

Agency for International Development

§ 212.38

(ii) Remittances shall be made payable to the order of the U.S. Treasury and mailed to the Chief, Customer Outreach and Oversight Staff, at the address set forth in §212.33(a) of this part.

§212.36 Denial of request for access to records.

(a) If it is determined that the Agency cannot comply with all or part of a request for records, the person making the request shall be immediately notified of the determination, the reasons for the determination, the name and title of each officer responsible for the denial, and the right of the person to appeal the adverse determination.

(b) The denial of a request for records may be made, initially, only by the Chief, Customer Outreach and Oversight Staff, or his/her designee.

(c) (1) Any person who has been denied access to records pursuant to this section may appeal the relevant decision not later than thirty days after the date of the notification of denial or, in the case of a partial denial, not later than thirty days after the date the releasable documents are actually furnished to the person making the request, whichever is later. The appeal shall be in writing addressed to the Agency's FOIA Appeals Officer, who is:

The Director, Office of Administrative Services, Bureau for Management, Room 803, SA-2, Agency for International Development, 21st and Virginia Ave., N.W., Washington, D.C., 20523-0217.

(2) In order for the Agency to make a timely response to the appeal, both the text of the appeal and its envelope must be plainly marked "FOIA Appeal". The appeal must contain a reasonable description of the record sought and withheld, a copy of the initial decision to deny access and any other information that will enable the Appeals Officer to make the final decision.

§212.37 Procedures for agency consideration of appeals.

(a) Upon receipt of the appeal by the Appeals Officer, a maximum of twenty working days will normally be taken to decide the appeal. In unusual circumstances, as defined in §212.34, the twenty working days may be extended by ten working days or by the number

of days not used in the original denial of the request.

(b) If the appeal is granted, the person making the appeal shall be immediately notified and copies of the releasable documents shall be made available promptly thereafter upon receipt of appropriate fees as set forth in §212.35. If the appeal is denied in whole or part, the person making the request shall be immediately notified of the decisions and of the provisions for judicial review of the Agency's denial of the request.

(c) In the event a determination is not issued within the applicable time limit and the person making the request therefore chooses to sue the Agency, the Agency-level determination process shall nonetheless continue.

(d) If an appeal not properly marked "FOIA Appeal" on the text of the appeal and/or envelope is thereby delayed in reaching the Appeals Officer, it will not be deemed received by the Appeals Officer until actually received by him/her. In such event, the person making the appeal will be furnished notice of the effective date of receipt.

§212.38 Predisclosure notification procedures for confidential commercial information.

(a) *In general.* Confidential commercial information provided to the Agency shall not be disclosed pursuant to a FOIA request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) *Confidential commercial information* means records provided to the Agency by a submitter that arguably contain material exempt from release under Exemption 4 of FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides confidential commercial information to the Agency. The term "submitter" includes, but is not limited to, corporations, state governments and foreign governments.

(b) *Notice to submitters.* Whenever the Agency receives a FOIA request for confidential commercial information and, pursuant to paragraph (c) of this