

(i) The term *representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Factors indicating such representation status include press accreditation, guild membership, a history of continuing publication, business registration, and/or Federal Communication Commission licensing, among others. For purpose of this definition the term *news* contemplates information that is about current events or that would be of current interest to the public. A freelance journalist shall be treated as a representative of the news media if the person can demonstrate a solid basis for expecting publication of matters related to the requested information through a qualifying news media entity. A publication contract with a qualifying news media entity satisfies this requirement. An individual's past publication record with organizations of the foregoing nature is also relevant to this determination. Examples of news media entities include:

- (1) Television or radio stations broadcasting to the public at large, and
- (2) Publishers of periodicals including newsletters (but only in those instances where they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public.

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§ 70.39 Statutes specifically providing for setting of fees.

Nothing in this subpart shall supersede fees chargeable under a statute other than the Freedom of Information Act which specifically provides for setting the level of fees for particular types of records.

§ 70.40 Charges assessed for the production of records.

(a) There are three types of charges assessed in connection with the production of agency records in response to a Freedom of Information Act request: costs associated with

- (1) Searching for or locating responsive records (search costs),
- (2) Reproducing such records (reproduction costs), and

(3) Reviewing records to determine whether any materials are exempt (review costs).

(b) There are four types of FOIA requesters:

- (1) Commercial use requesters,
- (2) Educational and non-commercial scientific institutions,
- (3) Representatives of the news media, and
- (4) All other requesters.

Depending upon the nature of the requester, one or all of the foregoing costs may be assessed. Paragraph (c) of this section sets forth the extent to which the foregoing costs may be assessed against each type of requester. Paragraph (d) of this section establishes the actual rate to be charged in connection with each of the foregoing types of costs. Paragraph (e) delineates the manner in which costs are to be assessed against an individual seeking access to records about himself or herself which are covered by the Privacy Act.

(c) (1) *Commercial use requester.* When a commercial use requester as defined in § 70.38(f) makes a request for documents, search costs, reproduction costs and review costs may be assessed in their entirety.

(2) *Educational or non-commercial, scientific institution requester.* When an educational or non-commercial scientific institution requester, as defined in §§ 70.38 (g) and (h), makes a request, only reproduction costs may be assessed, excluding charges for the first 100 pages.

(3) *Request by representative of news media.* When a representative of the news media as defined in § 70.38(i) makes a request, only reproduction costs may be assessed, excluding charges for the first 100 pages.

(4) *All other requesters.* Requesters who do not fall within paragraphs (c)(1), (2), and (3) of this section may be charged search costs and reproduction costs, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Where computer searches are involved, i.e., executing an existing program, however, the monetary equivalent of two hours of search time by a