf of the Attorney General on all appeals under this section, except that (1) in the case of an initial denial by the Assistant Attorney General, Office of Legal Policy, the Attorney General or his designee shall act on the appeal, and (2) an initial denial by the Attorney General shall constitute the final action of the Department on the request.

(c) *Action within twenty working days.* The appeal will be acted upon within twenty days (excluding Saturdays, Sundays and legal public holidays) of its receipt, unless an extension is made under paragraph (d) of this section.

(d) *Extension of time.* In unusual circumstances as specified in this paragraph, the time for action on an appeal may be extended up to ten days (excluding Saturdays, Sundays, and legal public holidays) minus any extension granted at the initial request level pursuant to § 16.5(c). Such extension shall be made by written notice to the requester which sets forth the

reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the appeal—

(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 or another division having substantial interest in the determination of the request or the need for consultation among two or more components of the responsible division having substantial subject matter interest therein.

(e) *Treatment of delay as a denial.* If no determination on the appeal has been dispatched at the end of the twenty-day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed; on expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review in the United States district court in the district in which he resides or has his principal place of business, the district in which the Department records are situated or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.

(f) *Form of action on appeal.* The determination on appeal shall be in writing. An affirmance in whole or in part of a denial on appeal shall include: (1) A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record, a

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brief explanation of how the exemption applies to the record withheld, and, where relevant, a brief statement of why a discretionary release is not appropriate; and (2) a statement that judicial review of the denial is available in the district in which the requester resides or has his principal place of business, the district in which the agency records are situated or the District of Columbia.

(g) *Copies to Assistant Attorney General, Office of Legal Policy.* Copies of all appeals, all actions on appeal, all extension notices issued under paragraph (d) of this section, and all delay advisories issued under paragraph (e) of this section shall be maintained by and when necessary supplied to the Assistant Attorney General, Office of Legal Policy.

[Order No. 596-75, 40 FR 7264, Feb. 19, 1975, as amended by Order No. 615-75, 40 FR 33214, Aug. 7, 1975; Order No. 900-80, 45 FR 43703, June 30, 1980; Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.8 Maintenance of files.

(a) *Complete files maintained by Assistant Attorney General, Office of Legal Policy.* The Assistant Attorney General, Office of Legal Policy shall maintain files containing all material required to be retained by or furnished to him under this subpart. The material shall be filed by individual request; and shall be indexed according to the exemptions asserted; and, to the extent feasible, according to the type of records requested.

(b) *Maintenance of file open to public.* The Assistant Attorney General, Office of Legal Policy, shall also maintain a file, open to the public, which shall contain copies of all grants or denials of appeals. The material shall be indexed by the exemption asserted, and, to the extent feasible, according to the type of records requested.

(c) *Protection of privacy.* Where the release of the identity of a requester, or other identifying details related to a request, would constitute a clearly unwarranted invasion of personal privacy, the Assistant Attorney General, Office of Legal Policy, shall delete identifying details from the copies of documents maintained in the public

file established under paragraph (b) of this section.

[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 596-75, 40 FR 7264, Feb. 19, 1975; Order No. 615-75, 40 FR 33214, Aug. 7, 1975; Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

§ 16.9 Fees for provisions of records.

(a) *When charged.* Fees pursuant to 31 U.S.C. 483a and 5 U.S.C. 552 shall be charged according to the schedules contained in paragraph (b) of this section for services rendered in responding to requests for Justice Department records under this subpart unless the official of the Department making the initial or appeal decision determines that such charges, or a portion thereof, are not in the public interest because furnishing the information primarily benefits the general public. Such a determination shall ordinarily not be made unless the service to be performed will be of benefit primarily to the public as opposed to the requester, or unless the requester is an indigent individual. Fees shall not be charged where they would amount, in the aggregate, for a request or series of related requests, to less than \$3. Ordinarily, fees shall not be charged if the records requested are not found, or if all of the records located are withheld as exempt. However, if the time expended in processing the request is substantial, and if the requester has been notified of the estimated cost pursuant to paragraph (c) of this section and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.

(b) *Services charged for, and amount charged.* For the services listed below expended in locating or making available records or copies thereof, the following charges shall be assessed:

(1) *Copies.* For copies of documents (maximum of 10 copies will be supplied) \$0.10 per copy of each page.

(2) *Clerical searches.* For each one quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and producing a requested record, \$1.00.

(3) [Reserved]

(4) *Certification.* For certification of true copies, each, \$1.

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(5) *Attestation.* For attestation under the seal of the Department, \$3.

(6) *Nonroutine, nonclerical searches.* Where a search cannot be performed by clerical personnel, for example, where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and where the amount of time that must be expended in the search and collection of the requested records by such higher level personnel is substantial, charges for the search may be made at a rate in excess of the clerical rate, namely for each one quarter hour spent in excess of the first quarter hour by such higher level personnel in searching for a requested record, \$2.00.

(7) *Examination and related tasks in screening records.* No charge shall be made for time spent in resolving legal or policy issues affecting access to records of known contents. In addition, no charge shall be made for the time involved in examining records in connection with determining whether they are exempt from mandatory disclosure and should be withheld as a matter of sound policy.

