the charges involved in a complaint and executed by some or all respondents. The Commission, at its discretion and under such restrictions as it may deem appropriate, may disclose to the public or to respondent(s) in a pending adjudicative proceeding a communication made exempt by this paragraph from the prohibitions of paragraph (b) of this section, however, when the Commission determines that the interests of justice would be served by the disclosure. The prohibitions of paragraph (b) of this section also do not apply to a communication between any member of the Commission, the Administrative Law Judge, or any other employee who is or who reasonably may be expected to be involved in the decisional process, and any employee who has been directed by the Commission or requested by an individual Commissioner or Administrative Law Judge to assist in the decision of the adjudicative proceeding. Such employee shall not, however, have performed an investigative or prosecuting function in that or a factually related proceeding.

[42 FR 43974, Sept. 1, 1977, as amended at 44 FR 40637, July 12, 1979; 46 FR 32435, June 23, 1981; 50 FR 53306, Dec. 31, 1985; 51 FR 36802, Oct. 16, 1986; 57 FR 10805, Mar. 31, 1992; 60 FR 37748, July 21, 1995; 60 FR 67325, Dec. 29, 1995]

§ 4.8 Costs for obtaining Commission records.

(a) *Definitions*. For the purpose of this section:

(1) The term *search* includes all time spent looking, manually or by automated means, for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(2) The term *duplication* refers to the process of making a copy of a document in order to respond to a request for Commission records.

(3) The term *review* refers to the examination of documents located in response to a request to determine whether any portion of such documents may be withheld, and the reduction or other processing of documents for disclosure. Review does not include time spent resolving general legal or policy issues regarding the release of the document.

(4) The term *direct costs* means expenditures that the Commission actually incurs in processing requests. Not included in direct costs are overhead expenses such as costs of document review facilities or the costs of heating or lighting such a facility or other facilities in which records are stored. The direct costs of specific services are set forth in § 4.8(b)(6).

(b) *Fees*. User fees pursuant to 31 U.S.C. 483(a) and 5 U.S.C. 552(a) shall be charged according to this paragraph.

(1) *Commercial use requesters*. Commercial use requesters will be charged for the direct costs to search for, review, and duplicate documents. A commercial use requester is a requester 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.

(2) *Educational requesters, non-commercial scientific institution requesters, and representative of the news media*. Requesters in these categories will be charged for the direct costs to duplicate documents, excluding charges for the first 100 pages. An *educational institution* is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. A *non-commercial scientific institution* is an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (b)(1) of this section, and that is operated solely to conduct scientific research the results of which are not intended to promote any particular product or industry. A *representative of the news media* is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. *News* means information that is about current events or that would be of current interest to the public.

(3) *Other requesters*. Other requesters will be charged for the direct costs to search for and duplicate documents, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge.

(4) *Waiver of small charges.* Notwithstanding the provisions of paragraphs (b)(1), (2), and (3) of this section, charges will be waived if the total chargeable fees for a request do not exceed $14.00.

(5) *Materials available without charge.* These provisions do not apply to recent Commission decisions and other materials that may be made available to all requesters without charge while supplies last.

(6) *Schedule of direct costs.* The following uniform schedule of fees applies to records held by all constituent units of the Commission:

Paper Fees:	
Paper copy (up to 8.5″ x 14″).	
Reproduced by Commission	$0.14 per page.
Reproduced by Requester	0.05 per page.
Microfiche Fees:	
Film Copy—Paper to 16mm film	0.04 per frame.
Fiche Copy—Paper to 105mm fiche	0.08 per frame.
Film Copy—Duplication of existing 100 ft. roll of 16mm film	9.50 per roll.
Fiche Copy—Duplication of existing 105mm fiche	0.26 per fiche.
Paper Copy—Converting existing 16mm film to paper (Conversion by Commission Staff).	0.26 per page.
Paper Copy—Converting existing 105mm fiche to paper (Conversion by Commission Staff).	0.23 per page.
Film Cassettes	2.00 per cassette.
Electronic Services:	
Converting paper into electronic format (scanning)	2.50 per page.
Computer programming	8.00 per qtr. hour.
Other Fees:	
Computer Tape	18.50 each.
Certification	10.35 each.
Express Mail	3.50 for first pound and 3.67 for each additional pound (up to $15.00).

