**Section 1651.405 Requests for Review of Denials − Public Access Counselor**

a) A person whose request to inspect or copy a record is denied by the Agency may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the date of the final denial. (Section 9.5(a) of FOIA)

b) If the Agency asserts that the records are exempt under Section 1651.202(a)(4) or (a)(7), it will, within the time periods provided for responding to a request, provide written notice to the requester and the Public Access Counselor of its intent to deny the request in whole or in part. The notice will include:

1) A copy of the request for access to records;

2) The proposed response from the Agency; and

3) A detailed summary of the Agency's basis for asserting the exemption. (Section 9.5(b) of FOIA)

c) Upon receipt of a notice of intent to deny from the Agency, the Public Access Counselor will determine whether further inquiry is warranted. The Public Access Counselor will process the notification of intent to deny as detailed in Section 9.5(b) of FOIA. Times for response or compliance by the Agency under Section 1651.401 will be tolled until the Public Access Counselor concludes his or her inquiry. (Section 9.5(b) of FOIA)

d) Within 7 working days after the Agency receives a request for review from the Public Access Counselor, the Agency will provide copies of records requested and will otherwise fully cooperate with the Public Access Counselor. (Section 9.5(c) of FOIA)

e) Within 7 working days after it receives a copy of a request for review and request for production of records from the Public Access Counselor, the Agency may, but is not required to, answer the allegations of the request for review. The answer may take the form of a letter, brief, or memorandum. The Public Access Counselor will forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy. (Section 9.5(d) of FOIA)

f) The requester may, but is not required to, respond in writing to the answer within 7 working days and will provide a copy of the response to the Agency. (Section 9.5(d) of FOIA)

g) In addition to the request for review, and the answer and response thereto, if any, a requester or the Agency may furnish affidavits or records concerning any matter germane to the review. (Section 9.5(e) of FOIA)

h) A binding opinion from the Attorney General will be binding upon both the requester and the Agency, subject to administrative review under Section 1651.407. (Section 9.5(f) of FOIA)

i) If the Attorney General decides to exercise his or her discretion to resolve a request for review by mediation or by a means other than issuance of a binding opinion, the decision not to issue a binding opinion will not be reviewable. (Section 9.5(f) of FOIA)

j) Upon receipt of a binding opinion concluding that a violation of FOIA has occurred, the Agency will either take necessary action immediately to comply with the directive of the opinion or will initiate administrative review under Section 1651.407. If the opinion concludes that no violation of FOIA has occurred, the requester may initiate administrative review under Section 1651.407. (Section 9.5(f) of FOIA)

k) If the Agency discloses records in accordance with an opinion of the Attorney General, the Agency is immune from all liabilities by reason thereof and will not be liable for penalties under FOIA. (Section 9.5(f) of FOIA)

l) If the requester files suit under Section 1651.406 with respect to the same denial that is the subject of a pending request for review, the requester will notify the Public Access Counselor, and the Public Access Counselor will so notify the Agency. (Section 9.5(g) of FOIA)

m) The Attorney General may also issue advisory opinions to the Agency regarding compliance with FOIA. A review may be initiated upon receipt of a written request from the Director of the Agency or the Agency's Chief Legal Counsel, which will contain sufficient accurate facts from which a determination can be made. The Public Access Counselor may request additional information from the Agency in order to assist in the review. If the Agency relies in good faith on an advisory opinion of the Attorney General in responding to a request, the Agency is not liable for penalties under FOIA, so long as the facts upon which the opinion is based have been fully and fairly disclosed to the Public Access Counselor. (Section 9.5(h) of FOIA)