

## Department of Energy

## § 1004.3

the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; DOE may also consider the past publication record of the requester in making such a determination.

(n) *Review* refers to the process of examining documents located in response to a commercial use request (see paragraph (c) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(o) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The DOE will search for material in the most efficient and least expensive manner in order to minimize cost for both DOE and the requester. For example, DOE will not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. “Search” will be distinguished, moreover, from “review” of material in order to determine whether the material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

(p) *Secretarial Officer* means the Under Secretary; Under Secretary for Science; Administrator, Energy Information Administration; Administrator, National Nuclear Security Administration; Assistant Secretary for Congressional and Intergovernmental Affairs; Assistant Secretary for Energy Efficiency and Renewable Energy; Assistant Secretary for Environmental Management; Assistant Secretary for Fos-

sil Energy; Assistant Secretary for Policy and International Affairs; Assistant Secretary for Nuclear Energy; Chief Financial Officer; Chief Health, Safety and Security Officer; Chief Human Capital Officer; Chief Information Officer; Director, Advanced Research Projects Agency—Energy; Director, Office of Indian Energy Policy and Programs, and Director, Loan Programs Office, Director, Office of Economic Impact and Diversity; Director, Office of Electricity Delivery and Energy Reliability; Director, Office of Hearings and Appeals; Director, Office of Legacy Management; Director, Office of Management; Director, Office of Public Affairs; Director, Office of Science; General Counsel; Inspector General; and Senior Intelligence Officer.

(q) *Statute specifically providing for setting the level of fees for particular types of records*, at 5 U.S.C. 552(a)(4)(A)(vi), means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of records, in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

[53 FR 15661, May 3, 1988, as amended at 71 FR 68734, Nov. 28, 2006; 79 FR 22857, Apr. 25, 2014; 81 FR 94919, Dec. 27, 2016]

### **§ 1004.3 Public inspection in an electronic format and policy on contractor records.**

(a) DOE will maintain, for public inspection in an electronic format, the materials which are required by 5 U.S.C. 552(a)(2) to be made available for

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public inspection and copying. An electronic public reading room can be accessed via *www.energy.gov* and *nnsa.energy.gov*.

(b) *Contractor records.* (1) When a contract with DOE provides that any records acquired or generated by the contractor in its performance of the contract shall be the property of the Government, DOE will make available to the public such records that are in the possession of the Government or the contractor, unless the records are exempt from public disclosure under 5 U.S.C. 552(b).

(2) Notwithstanding paragraph (b)(1) of this section, records owned by the Government under contract that contain information or technical data having commercial value as defined in paragraph (b)(4) of this section or information for which the contractor claims a privilege recognized under Federal or State law shall be made available only when they are in the possession of the Government and not otherwise exempt under 5 U.S.C. 552(b).

(3) The policies stated in this paragraph:

(i) Do not affect or alter contractors' obligations to provide to DOE upon request any records that DOE owns under contract, or DOE's rights under contract to obtain any contractor records and to determine their disposition, including public dissemination; and

(ii) Will be applied by DOE to maximize public disclosure of records that pertain to concerns about the environment, public health or safety, or employee grievances.

(4) For purposes of paragraph (b)(2) of this section, "technical data and information having commercial value" means technical data and related commercial or financial information which is generated or acquired by a contractor and possessed by that contractor, and whose disclosure the contractor certifies to DOE would cause competitive harm to the commercial value or use of the information or data.

[53 FR 15661, May 3, 1988, as amended at 59 FR 63884, Dec. 12, 1994; 79 FR 22858, Apr. 25, 2014; 81 FR 94919, Dec. 27, 2016]

#### § 1004.4 Elements of a request.

(a) *Addressed to the FOIA Officer.* A request for a record of DOE which is

not available for public inspection in an electronic format, as described in § 1004.3, shall be: Addressed to the Headquarters or appropriate field FOIA Officer at DOE at a location listed in § 1004.2(h), and both the envelope and the letter shall be clearly marked "Freedom of Information Act Request;" or submitted via facsimile or electronically, on an appropriate agency Web site. Except as provided in paragraph (e) of this section, a request will be considered to be received by DOE for purposes of 5 U.S.C. 552(a)(6) and the 20-day response period will start upon actual receipt by the appropriate FOIA Officer, or not later than ten days after receipt by a designated FOIA Officer at any location in § 1004.2(h). Requests delivered after regular business hours are considered received on the next regular business day.

(b) *Request must be in writing and for reasonably described records.* A request for access to records must be submitted in writing and must reasonably describe the records requested to enable DOE 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, including the names and titles of any DOE officers or employees who have been contacted regarding the request prior to the submission of a written request. If the request relates to a matter in pending litigation, the court and its location should be identified to aid in locating the documents. If the records are known to be in a particular office of the DOE, the request should identify that office.

(c) *Categorical requests.* (1) Must meet reasonably described records requirement. A request for all records falling within a reasonably specific and well-defined category shall be regarded as conforming to the statutory requirement that records be reasonably described if DOE personnel can reasonably determine which particular records are sought in the request. The request must enable the DOE to identify and locate the records sought by a