Search and Review Fees

Agency staff is divided into three categories: clerical, attorney/economist, and other professional. Fees for search and review are assessed on a quarter-hourly basis, and are determined by identifying the category into which the staff member(s) conducting the search or review belong(s), determining the average quarter-hourly wages of all staff members within that category, and adding 16 percent to reflect the cost of additional benefits accorded to government employees. The exact fees are calculated and announced periodically and are available from the Consumer Response Center, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580; (202) 326–2222.

(c) *Information to determine fees.* Each request for records shall set forth whether the request is made for other than commercial purposes and whether the requester is an educational institution, a noncommercial scientific institution, or a representative of the news media. The deciding official (as designated by the General Counsel) initially, or the General Counsel on appeal, will use this information, any additional information provided by the requester, and any other relevant information to determine the appropriate fee category in which to place the requester.

(d) *Agreement to pay fees.* (1) Each request that does not contain an application for a fee waiver shall specifically indicate the requester's willingness either:

(i) To pay, in accordance with §4.8(b) of these rules, whatever fees may be charged for processing the request; or

(ii) A willingness to pay such fees up to a specified amount.

(2) Each request that contains an application for a fee waiver must specifically indicate:

(i) The requester's willingness to pay, in accordance with § 4.8(b) of the rules, whatever fees may be charged for processing the request;

(ii) The requester's willingness to pay fees up to a specified amount; or

(iii) That the requester is not willing to pay fees if the waiver is not granted.

(3) If the agreement required by this section is absent, and if the estimated fees exceed $25.00, the requester will be advised of the estimated fees and the request will not be processed until the requester agrees to pay such fees.

(e) *Public interest fee waivers*—(1) *Procedures*. A requester may apply for a waiver of fees. The requester shall explain why a waiver is appropriate under the standards set forth in this paragraph. The application shall also include a statement, as provided by paragraph (d) of this section, of whether the requester agrees to pay costs if the waiver is denied. The deciding official (as designated by the General Counsel) initially, or the General Counsel on appeal, will rule on applications for fee waivers.

(2) *Standards*. (i) The first requirement for a fee waiver is that disclosure will likely contribute significantly to public understanding of the operations or activities of the government. This requirement shall be met if:

(A) The subject matter of the requested information concerns the operations or activities of the Federal government;

(B) The disclosure is likely to contribute to an understanding of these operations or activities;

(C) The understanding to which disclosure is likely to contribute is the understanding of the public at large, as opposed to the understanding of the individual requester or a narrow segment of interested persons; and

(D) The likely contribution to public understanding will be significant.

(ii) The second requirement for a fee waiver is that the request not be primarily in the commercial interest of the requester. Satisfaction of this requirement shall be determined by considering:

(A) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(B) If so, whether the public interest in disclosure is outweighed by the identified commercial interest of the requester so as to render the disclosure primarily in the requester's commercial interest.

(f) *Unsuccessful searches*. Charges may be assessed for search time even if the agency fails to locate any responsive records or if it locates only records that are determined to be exempt from disclosure.

(g) *Aggregating requests*. If the deciding official (as designated by the General Counsel) initially, or the General Counsel on appeal, reasonably believes that a requester, or a group of requesters acting in concert, is attempting to evade an assessment of fees by dividing a single request into a series of smaller requests, the requests may be aggregated and fees charged accordingly.

(h) *Advance payment*. If the deciding official (as designated by the General Counsel) initially, or the General Counsel on appeal, estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, or if the requester has previously failed to pay a fee within 30 days of the date of billing, the requester may be required to pay some or all of the total estimated charge in advance. Further, the requester may be required to pay all unpaid bills, including accrued interest, prior to processing the request.

(i) *Means of payment*. Payment shall be made by check or money order payable to the Treasury of the United States.

(j) *Interest charges*. The Commission will begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will accrue from the date of the billing, and will be calculated at the rate prescribed in 31 U.S.C. 3717.

(k) *Effect of the Debt Collection Act of 1982 (Pub. L. 97–365)* The Commission may pursue repayment, where appropriate, by employing the provisions of the Debt Collection Act, Public Law 97–365), including disclosure to consumer reporting agencies and use of collection agencies.

[57 FR 10806, Mar. 31, 1992, as amended at 63 FR 45646, Aug. 26, 1998; 64 FR 3012, Jan. 20, 1999; 66 FR 64144, Dec. 12, 2001]