

**SUPPLEMENTARY INFORMATION:** The Inspector General Act of 1978 was amended in 1988 to provide for the statutory establishment of Offices of Inspector General at 33 "designated Federal entities," one of which is LSC. 5 U.S.C. App. 3 Sec. 8E. The primary function of LSC's OIG is to promote economy and efficiency and to prevent and detect fraud, waste and abuse in LSC's programs and operations. Because of the independent and investigative nature of the OIG, OIG records are kept separate from other LSC records, and many are of a confidential nature. Although not required, it is appropriate to amend Part 1602 to give the OIG the authority to process and to grant or deny FOIA requests for OIG records.

Accordingly, this proposed rule adds a definition for "Office of Inspector General records" as records that are in the exclusive possession and control of the OIG. This proposed rule also gives the authority to process and to grant or deny a request for OIG records to the Counsel to the Inspector General, and maintains the authority to process and to grant or deny a request for all other Corporation records with the General Counsel. It further makes clear that the General Counsel may delegate this authority to a designee and provides that the Counsel to the Inspector General also may delegate to a designee. Also, the proposed rule gives the Inspector General the authority to decide appeals of requests for OIG records, while the President of the Corporation retains the authority to decide all other appeals.

Although requests for OIG records will be processed by the OIG, the proposed rule provides that all requests be directed initially to the Office of the General Counsel ("OGC"). The General Counsel or his designee is required by the proposed rule to promptly refer to the OIG any request or portion thereof determined to be for OIG records and to send the requester notice of such referral.

In addition, this proposed rule adds the requirement that the OGC consult with the OIG before granting any requests for records or portions of records which originated with the OIG or contain information which originated with the OIG, but which are maintained by other components of the Corporation. Examples of such records would be written reports by OIG personnel; minutes, notes or transcripts of oral reports by the Inspector General to the Board of Directors of the Corporation during closed portions of Board meetings; and travel vouchers prepared by OIG personnel. Such reports, minutes, notes and vouchers all have

the potential to reveal the identity of confidential sources or targets and the investigative or audit strategy of the OIG or to otherwise interfere with its ongoing activities. Similarly, this proposed rule requires the OIG to consult with the OGC prior to granting any request.

This proposed rule also amends § 1602.9(6)(iv) by adding language found in the corresponding FOIA exemption that appeared to be unnecessary prior to the establishment of the OIG. The FOIA exemption at 5 U.S.C. 552(b)(7)(D) protects documents that might identify a confidential source, and also, in the case of a criminal investigation, that might identify the information furnished by the source. LSC's current rule has no language protecting such documents. Because the OIG conducts investigations into criminal activities, addition of the language would appear to be appropriate.

#### Technical and Procedural Revisions

This proposed rule also amends Part 1602 by making numerous technical and procedural changes that reflect the Corporation's internal administrative structure and procedures. For example, the proposed rule states that all LSC records are maintained at the Corporation's headquarters in Washington, DC, and that the OGC is responsible for handling FOIA requests, except requests for OIG records. Also, the proposed rule deletes references to a central records room to better reflect LSC's practice of maintaining its records in the various divisions of the Corporation.

The fees section has been revised to better reflect categories of employees and to update labor costs. It has also been amended to add an assumption that requesters agree to pay all charges for services associated with their requests up to \$25. For requests estimated to exceed \$25, the Corporation will consult with the requester prior to processing the request. Also, requests estimated to exceed \$25 will not be deemed to be received by the Corporation for purposes of the initial ten-day response period until the requester agrees to pay all fees for services. This amendment allows requesters to reconsider their request before generating fees they may not have anticipated.

In addition, the proposed rule amends the language of Part 1602 that applies to matters specifically exempted from disclosure by statute. See § 1602.9(a)(2). The change is intended to better conform the rule to the corresponding FOIA exemption, 5 U.S.C. 552(b)(3).

