

PART 105-60—PUBLIC AVAILABILITY OF AGENCY RECORDS AND INFORMATIONAL MATERIALS

Sec.	Scope or part.	Sec.	
105-60.000	Scope or part.	105-60.303	Rules for public inspection and copying.
Subpart 105-60.1—General Provisions		105-60.304	Deletion of identifying details.
105-60.101	Purpose.	105-60.305	Index.
105-60.102	Application.	105-60.306	Effect of failure to make informational materials available.
105-60.103	Legal custody.		
105-60.104	Definitions.	Subpart 105-60.4—Identifiable Records	
105-60.105	Policy.	105-60.401	General.
105-60.105-1	Availability of records and other informational materials.	105-60.402	Procedures for making records available.
105-60.105-2	Exemptions.	105-60.402-1	Submission of requests for identifiable records.
105-60.106	Congressional information.	105-60.402-2	Review of requests.
105-60.107	Records and informational materials of other agencies.	105-60.402-3	Approval of requests; inspection of records.
105-60.108	Inconsistent issuances of GSA superseded.	105-60.402-4	Reproduction services.
105-60.109	Records involved in litigation or other judicial process.	105-60.403	Denial of request for identifiable records.
		105-60.404	Appeal within agency of denial.
		105-60.405	Judicial relief available to the public.
Subpart 105-60.2—Publication of General Agency Information and Rules in the Federal Register		Subpart 105-60.5—Agency Proceedings	
105-60.201	Published information and rules.	105-60.501	Agency proceedings.
105-60.202	Published materials available for sale to the public.	Subpart 105-60.6—Exemptions	
105-60.203	Effect of failure to publish.	105-60.801	General.
105-60.204	Coordination of publication.	105-60.802	Categories of records exempt under 5 U.S.C. 552 from disclosure.
105-60.205	Incorporation by reference.	105-60.803	Executive privilege exemption.
Subpart 105-60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions		105-60.804	Other statutory exemptions.
105-60.301	General.	105-60.805	Exemption of materials not affecting the public or involving clearly unwarranted invasions of personal privacy.
105-60.302	Available materials.		

41 CFR 105-60 GSA regulations for access to records under 5 U.S.C. 552

Subpart 105-60.7—Subpoenas or Other Legal Demands for Records and Authentication of Copies of Records

- Sec.**
 105-60.701 Service of subpoena or other legal demand.
 105-60.701-1 GSA records.
 105-60.701-2 Records transferred to the National Archives and Records Service.
 105-60.702 Compliance with subpoena or other legal demand.
 105-60.703 Authentication and attestation of copies.

AUTHORITY: The provisions of this Part 105-60 issued under section 205(c), 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 552 (Public Law 90-23).

SOURCE: The provisions of this Part 105-60 appear at 32 F.R. 8664, July 1, 1967, unless otherwise noted.

§ 105-60.000 Scope of part.

This part sets forth policies and procedures concerning the disclosure and availability to the public of records and information held by GSA with respect to: (a) Agency organization, functions, decisionmaking channels, and rules and regulations of general applicability, (b) agency final opinions and orders, including policy statements and staff manuals, (c) operational and other appropriate agency records, and (d) agency proceedings. The part also covers exemptions from disclosure of such materials, procedures for the guidance of the public in obtaining information and inspecting records, service of subpoena or other legal demand with respect to records, and authentication and attestation of record copies.

[33 F.R. 4883, Mar. 22, 1968]

Subpart 105-60.1—General Provisions

§ 105-60.101 Purpose.

This Part 105-60 implements the provisions of 5 U.S.C. 552 (Public Law 90-23 which codified Public Law 89-487, popularly known as the "Freedom of Information Act," which amended section 3 of the Administrative Procedure Act, formerly 5 U.S.C. 1002 (1964 ed.)). It prescribes procedures under which the public may obtain information and inspect records of GSA in a convenient and orderly manner.

§ 105-60.102 Application.

This Part 105-60 applies to all records and information generated, developed, or held by GSA which come within the purview of 5 U.S.C. 552.

§ 105-60.103 Legal custody.

The Administrator of General Services has legal custody of all records held by GSA.

§ 105-60.104 Definitions.

For purposes of this Part 105-60, the following terms have the meanings ascribed to them in this § 105-60.104.

