

§51-8.10

41 CFR Ch. 51 (7-1-02 Edition)

§51-8.10 Appeals.

(a) An appeal to the Chairperson of any denial, in whole or in part, of a request for access to and copies of material may be made by submission of a written request for reconsideration. Such requests shall state the specific reasons for reconsideration that address directly the grounds upon which the denial was based. Requests must be addressed to the Chairperson at the Committee offices and must be received within 30 calendar days of the requester's receipt of the Committee's initial denial.

(b) The Chairperson shall make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the request for reconsideration. The person making such a request shall immediately be notified by mail of the determination.

(c) If the initial denial is reversed by the Chairperson, any material with which the reversal is concerned shall be made available in accordance with §51-8.7(b).

(d) If the denial is upheld, in whole or in part, the Chairperson shall include in the notification a statement of the requester's right of judicial review under 5 U.S.C. 552(a)(4), and the name and position of the person responsible for the denial.

[54 FR 15189, Apr. 17, 1989. Redesignated at 56 FR 48983, Sept. 26, 1991, and amended at 59 FR 59345, Nov. 16, 1994]

§51-8.11 Extensions of time.

(a) Whenever unusual circumstances exist, such as those set forth in paragraph (b) of this section, the times within which determinations must be made by the Executive Director on requests for access (10 working days), and by the Chairperson on requests for reconsideration (20 working days), may be extended by written notice to the requester for a time not to exceed an aggregate of 30 working days. The notice shall set forth the reasons for such extension, and the date on which a determination is expected to be made. Extensions of time shall be utilized only to the extent reasonably necessary to the proper processing of the particular request.

(b) As used in this section, "unusual circumstances" may mean:

(1) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are the subject of a single request;

(2) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request; or

(3) The need to obtain and consider the views of a business information submitter under §51-8.8.

[54 FR 15189, Apr. 17, 1989. Redesignated at 56 FR 48983, Sept. 26, 1991, and amended at 59 FR 59345, Nov. 16, 1994]

§51-8.12 Fee schedule.

(a) This schedule sets forth fees to be charged for processing requests for records under the FOIA. No higher fees or charges in addition to those provided for in this schedule may be charged a party requesting records under FOIA.

(b) Subject to the criteria set forth in §51-8.13, fees may be assessed under FOIA on all requests involving document search, duplication, and review. Fees may also be charged in situations involving special service to requests, such as certifying that records requested are true copies, or sending records by special methods such as express mail, etc.

(c) Instances in which fees may not be charged are as follows:

(1) No charge shall be made for the first 100 pages of duplicated information (8½"×14" or smaller-size paper), or the first two hours of manual search time, or the first two minutes of computer search time, except on requests seeking documents for a commercial use, as specified in §51-8.13;

(2) Also, no charge shall be made—even to commercial use requesters—if the cost of collecting a fee would be equal to or greater than the fee itself;

(3) In addition, fees shall not be charged for time spent by an agency employee in resolving legal or policy issues, or in monitoring a requester's inspection of agency records;

(4) Documents shall also be furnished without charge when members of the

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public provide their own copying equipment, in which case no copying fee will be charged (although search and review fees may still be assessed).

(d) Fees for records and related services are as follows:

(1) The fee for photocopies of pages 8½"×14" or smaller shall be \$0.20 for each page;

(2) The fee for photocopies larger than 8½"×14" shall be \$0.50 per linear foot of the longest side of the copy;

(3) The fee for other forms of duplicated information, such as microfilm, audio-visual materials, or machine-readable documentation (i.e., magnetic tape or disk) shall be the actual direct cost of producing the document(s);

(4) Manual searches shall be charged at the salary rate of the employee conducting the search, plus 16 percent of the employee's basic pay.

(e) Computer searches and services shall be charged at the rate of \$22.00 per minute. The \$22.00-per-minute rate includes the cost of operating the central processing unit (CPU), and the computer operator's salary. When the services of a computer programmer or a computer program analyst are required in connection with an FOIA request, the fee for those services shall be \$16.00 and \$20.00 per hour, respectively.

(f) Charges for unsuccessful searches, or searches which fail to locate records or which locate records which are exempt from disclosure, shall be assessed at the same fee rate as searches which result in disclosure of records.

(g) The fee for providing review services shall be the hourly salary rate (i.e., basic pay plus 16 percent) of the employee conducting the review to determine whether any information is exempt from mandatory disclosure.

§51-8.13 Fees charged by category of requester.

(a) Under the FOIA, as amended, there are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each category.

(b) Commercial use requesters. For commercial use requesters, the Com-

mittee shall assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents referenced in §51-8.12(c)(1). The Committee may charge for the cost of searching for and reviewing records for commercial use requesters even if there is ultimately no disclosure of records.

(1) A commercial use requester is defined as 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.

(2) In determining whether a requester properly belongs in this category the Committee must determine whether the requester will put the documents to a commercial use. Where the Committee 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 Committee may seek additional clarification from the requester.

(c) Educational and non-commercial scientific institution requesters. Fees for this category of requesters shall be limited to the cost of providing duplication service alone, minus the charge for the first 100 reproduced pages. No charge shall be made for search or review services. To qualify for this category, requesters must show that the request is being made as authorized by and under the auspices of an eligible institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly research (if the request is from a non-commercial scientific institution).

(1) The term "educational institution" refers to 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.