## LEGAL SERVICES CORPORATION

### 45 CFR Part 1602

#### Procedures for Disclosure of Information Under the Freedom of Information Act

**AGENCY:** Legal Services Corporation.  
**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule amends the Legal Services Corporation's ("LSC" or "Corporation") regulation implementing the Freedom of Information Act ("FOIA") by giving authority to process and to grant or deny requests for records of the Corporation's Office of Inspector General ("OIG") to an official within the OIG. In addition, this proposed rule also makes other technical and procedural changes intended to reflect the Corporation's internal administrative structure and procedures and to better conform the regulation to the FOIA.

**DATES:** Comments must be received by August 9, 1993.

**ADDRESSES:** All comments should be addressed to the Office of the General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002-4250.

**FOR FURTHER INFORMATION CONTACT:** Victor M. Fortuno, General Counsel, 202-336-8810.

**List of Subjects in 45 CFR Part 1602**

Freedom of information. For reasons set out above, it is proposed that Part 1602 of Title 45 of the Code of Federal Regulations be amended as follows:

**PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT**

1-2. The authority citation for Part 1602 is revised to read as follows:

Authority: 5 U.S.C. 552 and 42 U.S.C. 2996d(g).

3. Section 1602.2 is revised to read as follows:

**§ 1602.2 Definitions.**

As used in this part—

*Commercial use request(s)* means request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. When the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a specific category. If still in doubt, the Corporation will make the determination based on the factual circumstances surrounding the request, including the identity of the requester.

*Duplication* means the process of copying a document to send to a FOIA requester. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

*Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, and an institution of professional or vocational education which operates a program or programs of scholarly research.

*FOIA* means the Freedom of Information Act, 5 U.S.C. 552. *Labor charges* means those costs which the Corporation incurs in searching for, reviewing, and duplicating records to respond to a FOIA request. A schedule of labor charges appears at § 1602.13(e)(1).

*Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis and which is

operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

*Office of Inspector General records* means those records as defined generally in this section which are exclusively in the possession and control of the Office of Inspector General of the Legal Services Corporation.

*Records* means books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include, *inter alia*, books, magazines, or other materials acquired solely for library purposes.

*Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

*Review* means the process of examining documents located in response to a commercial use request to determine whether any portion of any such document may 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.

*Search* means all the 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 search will be conducted in the most efficient and least expensive manner. Searches may be done manually or by computer using existing programming.

4. Section 1602.4 is revised to read as follows:

**§ 1602.4 Location of Corporation headquarters.**

The Corporation's headquarters are located at 750 First Street, NE, Washington, DC 20002-4250. The telephone number for the Corporation's headquarters is (202) 336-8800.

5. Section 1602.5 is revised to read as follows:

**§ 1602.5 Index of records.**

The Corporation will maintain a current index identifying any matter within the scope of section 1602.6(b) which has been issued, adopted, or promulgated by the Corporation, and other information published or made publicly available. The index will be maintained and made available for public inspection and copying at the Corporation's headquarters, located at the address stated in section 1602.4.

6. Section 1602.6 is added to read as follows:

**§ 1602.6 Records available.**

(a) The Corporation will maintain its records as described in paragraph (b) of this section at its headquarters, located at the address stated in § 1602.4, during the regular business hours of the Corporation for the convenience of members of the public in inspecting and copying records made available pursuant to this part.

(b) Subject to the limitation stated in paragraph (c) of this section, the following records will be available:

(1) All final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Corporation;

(3) Administrative staff manuals and instructions to the staff that affect the public;

(4) To the extent feasible, guidelines, forms, published regulations, notices, program descriptions, and other records considered to be of general interest to members of the public in understanding activities of the Corporation or in dealing with the Corporation in connection with those activities;

(5) The current index required by § 1602.5.

(c) Certain types of staff manuals or instructions, such as instructions to auditors or inspection staff, or instructions covering certain phases of contract negotiation, that deal with the performance of functions that would automatically be rendered ineffective by general awareness of the Corporation's techniques or procedures, may be exempt from mandatory disclosure even though they affect or may affect the public.

(d) Certain records made available pursuant to this part may be "edited" by the deletion of identifying details concerning individuals, to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it a full explanation of the deletion.