(a) **Records.** The term "records" means all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by GSA in pursuance of Federal law or in connection with the transaction of public business and preserved or appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of GSA or because of the informational value of data contained therein. The term does not include:

- (1) Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents; or
- (2) Objects or articles, such as structures, furniture, paintings, sculpture, models, vehicles, or equipment.
- (3) Donated historical materials (as defined in § 105-61.001-4) accepted by GSA from a source other than an agency of the U.S. Government in accordance with the provisions of 44 U.S.C. 397.

(b) **Availability.** The term "availability" signifies the right of the public to obtain information, purchase materials, and inspect and copy records and other pertinent information.

(c) **Identifiable.** The term "identifiable" means a description of a record which is specific to the extent that it will permit the location of the particular document with a reasonable effort.

(d) **Private party.** The term "private party" means any party other than an agency (as defined in 5 U.S.C. 551(c)).

[32 F.R. 9564, July 1, 1967, as amended at 33 F.R. 4883, Mar. 22, 1968]

§ 105-60.105 Policy.**§ 105-60.105-1 Availability of records and other informational materials.**

GSA records and other informational materials are available to the full extent required by 5 U.S.C. 552 and will be promptly furnished to any member of the public at convenient places and times and at an appropriate fee, if any. The person making the request need not have a particular interest in the subject matter, nor must he provide justification for the request. The requirement of 5 U.S.C. 552 that records be available to the public refers only to records in being at the time the request therefor is made. It imposes no obligation to compile a record in response to a request, although where it is not burdensome to do so, GSA will endeavor to compile such requested information.

§ 105-60.105-2 Exemptions.

Requests for GSA records or other informational materials may be denied if disclosure is exempted under the provisions of 5 U.S.C. 552, as outlined in Subpart 105-60.6, or precluded by executive privilege (see § 105-60.303). However, authority for nondisclosure will not be invoked unless there is a compelling reason to do so. In the absence of such compelling reason, records and other information will be disclosed although otherwise subject to exemption.

§ 105-60.106 Congressional information.

Nothing in this Part 105-60 authorizes withholding information from the Congress except where executive privilege is invoked by the President (see § 105-60.603).

[33 F.R. 4883, Mar. 22, 1968]

§ 105-60.107 Records and informational materials of other agencies.

(a) *Other agencies' records managed and administered by GSA.* The availability of records of other agencies located in the National Archives of the United States and Federal records centers are governed by Part 105-61 (Public Use of Records, Donated Historical Materials, and Facilities in the National Archives and Records Service).

(b) *Current records of other agencies.* If a request is submitted to GSA to make available current records or informa-

tional materials which are the primary responsibility of other agencies, but which are in GSA for review purposes, the request will be referred by GSA to the agency concerned for instructions, unless prior instructions have been received from the agency.

[33 F.R. 4883, Mar. 22, 1968]

§ 105-60.108 Inconsistent issuances of GSA superseded.

Any policies and procedures contained in any GSA issuance which are inconsistent with the policies and procedures set forth in this Part 105-60 are superseded to the extent of such inconsistency.

§ 105-60.109 Records involved in litigation or other judicial process.

Where there is reason to believe that any records requested may be involved in litigation or other judicial process in which the United States is a party, including discovery procedures pursuant to the Federal Rules of Civil Procedure or Federal Rules of Criminal Procedure, the request shall be referred to appropriate legal counsel for immediate coordination with the Department of Justice. Pending receipt of advice from that Department, the records involved shall not be made available.

[33 F.R. 4884, Mar. 22, 1968]

Subpart 105-60.2—Publication of General Agency Information and Rules in the Federal Register**§ 105-60.201 Published information and rules.**

In accordance with 5 U.S.C. 552(a) (1), there are separately stated and currently published, or from time to time will be published, in the FEDERAL REGISTER, for the guidance of the public, the following general informational materials concerning GSA:

(a) Description of the organization of the Central Office and regional offices and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

(b) Statements of the general course and method by which GSA functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by GSA.

(e) Each amendment, revision, or repeal of the foregoing (§ 105-60.201(a)-(d)).

§ 105-60.202 Published materials available for sale to the public.

Substantive rules of general applicability adopted by GSA as authorized by law which are published in the FEDERAL REGISTER and which are also available for sale to the public comprise the Federal Procurement Regulations, the General Services Administration Procurement Regulations, the Federal Property Management Regulations, and the General Services Administration Property Management Regulations. These series of regulations are codified in Chapters 1, 2, 101, and 105 of Title 41 of the Code of Federal Regulations and are also published in looseleaf volume form. The looseleaf version of the Federal Procurement Regulations is available for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, at prices established by that office. In addition, all of these regulations are available for sale by the Superintendent of Documents in (a) daily FEDERAL REGISTER form, and (b) in Code of Federal Regulations form, at prices established by that office.

