

Management investigation finds agency personnel responsible, these personnel will be subject to disciplinary action by the American Battle Monuments Commission.

§ 404.6 Fees to be charged.

While most information will be furnished promptly at no cost as a service to the general public, fees will be charged if the cost of search and duplication warrants. In those instances where ABMC deems it necessary to charge a fee, ABMC shall use the most efficient and least costly methods to comply with requests for documents, drawings, photographs, and any other materials made available under the FOIA. The Freedom of Information Representative shall charge the fees stated in paragraphs (a) through (g) of this section. The Freedom of Information Representative shall, however, waive the fees in the circumstances stated in § 404.9. The specific fees which ABMC shall charge the requester when so required by the FOIA are as follows:

(a) *Manual searches of records.* \$9.00 per hour for clerical personnel; \$15.00 per hour for supervisory personnel.

(b) *Computer searches for records.* Fees for searches of computerized records shall be the actual cost to the Commission but shall not exceed \$12.00 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer print-outs shall be \$.40 per page. The word "page" refers to paper copies of standard computer size, which normally are 11 × 15 inches.

(c) *Copying fee.* The machine copy fee for each page up to 8½ × 14 shall be \$.25 per page. Copying fees shall not be charged for the first 100 pages of copies unless the copies are requested for commercial purposes.

(d) \$2.00 for each 8 × 10 inch black and white photograph.

(e) \$3.00 for each 8 × 10 inch color photograph.

(f) \$1.75 per cemetery booklet.

(g) \$1.50 per lithograph.

§ 404.7 Assessment and collection of fees.

(a) *Assessment of fees.* (1) ABMC shall assess interest charges on an unpaid bill starting on the 31st day following

the day on which the billing was dispatched. Once the fee has been received by ABMC, even if not processed, accrual of interest will cease. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C. and will accrue from the date billing is sent.

(2) *Charges for unsuccessful searches.* If ABMC estimates that charges for an unsuccessful search may exceed \$10.00, it shall so inform the requester unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet the requester's needs at a lower cost. Dispatch of such a notice shall temporarily suspend the ten day period for response by ABMC until a reply is received from the requester.

(3) *Aggregating requests.* Except for requests that are for a commercial use, ABMC shall not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When ABMC believes that a group of requesters are acting in concert and attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, ABMC shall aggregate any such requests and charge accordingly. One element to be considered is the time period in which the requests have been made. Before aggregating requests from more than one requester, ABMC must be reasonably certain that the requesters are acting specifically to avoid payment of fees. In no case shall ABMC aggregate multiple requests on unrelated subjects from one requester.

(4) *Advance payments.* ABMC shall not require payment for fees before work has commenced or continued on a request unless:

(i) ABMC estimates that the charges may exceed \$25.00. In such an event, ABMC shall notify the requester of the estimated cost and may require an advance payment of an amount up to the full amount of estimated charges; or

(ii) A requester has previously failed to pay a fee within 30 days of the date

§ 404.8

36 CFR Ch. IV (7-1-01 Edition)

of billing. In this event, ABMC shall require the requester to pay the full amount owed plus any applicable interest and make an advance payment of the full amount of the estimated fee before ABMC begins to process a new request or a pending request from that requester.

(iii) When ABMC acts under paragraph (a)(4)(i) or (ii) of this section, the administrative time limits prescribed in § 404.3 will begin only after ABMC has received fee payments described above.

(5) *Form of payment.* Remittances shall be in the form of a personal check or bank draft drawn on any bank in the United States, a postal money order, or cash. Remittances shall be made payable to the American Battle Monuments Commission.

(6) ABMC will not defray cost sending records by special methods such as express mail or for transportation of personnel.

(b) *Restrictions on assessing fees.* With the exception of requesters seeking documents for commercial use, section (a)(4)(A)(iv) of the Freedom of Information Act, as amended, requires ABMC to provide the first 100 pages of duplication and the first two hours of search time without charge. ABMC shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. ABMC will not begin to assess fees until it has first provided the free search and reproduction authorized.

§ 404.8 Categories of requesters.

There are four categories of FOIA requesters: Commercial; educational and noncommercial scientific institutions; representatives of the news media; and all others. The fees to be charges each of these categories of requesters are as follows:

(a) *Commercial.* When ABMC receives a request for documents for commercial use, it shall assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters are not entitled to two hours of free search time or 100 free pages of reproduction. ABMC shall recover the cost of searching for the

records even if ultimately there is no disclosure of records. Requesters must provide a reasonable description of the records sought.

(b) *Educational and non-commercial scientific institutions.* ABMC shall provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, except there will be no charge for the first 100 pages of duplication. To be eligible for inclusion in this category, requesters must show that the request is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must provide a reasonable description of the records being sought;

(c) *Representatives of the news media.* ABMC shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, except there will be no charge for the first 100 pages. A request for records supporting the news-dissemination function of the requester shall not be considered commercial use. Requesters must provide a reasonable description of the records sought;

(d) *All other requesters.* ABMC shall charge requesters who do not fit into any of the above categories fees that recover the full reasonable costs of direct search and reproduction records responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requesters must provide reasonable description of the records sought.

§ 404.9 Waiver of fees.

The Freedom of Information Representative shall waive all fees assessed under 404, if the following two conditions are satisfied: Disclosure of the information is in the public interest as it is likely to contribute significantly to public understanding of the operations or activities of the government; and disclosure is not primarily in the commercial interest of the requester. The Freedom of Information