

Office of the Secretary, Interior

§ 2.21

(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

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activities or the manner in which an operation or activity affects the public. The connection between the records and the operations and activities to which they are said to relate should be clear and direct, not remote and attenuated. Records developed outside of the government and submitted to or obtained by the Department may relate to the operations and activities of the government if they are informative on how an agency is carrying out its regulatory, enforcement, procurement or other activities that involve private entities.

(ii) If a record concerns the operations or activities of the government, is its disclosure *likely to contribute to public understanding* of these operations and activities? The likelihood of a contribution to public understanding will depend on consideration of the content of the record, the identity of the requester, and the interrelationship between the two. Is there a logical connection between the content of the requested record and the operations or activities in which the requester is interested? Are the disclosable contents of the record meaningfully informative on the operations or activities? Is the focus of the requester on contribution to public understanding, rather than on the individual understanding of the requester or a narrow segment of interested persons? Does the requester have expertise in the subject area and the ability and intention to disseminate the information to the general public or otherwise use the information in a manner that will contribute to public understanding of government operations or activities? Is the requested information sought by the requester because it may be informative on government operations or activities or because of the intrinsic value of the information independent of the light that it may shed on government operations or activities?

(iii) If there is likely to be a contribution to public understanding, will that contribution be *significant*? A contribution to public understanding will be significant if the information disclosed is new, clearly supports public oversight of Department operations, including the quality of Department activities and the effect of policy and

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regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of the Department. A contribution will not be significant if disclosure will not have a positive impact on the level of public understanding of the operations or activities involved that existed prior to the disclosure. In particular, a significant contribution is not likely to arise from disclosure of information already in the public domain because it has, for example, previously been published or is routinely available to the general public in a public reading room.

(3) Factors to be considered in determining whether disclosure “is primarily in the commercial interest of the requester” are the following:

(i) Does the requester have a *commercial interest* that would be furthered by the requested disclosure? A commercial interest is a commercial, trade or profit interest as these terms are commonly understood. An entity’s status is not determinative. Not only profit-making corporations, but also individuals or other organizations, may have a commercial interest to be served by disclosure, depending on the circumstances involved.

(ii) If the requester has a commercial interest, will disclosure be *primarily* in that interest? The requester’s commercial interest is the primary interest if the magnitude of that interest is greater than the public interest to be served by disclosure. Where a requester is a representative of a news media organization seeking information as part of the news gathering process, it may be presumed that the public interest outweighs the organization’s commercial interest.

(4) *Notice of denial*. If a requested statutory fee waiver or reduction is denied, the requester shall be notified in writing. The notice shall include:

(i) A statement of the basis on which the waiver or reduction has been denied.

(ii) A listing of the names and titles or positions of each person responsible for the denial.

(iii) A statement that the denial may be appealed to the Assistant Secretary—Policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

(b) *Discretionary waivers.* Fees otherwise chargeable may be waived at the discretion of a bureau if a request involves:

(1) Furnishing unauthenticated copies of documents reproduced for gratuitous distribution;

(2) Furnishing one copy of a personal document (e.g., a birth certificate) to a person who has been required to furnish it for retention by the Department;

(3) Furnishing one copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held.

(4) Furnishing records to donors with respect to their gifts;

(5) Furnishing records to individuals or private non-profit organizations having an official voluntary or cooperative relationship with the Department to assist the individual or organization in its work with the Department;

(6) Furnishing records to state, local and foreign governments, public international organizations, and Indian tribes, when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to that of the Department and to do so will help to accomplish the work of the Department;

(7) Furnishing a record when to do so saves costs and yields income equal to the direct cost of providing the records (e.g., where the Department's fee for the service would be included in a billing against the Department);

(8) Furnishing records when to do so is in conformance with generally established business custom (e.g., furnishing personal reference data to prospective employers of former Department employees);

(9) Furnishing one copy of a record in order to assist the requester to obtain financial benefits to which he or she is entitled (e.g., veterans or their dependents, employees with Government employee compensation claims or persons insured by the Government).

§ 2.22 Special rules governing certain information concerning coal obtained under the Mineral Leasing Act.

(a) *Definitions.* As used in the section:

(1) *Act* means the Mineral Leasing Act of February 25, 1920, as amended by the Act of August 4, 1976, Pub. L. 94-377, 90 Stat. 1083 (30 U.S.C. 181 *et seq.*), and the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351 *et seq.*)

(2) *Exploration license* means a license issued by the Secretary of the Interior to conduct coal exploration operations on land subject to the Act pursuant to the authority in section 2(b) of the Act, as amended (30 U.S.C. 201(b)).

(3) *Fair-market value of coal to be leased* means the minimum amount of a bid the Secretary has determined he is willing to accept in leasing coal within leasing tracts offered in general lease sales or reserved and offered for lease to public bodies, including Federal agencies, rural electric cooperatives, or non-profit corporations, controlled by any of such entities pursuant to section 2(a) of the Act (30 U.S.C. 201(a)(1)).

(4) *Information* means data, statistics, samples and other facts, whether analyzed or processed or not, pertaining to Federal coal resources, which fit within an exemption to the Freedom of Information Act, 5 U.S.C. 552(b).

(b) *Applicability.* This section applies to the following categories of information:

(1) *Category A.* Information provided to or obtained by a bureau under section 2(b)(3) of the Act from the holder of an exploration license;

(2) *Category B.* Information acquired from commercial or other sources under service contract with Geological Survey pursuant to section 8A(b) of the Act, and information developed by the Geological Survey under an exploratory program authorized by section 8A of the Act;

(3) *Category C.* Information obtained from commercial sources which the commercial source acquired while not under contract with the United States Government;

(4) *Category D.* Information provided to the Secretary by a federal department or agency pursuant to section 8A(e) of the Act; and