

## Office of the Secretary, Interior

## § 2.20

(b) *Time limit.* A final determination shall be made within 20 working days after receipt of an appeal meeting the requirements of § 2.18(c).

(c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of § 2.17(c) or was extended for fewer than 10 working days, the time for processing of the appeal may be extended to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than 10 working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 2.17(c) requires an extension.

(2) The appellant shall be advised in writing of the reasons for the extension and the date on which a final determination on the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the 20 working day period, or the extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States, as specified in 5 U.S.C. 552(a)(4). When no determination can be reached within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be reached to be dispatched and of the right to seek judicial review.

(d) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the Assistant Secretary—Policy, Budget and Administration shall immediately make the records available or instruct the appropriate bureau to make them immediately available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of

the right to obtain judicial review in the U.S. District Court for the district in which the withheld records are located, or in which the requester resides or has his or her principal place of business or in the U.S. District Court for the District of Columbia, and shall set forth the names and titles or positions of each person responsible for the denial.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 2.15(d), the submitter shall be provided notice as described in § 2.16(b)(2).

### § 2.20 Fees.

(a) *Policy.* (1) Unless waived pursuant to the provisions of § 2.21, fees for responding to FOIA requests shall be charged in accordance with the provisions of this section and the schedule of charges contained in Appendix A to this part.

(2) Fees shall not be charged if the total amount chargeable does not exceed \$15.00.

(3) Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.

(b) *Commercial use requests.* (1) A requester seeking records for commercial use shall be charged fees for costs incurred in document search, duplication and review.

(2) A commercial use requester may not be charged fees for time spent resolving legal and policy issues affecting access to requested records.

(3) A commercial use request is a request from or on behalf of a person who seeks information for a use or purpose that further the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The intended use of records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.

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(c) *Educational and noncommercial scientific institution requests.* (1) A requester seeking records under the auspices of an educational institution in furtherance of scholarly research or a noncommercial scientific institution in furtherance of scientific research shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged fees for costs incurred in—

- (i) Searching for requested records,
- (ii) Examining requested records to determine whether they are exempt from mandatory disclosure,
- (iii) Deleting reasonably segregable exempt matter,
- (iv) Monitoring the requesters' inspection of agency records, or

(v) Resolving legal and policy issues affecting access to requested records.

(3) 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, or an institution of vocational education, which operates a program or programs of scholarly research.

(4) A "noncommercial scientific institution" is an institution that is not operated for commerce, trade or profit and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(d) *News media requests.* (1) A representative of the new media shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Representatives of the news media may not be charged fees for costs incurred in—

- (i) Searching for requested records,
- (ii) Examining requested records to determine whether they are exempt from mandatory disclosure,
- (iii) Deleting reasonably segregable exempt matter,

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(iv) Monitoring the requester's inspection of agency records, or

(v) Resolving legal and policy issues affecting access to requested records.

(3)(i) 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. The term "news" means information that is about current events or that is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, 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. 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.

(ii) Free-lance journalists may be considered "representatives of the news media" if they demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. A publication contract or past record of publication, or evidence of a specific free-lance assignment from a news organization may indicate a solid basis for expecting publication.

(e) *Other requests.* (1) A requester not covered by paragraphs (b), (c) or (d) of this section shall be charged fees for document search and duplication, except that the first two hours of search time and the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged for costs incurred in—

- (i) Examining requested records to determine whether they are exempt from disclosure,
- (ii) Deleting reasonably segregable exempt matter,
- (iii) Monitoring the requester's inspection of agency records, or
- (iv) Resolving legal and policy issues affecting access to requested records.

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(f) *Requests for clarification.* Where a request does not provide sufficient information to determine whether it is covered by paragraph (b), (c), (d) or (e) of this section, the requester should be asked to provide additional clarification. If it is necessary to seek such clarification, the request may be deemed to have not been received for purposes of the time limits established in § 2.17 until the clarification is received. Requests to requesters for clarification shall be made promptly.

(g) *Notice of anticipated fees.* Where a request does not state a willingness to pay fees as high as anticipated by the Department, and the requester has not sought and been granted a full waiver of fees under § 2.21, the request may be deemed to have not been received for purposes of the time limits established in § 2.17 until the requester has been notified of and agrees to pay the anticipated fee. Advice to requesters with respect to anticipated fees shall be provided promptly.

(h) *Advance payment.* (1) Where it is anticipated that allowable fees are likely to exceed \$250.00 and the requester does not have a history of prompt payment of FOIA fees, the requester may be required to make an advance payment of the entire fee before processing of his or her request.

(2) Where a requester has previously failed to pay a fee within 30 calendar days of the date of billing, processing of any new request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees anticipated in connection with the new request.

(3) Advance payment of fees may not be required except as described in paragraphs (h) (1) and (2) of this section.

(4) Issuance of a notice requiring payment of overdue fees or advance payment shall toll the time limit in § 2.17 until receipt of payment.

(i) *Form of payment.* Payment of fees should be made by check or money order payable to the Department of the Interior or the bureau furnishing the information. The term United States or the initials "U.S." should not be included on the check or money order. Where appropriate, the official respon-

sible for handling a request may require that payment by check be made in the form of a certified check.

(j) *Billing procedures.* A bill for collection, Form DI-1040, shall be prepared for each request that requires collection of fees. The requester shall be provided the first sheet of the DI-1040. This Accounting Copy of the Form shall be transmitted to the agency's finance office for entry into accounts receivable records. Upon receipt of payment from the requester, the recipient shall forward the payment along with a copy of the DI-1040 to the finance office.

(k) *Collection of fees.* The bill for collection or an accompanying letter to the requester shall include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations, 4 CFR 102.13, if the fees are not paid within 30 calendar days of the date of the bill for collection is mailed or hand-delivered to the requester. This requirement does not apply if the requester is a unit of state or local government. Other authorities of the Debt Collection Act of 1982 shall be used, as appropriate, to collect the fees (see 4 CFR parts 101-105).

### § 2.21 Waiver of fees.

(a) *Statutory fee waiver.* (1) Documents shall be furnished without charge or at a charge reduced below the fees chargeable under § 2.20 and appendix A to this part if disclosure of the information is in the public interest because it—

(i) Is likely to contribute significantly to public understanding of the operations or activities of the government and

(ii) Is not primarily in the commercial interest of the requester.

(2) Factors to be considered in determining whether disclosure of information "is likely to contribute significantly to public understanding of the operations or activities of the government" are the following:

(i) Does the record concern *the operations or activities of the government?* Records concern the operations or activities of the government if they relate to or will illuminate the manner in which the Department or a bureau is carrying out identifiable operations or