§ 105-60.203 Effect of failure to publish.

5 U.S.C. 552(a)(1) provides that, except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the FEDERAL REGISTER and not so published (see § 105-60.201).

§ 105-60.204 Coordination of publication.

Coordination of GSA materials required to be published in the FEDERAL REGISTER in accordance with § 105-60.201 are coordinated by the Office of Administration, GSA.

§ 105-60.205 Incorporation by reference.

When deemed appropriate, matters covered by § 105-60.201 which is reasonably available to the class of persons affected thereby may be incorporated by reference in the FEDERAL REGISTER in accordance with standards prescribed from time to time by the Director of the FEDERAL REGISTER (see 1 CFR Part 20 32 F.R. 7899, June 1, 1967).

Subpart 105-60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions

§ 105-60.301 General.

(a) GSA makes available for public inspection and copying the materials described in 5 U.S.C. 552(a)(2), which are enumerated in § 105-60.302, together with an index of such materials, at convenient locations and times. All Central Office materials are situated in Washington, D.C.; some are also available at GSA regional offices. Each regional office has the materials of its region. All locations provide public reading rooms for the purpose of inspection and copying of documents. Reasonable copying services are also furnished at appropriate fees.

(b) Reading room type materials may be withheld from inclusion in the reading room only with the approval of appropriate legal counsel. An explanation of such withholding shall be furnished to the appropriate Regional Director of Business Affairs and the Director of Information (Washington, D.C.).

§ 105-60.302 Available materials.

(a) GSA materials which are available under this Subpart 105-60.3 are as follows:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases.

(2) Those statements of policy and interpretations which have been adopted by GSA and are not published in the FEDERAL REGISTER.

(3) Administrative staff manuals and instructions to staff that affect a member of the public; unless such materials are promptly published and copies offered for sale. (Any materials published and offered for sale will also be available in each reading room.)

(b) In addition, an index arranged by subject matter of the materials enumerated in paragraph (a) of this § 105-60.302 will be maintained for public inspection in each reading room. This index in each regional office will relate only to materials housed in the particular region. The Washington, D.C. reading room located at Region 3 will maintain indexes of Central Office and Region 3 materials.

§ 105-60.303 Rules for public inspection and copying.

(a) *Locations.* Reading rooms containing the materials available for public inspection and copying, described in § 105-60.302, are located in the GSA Business Service Centers at the addresses listed below:

Central Office (GSA Headquarters), Washington, D.C. GSA Regional Office Building, Seventh and D Streets SW., Washington, D.C. 20407, Telephone: Area Code 202-963-4147.

Region 1, Boston, Mass. (Comprising the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont). John Fitzgerald Kennedy Federal Building, Boston, Mass. 02203, Telephone: Area Code 617-223-2888.

Region 2, New York, N.Y. (Comprising the States of Delaware, New Jersey, New York, and Pennsylvania; and the Commonwealth of Puerto Rico and the Virgin Islands). 30 Church Street, New York, N.Y. 10007, Telephone: Area Code 212-264-1234.

Region 3, Washington, D.C. (Comprising the District of Columbia and the States of Maryland, Virginia, and West Virginia). GSA Regional Office Building, Seventh and D Streets SW., Washington, D.C. 20407, Telephone: Area Code 202-963-4147.

Region 4, Atlanta, Ga. (Comprising the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee). 1776 Peachtree Street NW., Atlanta, Ga. 30309, Telephone: Area Code 404-526-5661.

Region 5, Chicago, Ill. (Comprising the States of Illinois, Indiana, Kentucky, Michigan, Ohio, and Wisconsin). 219 South Dearborn Street, Chicago, Ill. 60604, Telephone: Area Code 312-353-5383.

Region 6, Kansas City, Mo. (Comprising the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota). 1500 East Bannister Road, Kansas City, Mo. 64131, Telephone: Area Code 816-361-7203.

Region 7, Fort Worth, Tex. (Comprising the States of Arkansas, Louisiana, Oklahoma, and Texas). 819 Taylor Street, Fort Worth, Tex. 76102, Telephone: Area Code 817-334-3284.