7. Section 1602.7 is revised to read as follows:

**§ 1602.7 Procedures for public inspection of records.**

Any member of the public may inspect or copy records regularly maintained by the Corporation at the Corporation during regular business hours. Because it will sometimes be impossible to produce records or copies of them on short notice, a person who wishes to inspect or copy Corporation records is advised to arrange a time in advance, by telephone or letter request made to the Office of the General Counsel at the address and telephone number stated in § 1602.4. Persons submitting written requests should identify the records sought in the manner provided in § 1602.8(b) and should indicate whether they wish to inspect the records on a specific date. The Corporation will endeavor to advise the requester as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

8. Section 1602.8 is amended by revising paragraphs (a), (b) (3), (4) and (5), (c) introductory text and (d) to read as follows:

**§ 1602.8 Availability of records on request.**

(a) In addition to the records described in § 1602.8, the Corporation will make all other Corporation records available to any person in accordance with paragraphs (b) and (c) of this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9.

(b) \* \* \*

(3) The Corporation is not required to create a record or to perform research to satisfy a request for information.

(4) Requests for records under this section should be made in writing, with

the envelope and the letter clearly marked "Freedom of Information Request" and should be addressed to the LSC Office of the General Counsel at the address stated in section 1602.4. Any request not marked and addressed as specified in this paragraph will be so marked by Corporation personnel as soon as it is properly identified, and will be forwarded immediately to the Office of the General Counsel. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (c) of this section until it is received by the Office of the General Counsel. Upon receipt of an improperly addressed request, the General Counsel or his designee shall notify the requester of the date on which the time period began.

(5) All requests should identify the records sought with reasonable specificity and should indicate the number of copies desired. The Corporation may require that fees be paid in advance, in accordance with § 1602.13(i), and the Corporation will advise a requester as promptly as possible if the fees are estimated to exceed \$25 or any limit indicated by the requester. If a waiver or reduction of fees is requested, the grounds for such request as set out in § 1602.13(f) should be included in the letter.

(c) The General Counsel or his designee, upon request for any records made in accordance with this part, except in the case of a request for Office of Inspector General records, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 10 working days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for not more than 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. If the General Counsel or his designee determines that a request or portion thereof is for Office of Inspector General records, the General Counsel or his designee shall promptly refer the request or portion thereof to the Office of Inspector General and send notice of such referral to the requester. In such case, the Counsel to the Inspector General or his designee shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 10 working days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for not more than

10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. As used herein, "unusual circumstances" are limited to the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(d) If no determination has been dispatched at the end of the 10-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal in accordance with § 1602.12. When no determination can be dispatched within the applicable time limit, the General Counsel or his designee, and/or the Counsel to the Inspector General or his designee, shall nevertheless continue to process the request. On expiration of the time limit, the General Counsel or his designee, and/or the Counsel to the Inspector General or his designee, 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 the requester's right to treat the delay as a denial and to appeal to the President of the Corporation, or to the Inspector General of the Corporation, in accordance with § 1602.12. The General Counsel or his designee, and/or the Counsel to the Inspector General or his designee, may ask the requester to forego appeal until a determination is made.

9. Section 1602.9 is amended by revising paragraphs (a)(2) and (6)(iv) to read as follows:

**§ 1602.9 Invoking exemptions to withhold a requested record.**

(a) \* \* \*

(2) Matter which is specifically exempted from disclosure by statute other than section 552b of the FOIA, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues, or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(6) \* \* \*

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal

investigation, information furnished by a confidential source;

10. Section 1602.10 is revised to read as follows:

**§ 1602.10 Officials authorized to grant or deny requests for records.**

The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Corporation. The General Counsel or his designee and the Counsel to the Inspector General or his designee, are authorized to grant or deny requests under this part. In the absence of a Counsel to the Inspector General, the Inspector General shall name a designee who will be authorized to grant or deny requests under this part and who will perform all other functions of the Counsel to the Inspector General under this regulation. The General Counsel or his designee shall consult with the Office of Inspector General prior to granting any request for records or portions of records which originated with the OIG, or which contain information which originated with the OIG, but which are maintained by other components of the Corporation. The Counsel to the Inspector General or his designee shall consult with the Office of the General Counsel prior to granting any request for records.

