

## Pennsylvania Avenue Development Corporation

## § 902.82

been denied may submit a written appeal to the Corporation requesting reconsideration of the decision.

[41 FR 43143, Sept. 30, 1976, as amended at 48 FR 17354, Apr. 22, 1983]

### § 902.71 Forms for appeal.

Although no particular written form is prescribed for on appeal, the letter or similar written statement appealing a denial of a record shall contain a description of the record requested, the name and position of the official who denied the request, the reason(s) given for the denial, and other pertinent facts and statements deemed appropriate by the appellant. The Corporation may request additional details if the information submitted is insufficient to support an appeal.

### § 902.72 Time limitations on filing an appeal.

An appeal must be submitted in writing within thirty days from the date of receipt of the initial written denial and must contain the information requested in § 902.71.

### § 902.73 Where to appeal.

An appeal shall be addressed to the Chairman of the Board of Directors, Pennsylvania Avenue Development Corporation, 1331 Pennsylvania Avenue, NW., Suite 1220 North, Washington, DC 20004.

[41 FR 43143, Sept. 30, 1976, as amended at 50 FR 45824, Nov. 4, 1985]

### § 902.74 Agency decision.

(a) The Chairman shall have sole authority to act on an appeal, which seeks to reverse an initial decision denying disclosure of a record. He shall review each appeal and provide the appellant and other interested parties with a written notice of his decision. The decision of the Chairman as to the availability of the record is administratively final.

(b) If the decision of the Chairman sustains the refusal to disclose, the notice of decision shall set forth the reasons for the refusal, including the specific exemptions from disclosure under the Act that are the bases of the decision not to disclose. The notice shall further advise the appellant that judi-

cial review is available on complaint to the appropriate District Court of the United States, as provided in section 552(a)(4)(B) of title 5 U.S.C.

(c) As set out in § 902.61, the final decision on appeal shall be made within 20 workdays after the receipt of the appeal. An extension of this limitation is authorized as prescribed under § 902.62.

## Subpart I—Fees

### § 902.80 General.

(a) This subpart prescribes fees for services performed by the Corporation under subparts D and E of this part. This subpart shall only apply to the services described herein. The fees for the service listed reflect the actual cost of the work involved in compiling requested record and copying, if necessary.

(b) A fee shall not be charged for time spent in resolving legal or policy issues.

[41 FR 43143, Sept. 30, 1976, as amended at 52 FR 26677, July 16, 1987]

### § 902.81 Payment of fees.

The fees prescribed in this part may be paid in cash or by check, draft, or postal money order made payable to the Pennsylvania Avenue Development Corporation.

[52 FR 26677, July 16, 1987]

### § 902.82 Fee schedule.

(a) *Definitions.* For purposes of this section—

(1) A *commercial use request* is a request from or on behalf of one 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. In determining whether a requester properly belongs in this category, the Corporation will determine the use to which the requester will put the records sought. Where the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Corporation will seek additional clarification before assigning the request to a specific category.

(2) *Direct costs* means those expenditures the Corporation actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) records to respond to an FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(3) *Duplication* means the process of making a copy of a record necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(4) *Educational institution* means 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.

(5) *Non-commercial scientific institution* means an institution that is not operated on a *commercial* basis, within the meaning of paragraph (a)(1) of this section 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.

(6) *Representative of the new media* means 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 would be of current interest to the public. Examples of new media entities include 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. These examples are not intended to be all-inclusive. Moreover, 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. *Freelance* journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Corporation may also look to the past publication record of a requester in making this determination.

(7) *Review* means the process of examining records located in response to a request that is for a commercial use (see paragraph (a)(1) of this section) to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. A line-by-line search will not be conducted when merely duplicating an entire record would be the less expensive and quicker method of complying with the request. *Search* does not include *review* of material to determine whether the material is exempt from disclosure (see paragraph (a)(7) of this section). Searches may be done manually or by computer using existing programming.

(b) The following provisions shall apply with respect to services rendered to the public in processing requests for disclosure of the Corporation's records under this part:

(1) *Fee for duplication of records: \$0.25 per page.* When the Corporation estimates that duplication charges are likely to exceed \$25.00, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. The

Corporation will offer the requester the opportunity to confer with the Corporation's staff in order to reformulate the request to meet the requester's needs at a lower cost.

(2) *Search and review fees.* (i) Searches for records by clerical personnel: \$7.00 per hour, including the time spent searching for and copying any records.

(ii) Search for and review of records by professional and supervisory personnel: \$11.50 per hour spent searching for any record or reviewing any record to determine whether it may be disclosed, including time spent in copying any record.