Region 8, Denver, Colo. (Comprising the States of Arizona, Colorado, New Mexico, Utah, and Wyoming). Building 41, Denver Federal Center, Denver, Colo. 80225, Telephone: Area Code 303-233-6689.

Region 9, San Francisco, Calif. (Comprising the States of California, Hawaii, and Nevada). 49 Fourth Street, San Francisco, Calif. 94103, Telephone: Area Code 415-556-2114.

Region 10, Seattle, Wash. (Comprising the States of Alaska, Idaho, Montana, Oregon, and Washington). 909 First Avenue, Seattle, Wash. 98104, Telephone: Area Code 206-583-5558.

(b) *Time.* The reading rooms in the GSA Business Service Centers will be open to the public during the established hours of business.

(c) *Copying.* GSA will furnish reasonable copying services at appropriate fees which will be posted at each Business Service Center reading room. However, in suitable circumstances, a member of the public may be authorized to copy materials himself, under such procedures as the Director of Information or the Regional Director of Business Affairs, as the case may be, may determine.

(d) *Reading room rules—(1) Age.* Permission to inspect materials will not be given to a person under 16 years unless accompanied by an adult who agrees to remain with the minor while the materials are in use.

(2) *Handling of materials.* The unlawful removal or mutilation of materials is forbidden by law and is punishable by fine or imprisonment or both (18 U.S.C. 2071). When requested by a reading room attendant, a person inspecting materials must present for examination any briefcase, notebook, package, envelope, book, or other article that could contain GSA informational materials.

(3) *Reproduction services.* The GSA Business Service Centers will furnish reasonable reproduction services of materials available. Any fees charged will be on the basis of a posted fee schedule and, normally, will be paid in advance by cash, check, or money order made payable to the General Services Administration. If a specific request is in writing, payment should be mailed to the Regional Director of Business Affairs for the Business Service Center having custody of the particular materials desired (see listing in § 105-60.303(a)). Whenever in the judgment of the Regional Director of Business Affairs, there is an indicated urgency of need

for documents which are requested by mail or telephone, the requirement for advance payment may be waived, and the inquirer may be requested to make later reimbursement.

(e) *Fees.* The fee to be charged will be fair and equitable, taking into account the cost to the Government, value to the recipient, the public policy or interest served, and other pertinent factors. (For further discussion of this matter, see the so-called "User Statute," section 501, 65 Stat. 290, August 31, 1951 (5 U.S.C. 140 (1964 ed.)), and Bureau of the Budget Circular A-25, September 23, 1959.)

§ 105-60.304 Deletion of identifying details.

To the extent required to prevent a clearly unwarranted invasion of personal privacy, GSA may delete identifying details when making available or publishing an opinion, statement of policy, interpretation, or staff manual or instruction. However, the justification for each deletion will be explained fully in writing, and will require the concurrence of appropriate legal counsel. A copy of the justification will be attached to the material containing the deletion and a copy will also be furnished to the appropriate Regional Director of Business Affairs and the Director of Information (Washington, D.C.).

§ 105-60.305 Index.

The index described in § 105-60.302(b) will be maintained by GSA in the appropriate reading rooms and made available for public inspection and copying. The index will provide current identifying information for the public as to any matter (see § 105-60.302) which is issued, adopted, or promulgated by GSA and required to be made available or published under 5 U.S.C. 552(a)(2). The index will include all current materials in the reading room regardless of the effective date of the materials.

§ 105-60.306 Effect of failure to make informational materials available.

Materials available pursuant to § 105-60.302 that affect a member of the public may be relied upon, used, or cited as precedent by GSA against any private party only if (a) they have been indexed and either made available or published as required by 5 U.S.C. 552(a)(2), or (b) the private party has actual and timely notice of their terms.

Subpart 105-60.4—Identifiable Records

§ 105-60.401 General.

Except with respect to the records made available pursuant to Subparts 105-60.2 and 105-60.3, identifiable records requested in accordance with § 105-60.402, or in accordance with § 105-61.101 or § 105-61.104, will be made promptly available to any person by GSA, unless nondisclosure is invoked pursuant to § 105-60.105-2. While the burden of identification rests with the person seeking the record, GSA will assist to the extent practicable in this regard. Where it is believed that records requested may be involved in litigation or other judicial process in which the United States is a party, the procedures set forth under § 105-60.109 shall be followed.