11. Section 1602.12 is revised to read as follows:

**§ 1602.12 Appeals of denials.**

(a) Any person whose written request has been denied is entitled to appeal the denial within 90 days by writing to the President of the Corporation or, in the case of a denial of a request for Office of Inspector General records, the Inspector General, at the Corporation's headquarters, located at the address stated in § 1602.4. The envelope and letter should be clearly marked: "Freedom of Information Appeal." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the

President, or the Inspector General, or their designees, for this purpose.

(c) The decision of the President or the Inspector General on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requestor, the matters described in § 1602.11(a) (1) through (4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requestor within 20 working days after receipt of the appeal, unless an additional period is justified pursuant to § 1602.8(c) and such period taken together with any earlier extension does not exceed 10 days. The decision of the President or the Inspector General shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under § 1602.6(b).

12. Section 1602.13 is revised to read as follows:

**§ 1602.13 Fees.**

(a) Information provided routinely in the normal course of doing business will be provided at no charge.

(b) For commercial use requests, fees shall be limited to reasonable standard charges for document search, review and duplication.

(c) When records are not sought for commercial use and the request is made by a representative of the news media or by an educational institution or a non-commercial scientific institution whose purpose is scholarly or scientific research, fees shall be limited to reasonable standard charges for document duplication after the first 100 pages.

(d) For all other requests, fees shall be limited to reasonable standard charges for search time after the first 2 hours and duplication after the first 100 pages.

(e) The schedule of charges for services regarding the production or disclosure of Corporation records is as follows:

(1) Manual search for and review of records will be billed at the following labor charges:

(i) Salary levels 1-4: \$14 per hour;

(ii) Salary levels 5-6: \$25 per hour;

(iii) Salary level 7-unclassified: \$34 per hour.

(iv) Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) Computer time: Actual charges as incurred;

(3) Duplication by paper copy: \$0.10 per page;

(4) Duplication by other methods: actual charges as incurred;

(5) Certification of true copies: \$1.00 each;

(6) Packing and mailing records: no charge for regular mail;

(7) Special delivery or express mail: actual charges as incurred.

(f) Fees will be waived or reduced below the fees established under paragraph (e) of this section if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation," the Corporation will consider the following four criteria:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Corporation";

(ii) The informative value of the information to be disclosed:

Whether the disclosure is "likely to contribute" to an understanding of Corporation operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of Corporation operations or activities.

(2) In order to determine whether disclosure of the information "is not primarily in the commercial interest of the requester," the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(3) These fee waiver/reduction provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.

(g) No fee will be charged under this section if the cost of routine collection and processing of the fee payment is

likely to equal or exceed the amount of the fee charged. That cost is currently \$6.50.

(h) Requesters must agree to pay all fees charged for services associated with their requests. The Corporation will assume that requesters agree to pay all charges for services associated with their requests up to \$25 unless otherwise indicated by the requester. For requests estimated to exceed the \$25 amount, the Corporation will first consult with the requester prior to processing the request, and such requests will not be deemed to have been received by the Corporation until the requester agrees in writing to pay all fees charged for services.

(i) No requester will be required to make an advance payment of any fee unless:

(1) That requester has previously failed to pay a required fee (within 30 days of the date of billing), in which case an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. The request will not be deemed to have been received by the Corporation until such payment is made;

(2) The Corporation determines that an estimated fee will exceed \$250, in which case the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within five working days of receipt by the Corporation, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet the requester's needs at a reduced cost. The request will not be deemed to have been received by the Corporation for purposes of the initial 10-day response period until an advance payment of the entire fee is made.

(j) Interest will be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(k) If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Corporation shall aggregate such requests and charge accordingly.

(l) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one

requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

Dated: June 30, 1993.

Victor M. Fortuno,

General Counsel.

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