(8) *Computerized Records.*

(i) *Computer time charges (includes personnel cost).*

1. Central processor charge per hour.....	\$188.00
2. Main storage charge per 1,000 bytes per hour.....	.50
3. Channel charges per hour.....	.74
4. Card reading per 1,000 cards.....	.20
5. Printing per 1,000 lines.....	.43
6. Card punching per 1,000 cards.....	10.76
7. Tape mount.....	.50
8. Specific device charges:	
a. IBM 2260 Cathode ray tube or equivalent per hour.....	4.20
b. IBM 3330 Disk storage or equivalent per hour.....	39.72
c. IBM 2314 Disk storage or equivalent per hour.....	39.72
d. IBM 3420 Tape Drive or equivalent per hour.....	44.59

(ii) *Material charges.*

1. One-part paper per 1,000.....	\$11.00
2. Two-part paper per 1,000.....	17.83
3. Three-part paper per 1,000.....	28.95
4. Four-part paper per 1,000.....	37.52
5. Five-part paper per 1,000.....	50.83
6. Stock Hollerith cards per 1,000.....	1.78
7. Magnetic tape per reel.....	8.50
8. Disk pack, each.....	775.00

(9) *Tape recordings and other audio records.*

(i) *Personnel charges.* Personnel charges in connection with the duplication of audio records shall be charged in accordance with

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paragraph (b)(2) or (b)(6) of this section, whichever is appropriate.

(ii) *Material charges.*

1. 45 minute cassette.....	\$0.56
2. 60 minute cassette.....	.60
3. 90 minute cassette.....	.77

(10) *Other charges.* When a response to a request requires services or materials other than the common ones described in paragraphs (b)(1) through (b)(9) of this section, the direct cost of such services or materials to the government may be charged, but only if the requester has been notified of such cost before it is incurred.

(c) *Notice of anticipated fees in excess of \$25.* Where it is anticipated that the fees chargeable under this section will amount to more than \$25, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In such cases, a request will not be deemed to have been received until the requester is notified of the anticipated cost and agrees to bear it. Such a notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with Department personnel with the object of reformulating the request so as to meet his needs at lower cost.

(d) *Form of payment.* Payment should be made by check or money order payable to the Treasury of the United States.

(e) *Advance deposit.* (1) Where the anticipated fee chargeable under this section exceeds \$25, an advance deposit of 25% of the anticipated fee or \$25, whichever is greater, may be required.

(2) Where a requester has previously failed to pay a fee under this section, an advance deposit of the full amount of the anticipated fee may be required.

(f) *Other services.* Nothing in this section shall be construed to entitle any person, as of right, to any services or materials to which such person is not entitled under 5 U.S.C. 552.

[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 502-73, 38

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FR 9666, Apr. 19, 1973; Order No. 599-75, 40 FR 7265, Feb. 19, 1975]

§ 16.10 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in subsection (b) of that section. 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 generally in the Attorney General's memorandum referred to in § 16.1.

(b) (1) In processing requests for information classified pursuant to Executive Order 11652, the responsible division shall review the information to determine whether it continues to warrant classification under the criteria of sections 1 and 5 (B), (C), (D), and (E) of the Executive Order. Information which no longer warrants classification under these criteria shall be declassified and shall not be withheld on the basis of 5 U.S.C. 552(b)(1). No record remaining classified after such review shall be withheld by a division on the basis of any exemption other than 5 U.S.C. 552(b)(1) unless in addition to such other exemption it is also asserted that the record is exempt under 5 U.S.C. 552(b)(1).

(2) The Office of Legal Policy shall, upon receipt of any appeal from an initial denial based in whole or in part upon 5 U.S.C. 552(b)(1), refer to the Departmental Review Committee, established in Part 17 of this chapter, any portion of the request as to which that exemption was asserted at the initial level. Within ten days (excluding Saturdays, Sundays and legal public holidays) of receipt of such referral (unless such period is extended by the Assistant Attorney General, Office of Legal Policy), the Committee shall advise the Appeals Unit whether all or any portion of the material referred warrants continued classification under the criteria of Executive Order 11652.

(3) When a request for Department records encompasses information clas-

sified by another agency, or by a division of the Department other than the responsible division, the responsible division shall refer that portion of the request to the originating agency or division for determination as to all issues in accordance with the Freedom of Information Act. In the case of a referral to another agency under this paragraph, the requester shall be notified that such portion of his request has been so referred and that he may expect a determination from that agency. In the case of a referral to another division under this paragraph, the requester need not be notified, the original date of receipt of the request as established under this section shall continue to govern for purposes of all time limits, and the originating division shall advise the division receiving the request of its determination.

[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 598-75, 40 FR 7264 Feb. 19, 1975; Order No. 960-81, 46 FR 52356, Oct. 27, 1981]

APPENDIX TO SUBPART A—DELEGATION OF AUTHORITY

1. By virtue of the authority vested in me by Section 16.5(b) of Title 28 of the Code of Federal Regulations, the authority to deny requests under the Freedom of Information Act is delegated to the occupant of the position of Chief, Freedom of Information-Privacy Acts Section, Records Management Division, Federal Bureau of Investigation. This same authority is delegated to the occupant of the position of Special Agent in Charge of each of the field offices of the Federal Bureau of Investigation for records in their custody and control.

2. This directive is effective June 9, 1981. [46 FR 32021, June 19, 1981]

Subpart B—Production or Disclosure in Federal and State Proceedings

SOURCE: Order No. 919-80, 45 FR 83210, Dec. 18, 1980, unless otherwise noted.

§ 16.21 Purpose and scope.

(a) This subpart sets forth procedures to be followed with respect to the production or disclosure of any material contained in the files of the Department, any information relating to material contained in the files of the Department, or any information acquired by any person while such