[33 F.R. 4884, Mar. 22, 1968]

§ 105-60.402 Procedures for making records available.

This section sets forth initial procedures for making identifiable records available when requested. These procedures do not apply to records that have been transferred to the National Archives and Records Service in accordance with the Federal Records Act of 1950 (44 U.S.C. 392-401), which include "archives" and "FRC records" (as defined in §§ 105-61.001-2 and 105-61.001-3). The initial procedures on availability of such records are governed by Part 105-61 (see §§ 105-61.101 and 105-61.104).

[33 F.R. 4884, Mar. 22, 1968]

§ 105-60.402-1 Submission of requests for identifiable records.

(a) With respect to identifiable records located in the GSA Central Office, requests shall be submitted, in writing or in person, to the Director of Information, Office of the Administrator, General Services Administration, Washington, D.C. 20405. With respect to identifiable records located in the GSA regional offices, requests shall be submitted to the Regional Director of Business Affairs for the particular region involved at the address listed in § 105-60.303(a).

(b) When the requester does not know which GSA office has custody of an identifiable record, he may address his request to the Regional Director of Business Affairs for the region convenient to him, or to the Director of Information (Washington, D.C.). Where a request is made of a Regional Director of

Business Affairs for a record not in the custody of that regional office, the requester should be informed of the location of the record and that, at his preference, either the record will be requested for him or he may directly request it from the holding office.

[32 F.R. 9564, July 1, 1967, as amended at 33 F.R. 4884, Mar. 22, 1968]

§ 105-60.402-2 Review of requests.

The Director of Information for the Central Office, Washington, D.C., or the Regional Director of Business Affairs for a regional office, or his designee, will forward a request for an identifiable record to the cognizant GSA office having custody thereof. The request will be reviewed in the cognizant office and by appropriate legal counsel in the light of the requirements of 5 U.S.C. 552, the guidelines issued by the Department of Justice (Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act), as well as this Part 105-60.

§ 105-60.402-3 Approval of requests; inspection of records.

When a request is approved, records will be promptly made available. They may be inspected at the reading rooms, as provided in § 105-60.303, or at such other places as the Director of Information or the Regional Director of Business Affairs, as the case may be, shall prescribe.

§ 105-60.402-4 Reproduction services.

Reasonable reproduction services will be available for the copying of records which have been approved for inspection at appropriate fees in accordance with § 105-60.303(d) (3) and (e). However, in suitable circumstances, a member of the public may be authorized to copy records himself, under such procedures as the Director of Information or the Regional Director of Business Affairs, as the case may be, may determine.

§ 105-60.403 Denial of request for identifiable records.

(a) If a request is denied, the person submitting the request shall be promptly advised and furnished the specific reasons therefor in writing. The denial reply will (1) briefly describe the record requested, (2) state the legal basis for nondisclosure (see subpart 105-60.6), and (3) except in cases where the public interest so requires, specify the compelling reasons justifying the denial.

(b) To assure uniformity of determinations in this regard, the Director of Information for the Central Office and each Regional Director of Business Affairs for denials made by his region shall retain a copy of all denial replies. Copies of all regional denials shall be sent to the Director of Information, Washington, D.C., who shall maintain a GSA-wide file of such actions.

§ 105-60.404 Appeal within agency of denial.

(a) After notification that his request for identifiable records has been denied, the person submitting the request may appeal the denial. The appeal shall be submitted to the Director of Information, Washington, D.C., with respect to a Central Office matter or to the Regional Director of Business Affairs with respect to a regional matter. The Regional Director of Business Affairs will promptly forward the appeal to the Director of Information who will, as also in the case of appeals concerning Central Office records, submit the matter for consideration by the Head of the GSA Service or Staff Office concerned with the particular records, in consultation with appropriate Central Office legal counsel. The appeal file will consist of a copy or description (if oral) of the initial request and a copy of the reasons for denial furnished the person submitting the request.

(b) Where the Head of the GSA Service or Staff Office recommends granting the appeal and the Director of Information concurs, the Director will arrange for appropriate disclosure of the records.

(c) If the denial is sustained, the matter will be submitted promptly by the Director of Information to the Assistant Administrator for Administration whose ruling thereon will be furnished in writing to the person requesting the records.

§ 105-60.405 Judicial relief available to the public.