(iii) Except for requests seeking records for a commercial use, the Corporation will provide the first 100 pages of duplication and the first two hours of search time without charge. The word *pages* means paper copies of a standard size, either 8½" by 11" or 14" by 14".

(3) *Duplication of architectural drawings, maps, and similar materials:* (per copy) \$10.00.

(4) *Reproduction of 35 mm slides:* (per copy) \$1.00.

(5) *Reproduction of enlarged, black and white photographs:* (per copy) \$10.00.

(6) *Reproduction of enlarged color photographs:* (per copy) \$17.00.

(7) *Certification and validation fee:* \$1.75 for each certification or validation of a copy of any record.

(8) *Categories of FOIA requesters and fees to be charged*—(i) *Commercial use requesters.* When the Corporation receives a request for records for commercial use, it will assess charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought.

(ii) *Educational and non-commercial scientific institution requesters.* The Corporation shall provide copies of records to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly (if the request is from an educational institution) or sci-

entific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(iii) *Requesters who are representatives of the news media.* The Corporation shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in the definition of *representative of the news media* in paragraph (a)(6) of this section, and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requestors must reasonably describe the records sought.

(iv) *All other requesters.* The Corporation will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are 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. Requests from record subjects for records about themselves filed in the Corporation's systems of records will be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

(9) *Interest.* In the event a requester fails to remit payment of fees charged for processing a request under this part within 30 days from the date such fees were billed, interest on such fees may be assessed beginning on the 31st day after the billing date at the rate prescribed in section 3717 of title 31 U.S.C., and will accrue from the date of the billing.

(10) *Unsuccessful searches.* Except as provided in paragraph (b)(8)(iv) of this section, the cost of searching for a requested record shall be charged even if the search fails to locate such record or it is determined that the record is exempt from disclosure.

(11) *Aggregating requests.* A requester must not file multiple requests at the same time, each seeking portions of a

## § 902.83

record or records, solely in order to avoid payment of fees. When the Corporation reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Corporation may aggregate any such requests and charge accordingly.

(12) *Advance payments.* The Corporation will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request unless:

(i) The Corporation estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250; or

(ii) If a requester has previously failed to make timely payments (i.e., within 30 days of billing date) of fees charged under this part, the requester may be required to pay the full amount owed plus any applicable interest accrued thereon or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the Corporation begins to process a new request or a pending request from this requester.

(iii) With regard to any request coming within paragraphs (b)(12) (i) and (ii) of this section, the administrative time limits set forth in §§ 902.60, 902.61, and 902.62 of this part will begin to run only after the Corporation has received the requisite fee payments.

(iv) *Non-payment.* In the event of non-payment of billed charges for disclosure of records, the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365), including disclosure to consumer credit reporting agencies and referral to collection agencies, where appropriate, may be utilized to obtain payment.

[52 FR 26677, July 16, 1987]

### § 902.83 Waiver or reduction of fees.

Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where:

(a) Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or ac-

## 36 CFR Ch. IX (7-1-01 Edition)

tivities of the government and is not primarily in the commercial interest of the requester; or

(b) The costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

[52 FR 26679, July 16, 1987]

## PART 903—PRIVACY ACT

Sec.

903.1 Purpose and scope.

903.2 Definitions.

903.3 Procedures for notification of records pertaining to individuals.

903.4 Requests for access to records.

903.5 Response to request for access.

903.6 Appeal of initial denial of access.

903.7 Requests for amendment of record.

903.8 Review of request for amendment of record.

903.9 Appeal of initial adverse determination of request for amendment of record.

903.10 Disclosure of records to persons or agencies.

903.11 Routine uses of records maintained in the system of records.

903.12 Fees for furnishing and reproducing records.

903.13 Penalties.

AUTHORITY: 5 U.S.C. 552a; 40 U.S.C. 870.

SOURCE: 42 FR 5973, Feb. 1, 1977, unless otherwise noted.

### § 903.1 Purpose and scope.

The purpose of this part is to enable the Pennsylvania Avenue Development Corporation to implement the Privacy Act of 1974, and in particular the provisions of 5 U.S.C. 552a, as added by the Act. The Act was designed to insure that personal information about individuals collected by Federal agencies be limited to that which is legally authorized and necessary, and that the information is maintained in a manner which precludes unwarranted intrusions upon individual privacy. The regulations in this part establish, and make public, procedures whereby an individual can:

(a) Request notification of whether or not the Corporation maintains or has disclosed a record pertaining to him or her,

(b) Request access to such a record or an accounting of its disclosure,

(c) Request that the record be amended, and