

CHAPTER 10. TITLE VI AND THE FREEDOM
OF INFORMATION ACT, AS AMENDED

43. GENERAL. The Freedom of Information Act (FOIA) is legislation designed to make most information maintained by the Executive Branch of the Federal Government available to the public. The FOIA has been significantly amended to further expand the categories of matters subject to public disclosure (See Section 552 of Title 5, U.S.C., as amended by Public Law 93-502, November 21, 1974. Also see Appendix 4.8(a) for FOIA and amendments).
44. APPLICABILITY OF HUD'S FOIA REGULATIONS TO TITLE VI. The requirements of the Department's Regulations under the FOIA apply to all requests for release of information on matters relating to Title VI (see 24 CFR Part 15, as amended at 40 F.R. 48123, October 14, 1975). This chapter serves to clarify procedures for implementing the Department's FOIA requirements as they relate to Title VI.
45. PROCEDURES FOR IMPLEMENTING THE FOIA IN TITLE VI MATTERS.
- a. Request for Records. Requests for Title VI records must be made pursuant to the Department's Regulation effectuating the FOIA.
 - b. Records Subject to Release. Any identifiable record and information which has not been published in the Federal Register or is not available from the Government Printing Office is subject to release under FOIA.
 - c. What Constitutes a Record. A record is any document prepared by a HUD employee which has been signed, approved/disapproved, evaluated, or in anyway acted upon by the immediate supervisor or anyone who serves in a supervisory capacity. Any draft material or data which triggers some further action by the Department becomes a record within the meaning of FOIA.
 1. Preliminary Final (draft) Investigation Reports, Final Investigation Reports, Correspondence Files, special papers, summaries, or general memorandum are records within the meaning of FOIA. But see, item 45.d below.
 - d. Exemptions: A requested record may not be withheld from inspection or copying unless it (1) comes within one of the classes of records exempted by 5USC 552, and (2) there is need in the public interest to withhold it (see 24 CFR 15.21, Appendix 4.8(b). There are nine (9) classes of records authorized to be exempted from disclosure (see 24 CFR

15.21, Appendix 4.8(b) One (1) of the nine (9) classes of records (e.g. Investigatory records compiled for law enforcement purposes) is applicable to Title VI related records.

1. Any Title VI related record, including a preliminary Final (draft) Investigation Report, or Final Investigation Report may be exempt because it is an investigation record compiled for law (Title VI of the Civil Rights Act of 1964) enforcement purposes.
 2. Title VI Records which reflect a HUD applicant/recipient's apparent noncompliance should not be released until the Title VI administrative process has been exhausted. This course of action is taken to prevent interference or any attempt to influence the administrative enforcement process and to insure the ability of the Department to afford HUD applicant/recipient due process of law within the meaning of the 5th amendment of the U.S. Constitution and 5 USC 554 of the Administrative Procedures Act.
 3. Records which indicate substantial compliance with Title VI may be released.
- e. Deletions. To prevent a clearly unwarranted invasion of personal privacy, identifying details may be deleted when any HUD record is being made available or being published. Whenever such deletions are required, the record or copy will be made available with the space formerly occupied by such identifying details left blank, and the justification for the deletion shall be explained fully in writing (see 24 CFR 15.12(b)).
- f. Organization Unit Head. The AS/FHEO is authorized to act as the responsible Department official in all matters relating to the carrying out of the requirements of Title VI (see 36 F.R. 8821, May 13, 1971). Therefore, for all requests for information which relates to Title VI, "the head of the appropriate organization unit" is the AS/FHEO.

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NOTE: For purposes of honoring a request for a final Title VI report of a routine HUD initiated compliance review or complaint investigation, the ARA/FHEO is designated the appropriate "FHEO unit head" and may release such records held in the Regional Office. The ARA/FHEO may elect to defer to the AS/FHEO the decision to honor a request if: (a) a copy of the record requested has been mailed previously to the AS/FHEO; and/or (b) the ARA/FHEO forwards the request by

facsimile to the AS/FHEO on the same day as received in the Office of ARA/FHEO. If the ARA/FHEO elects to defer the decision o honor a request for release to the AS/FHEO, then the requester should be so notified and advised that time of receipt (i.e. ten days) for processing purposes will be the time when it is received by the appropriate official, i.e. AS/FHEO.

g. Requests Which Must be Acted Upon by AS/FHEO.

- (1) Title VI matters which are the result of a complaint from a person who alleges that he/she was discriminated against in HUD programs or activities, based on race, color or national origin. (To determine whether it is necessary to disclose the identity of the complainant).
- (2) Working papers or any document which is not complete and relates to Title VI cases involving HUD.
- (3) Title VI matters in which a person provided information to an FHEO investigator in confidence and;
- (4) Information prior to the completion of the Department's responsibility under Section 602 of Title VI and implementing regulation.

h. Denials. All denials must be made by AS/FHEO with the concurrence of the General Counsel pursuant to 36 F.R. 8821 and 24 CFR 15.52.

46. RECORD KEEPING RESPONSIBILITIES. Under the FOIA, HUD must submit an annual report to the Congress showing: (1) the number of requests for information which have been denied; (2) the number of appeals and the reasons for each affirmance of an initial denial; (3) the name and title of each person responsible for a denial and the number of cases handled by that person; (4) the results of each proceeding which involved disciplinary action against an employee for an allegedly improper denial; and (5) the total fees collected for search time and copying documents.

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a. AS/FHEO. The AS/FHEO shall maintain records relating to requests for Title VI information as follows:

- (1) A staff person will be designated within the Office of the AS/FHEO to process requests for Title VI related matters and to search for documents in the Central Office;
- (2) All requests for Title VI records will be dated and time stamped when received by the AS/FHEO.

- (3) Each requester will be notified in writing within twenty-four (24) hours of receipt of the date the request was received by the AS/FHEO (see Appendix 3.17 for copy of form letter);
- (4) An index of all requests for Title VI matters shall be maintained on a current basis to minimize the time needed to comply with the Department's time limitations for the annual report to Congress; and
- (5) A roster of all requests shall be maintained including: (a) the name(s) of the requester; (b) the date of the request; (c) the date the request was received by the AS/FHEO; (d) the title of the specific item requested; (e) the time spent to process the request; (f) the cost to the requester; and (g) the number of copies provided.

b. ARA/FHEO. The ARA/FHEO shall submit to the AS/FHEO on an annual basis and at times and in a manner prescribed by the AS/FHEO, the following items:

- (1) an index of all requests for Title VI matters; and
- (2) a roster of all requests by name of the requester, date of the request, date the request was received by the ARA/FHEO, title of the specific item requested, time spent processing the request, cost to the requester, and number of copies provided.

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APPROVAL

Assistant Secretary for Fair Housing

Date

and Equal Opportunity

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