A person whose request for identifiable records has been so denied by the Assistant Administrator for Administration may file a complaint, as authorized by 5 U.S.C. 552(a) (3), in a district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated. In such cases, the court will determine

the matter de novo and the burden will be on GSA to sustain its action of denial. The court may enjoin GSA from withholding agency records and order the production of any records improperly withheld from the complainant.

Subpart 105-60.5—Agency Proceedings

§ 105-60.501 Agency proceedings.

A record shall be kept of the final votes of each member in every GSA agency proceeding (as defined in 5 U.S.C. 551(12)) and such record shall be maintained and be available for public inspection in the appropriate reading room listed under § 105-60.303(a). (For rules and procedures of the GSA Board of Contract Appeals, see 41 CFR 5-60.)

Subpart 105-60.6—Exemptions

§ 105-60.601 General.

(a) The exemptions enumerated in 5 U.S.C. 552(b), under which the provisions for availability of records and informational materials will not apply, are general in nature. GSA will decide each case on its merits, in accordance with the liberal policy of 5 U.S.C. 552, the GSA policy expressed in § 105-60.105-2, and the guidelines issued by the Department of Justice (Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act).

(b) Formulae, designs, patents, drawings, and other records of intrinsic financial value to the Government, which value would be impaired or destroyed by disclosure, will not be available for inspection or copying.

§ 105-60.602 Categories of records exempt under 5 U.S.C. 552 from disclosure.

5 U.S.C. 552(b) provides that the requirements of the statute do not apply to matters that are:

(a) Specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy.

(b) Related solely to the internal personnel rules and practices of an agency.

(c) Specifically exempted from disclosure by statute (see § 105-60.604).

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(e) Interagency or intraagency memorandums or letters which would not be available by law to a private party in litigation with the agency.

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) Investigatory files compiled for law enforcement purposes except to the extent available by law to a private party.

(h) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(i) Geological and geophysical information and data, including maps, concerning wells.

§ 105-60.603 Executive privilege exemption.

On signing Public Law 89-487, the President stated "Moreover, this bill in no way impairs the President's power under our Constitution to provide for confidentiality when the national interest so requires" (2 Weekly Compilation of Presidential Documents 895, July 11, 1966). Where application of the executive privilege exemption is desired, the matter shall be forwarded to the Administrator for consideration. If the request for information is Congressional, only the President may invoke the exemption. Presidential approval is not necessarily required where the request for information is in connection with judicial or adjudicatory proceedings or otherwise. In connection with judicial proceedings, the response shall be coordinated with the Department of Justice.

[33 F.R. 4884, Mar. 22, 1968]

§ 105-60.604 Other statutory exemptions.

(a) 5 U.S.C. 552(b) (3) provides that the statute does not apply to matters that are specifically exempted from disclosure by other statutes. (For further discussion of this matter, see the Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act (June 1967), pages 31 and 32.)

(b) The following are illustrative of such statutes, but are not all inclusive:

(1) 18 U.S.C. 1905 (trade and financial information provided in confidence by businesses).

(2) 22 U.S.C. 1934 (technical data concerning war materials subject to the International Traffic in Arms Regulations of the Department of State).

(3) 26 U.S.C. 6103 (publicity of tax returns and lists of taxpayers).

(4) 35 U.S.C. 181-188 (records concerning inventions on which Patent Secrecy Orders have been issued).

(5) 42 U.S.C. 2000e-8 (investigations of employment practices).

(6) 42 U.S.C. 2161 (restricted atomic energy data).

(7) 43 U.S.C. 1398 (confidential information of the Public Land Law Review Commission).

(8) 44 U.S.C. 397 (nondisclosure of certain records in the National Archives, Federal records centers, and Presidential archival depositories; see Part 105-61 of this subchapter).

(9) 50 U.S.C. 402 note (National Security Agency information).

(10) 50 U.S.C. 403g (nature of CIA functions and organization).

(11) 50 U.S.C. 2023 (technical data relating to articles and materials subject to Export Control Regulations of the Department of Commerce).

[32 F.R. 9564, July 1, 1967, as amended at 33 F.R. 4884, Mar. 22, 1968]

§ 105-60.605 Exemption of materials not affecting the public or involving clearly unwarranted invasions of personal privacy.

5 U.S.C. 552(a) (2) provides that there need not be made available to the public: (1) administrative staff manuals and instructions to staff that do not affect a member of the public; and (2) identifying details found in an opinion, statement of policy, interpretation, or staff manual or instruction, to the extent required to prevent a clearly unwarranted invasion of personal privacy. Determinations as to whether materials affect the public will be made in accordance with the policy expressed in § 105-60.105-1. Determinations concerning deletion of identifying details shall recognize that the phrase "clearly unwarranted" does not include factors such as mere personal annoyance or administrative embarrassment. (See also § 105-60.304.)

Subpart 105-60.7—Subpoenas or Other Legal Demands for Records and Authentication of Copies of Records

§ 105-60.701 Service of subpoena or other legal demand.
[33 F.R. 4884, Mar. 22, 1968]

§ 105-60.701-1 GSA records.

(a) A subpoena duces tecum or other legal demand for the production of records held by GSA shall be addressed to the appropriate Regional Director of Business Affairs or Regional Administrator with respect to regional records; to the Director of Information, Washington, D.C., with respect to Central Office records; or to the Administrator of General Services.

(b) The General Counsel and, with respect to records in a GSA regional office, the Regional Counsel are authorized to accept service of a subpoena duces tecum or other legal demand on behalf of the officials designated in paragraph (a) of this § 105-60.701-1.

(c) When such subpoena or demand is served on any officer or employee of GSA other than as provided in paragraphs (a) and (b) of this § 105-60.701-1, he shall, unless otherwise directed by the Administrator, respectfully decline to produce such records on the ground that he is without authority under this Subpart 105-60.7 to do so.
[33 F.R. 4884, Mar. 22, 1968]

§ 105-60.701-2 Records transferred to the National Archives and Records Service.

(a) Access to "FRC records" (§ 105-61.001-3) is controlled by the instructions and restrictions imposed on GSA by the Federal agency which transferred the records to the Federal records center. Accordingly, a subpoena duces tecum or other legal demand for the production of "FRC records" will be honored by GSA if no restrictions have been imposed by the transferring agency. On the other hand, where restrictions have been imposed by the transferring Federal agency, the authority issuing the subpoena or other legal demand will be notified of that fact and be requested to take up the matter further with the transferring agency, since GSA must decline to release the records. The subpoena or other legal demand for "FRC records" may be

served only on the Administrator of General Services, the Archivist of the United States, the General Counsel, a Regional Administrator or a Regional Counsel, as appropriate, or the manager of the Federal records center in which the records are stored. Any such demands will be reported to the agency whose records are involved.

(b) A subpoena duces tecum or other legal demand for the production of records designated as "archives" or "donated historical materials" administered by the National Archives and Records Service (§§ 105-61.001-2 and 105-61.001-4) may be served only on the Administrator of General Services, the Archivist of the United States, the General Counsel, or the cognizant Assistant Archivist or, as appropriate, on a Regional Administrator, a Regional Counsel, a manager of a Federal records center, or a director of a Presidential library.

(c) When such subpoena or demand is served on any officer or employee of GSA other than as provided in paragraphs (a) and (b) of this § 105-60.701-2, he shall, unless otherwise directed by the Administrator, respectfully decline to produce such records on the ground that he is without authority under this Subpart 105-60.7 to do so.

[33 F.R. 4884, Mar. 22, 1968]

§ 105-60.702 Compliance with subpoena or other legal demand.

(a) Such served officials will comply with the subpoena or demand insofar as practicable by submitting authenticated copies of the records, or the original records if necessary. However, the records shall not be produced where to do so would be contrary to the governing policies stated in 5 U.S.C. 552 and Parts 105-60 and 105-61.

(b) The served official or the Administrator of General Services may determine that such demanded records will be denied. In the event of a determination to deny, the served official will be given the assistance of legal counsel in responding to the legal demand.

[32 F.R. 9564, July 1, 1967, as amended at 33 F.R. 4886, Mar. 22, 1968]

§ 105-60.703 Authentication and attestation of copies.

The Head of the Service or Staff Office having the records, or his superiors, or if the records are in a GSA regional office, the Head of the Regional Service

or Staff Office concerned, or his superiors, are authorized to authenticate and attest, for and in the name of the Administrator of General Services, copies or reproductions of the records. Appropriate fees will be charged for such copies or reproductions (see § 105-60.303 (d) (3) and (e)). With respect to records transferred to the National Archives and Records Service, authentication and attestation and fee procedures set forth in §§ 105-61.107 and 105-61.108 will be followed.

[33 F.R. 4885, Mar. 22, 1968]