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substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(b) Expedited processing of a request for records, or an appeal of a denial of a request for expedited processing, shall be provided when the requester demonstrates a compelling need for the information and in other cases as determined by the officer processing the request. A requester seeking expedited processing can demonstrate a compelling need by submitting a statement certified by the requester to be true and correct to the best of such person's knowledge and belief and that satisfies the statutory and regulatory definitions of compelling need. Requesters shall be notified within ten (10) calendar days after receipt of such a request whether expedited processing, or an appeal of a denial of a request for expedited processing, was granted. As used in this section, "compelling need" means:

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

[64 FR 18799, Apr. 16, 1999]

§ 2411.9 Effect of failure to meet time limits.

Failure by the Authority, the General Counsel or the Panel either to deny or grant any request under this part within the time limits prescribed by the Freedom of Information Act, as amended, 5 U.S.C. 552, and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making this request.

§ 2411.10 Fees.

(a) *Definitions.* For the purpose of this section:

(1) The term *direct costs* means those expenditures which the Authority, the General Counsel or the Panel actually incurs in searching for and duplicating

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(and in the case of commercial requesters, reviewing) documents to respond to a 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 the 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.

(2) The term *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 documents. Searches may be done manually or by computer using existing programming.

(3) The term *duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) The term *review* refers to the process of examining documents located in response to a commercial use request (see paragraph (a)(5) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents 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.

(5) The term "*commercial use*" request refers to 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 Authority, the General Counsel or the Panel will look first to the use to which a requester will put the document requested. Where the Authority, the General Counsel or the Panel 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 Authority, the General

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Counsel or the Panel may seek additional clarification before assigning the request to a specific category.

(6) 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.

(7) The term *non-commercial scientific institution* refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) The term *representative of the news media* refers to 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 news 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. In the case of "freelance" journalists, they may be regarded as working for a news organization if they 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 Authority, the General Counsel or the Panel may also look to the past publication record of a requester, press accreditation, guild membership, business registration, Federal Communications Commission licensing, or similar credentials of a requester in making this determination.

(b) *Exceptions to fee charges.* (1) With the exception of requesters seeking documents for a commercial use, the Authority, the General Counsel or the

Panel will provide the first 100 pages of duplication and the first two hours of search time without charge. The word "pages" in this paragraph refers to paper copies of standard size, usually 8½" by 11", or their equivalent in microfiche or computer disks. The term "search time" in this paragraph is based on a manual search for records. In applying this term to searches made by computer, when the cost of the search as set forth in paragraph (d)(2) of this section equals the equivalent dollar amount of two hours of the salary of the person performing the search, the Authority, the General Counsel or the Panel will begin assessing charges for computer search.

(2) The Authority, the General Counsel, or the Panel will not charge fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself.

(3)(i) The Authority, the General Counsel or the Panel will provide documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(ii) In determining whether disclosure is in the public interest under paragraph (b)(3)(i) of this section, the Authority, the General Counsel, and the Panel will consider the following factors:

(a) *The subject of the request.* Whether the subject of the requested records concerns "the operations or activities of the government";

(b) *The informative value of the information to be disclosed.* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(c) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to "public understanding";

(d) *The significance of the contribution to the public understanding.* Whether the

disclosure is likely to contribute “significantly” to public understanding of government operations or activities;

(e) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(f) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primary in the commercial interest of the requester.”

(iii) A request for a fee waiver based on the public interest under paragraph (b)(3)(i) of this section must address these factors as they apply to the request for records in order to be considered by the Authority, the General Counsel, or the Panel.

(c) *Level of fees to be charged.* The level of fees to be charged by the Authority, the General Counsel or the Panel, in accordance with the schedule set forth in paragraph (d) of this section, depends on the category of the requester. The fee levels to be charged are as follows:

(1) A request for documents appearing to be for commercial use will be charged to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(2) A request for documents from an educational or non-commercial scientific institution will be charged 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 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 scientific (if the request is from a non-commercial scientific institution) research.

(3) The Authority, the General Counsel or the Panel shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages.

(4) The Authority, the General Counsel or the Panel shall charge requesters who do not fit into any of the categories above fees which recover the full 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 Authority, General Counsel, or Panel systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974, which permits fees only for reproduction.

All requesters must reasonably describe the records sought.

(d) The following fees shall be charged in accordance with paragraph (c) of this section:

(1) *Manual searches for records.* The salary rate (i.e., basic pay plus 16 percent) of the employee(s) making the search. Search time under this paragraph and paragraph (d)(2) of this section may be charged for even if the Authority, the General Counsel or the Panel fails to locate records or if records located are determined to be exempt from disclosure.

(2) *Computer searches for records.* \$4.15 per quarter hour, which the Authority, the General Counsel and the Panel determined to be the actual direct cost of providing the service, including computer search time directly attributable to searching for records responsive to a FOIA request, runs, and operator salary apportionable to the search.

(3) *Review of records.* The salary rate (i.e., basic pay plus 16 percent) of the employee(s) conducting the review. This charge applies only to requesters who are seeking documents for commercial use, and only to the review necessary at the initial administrative level to determine the applicability of any relevant FOIA exemptions, and not at the administrative appeal level of an exemption already applied.

(4) *Duplication of records.* Twenty-five cents per page for paper copy reproduction of documents, which the Authority, the General Counsel and the Panel determined is the reasonable direct cost of making such copies, taking into account the average salary of the operator and the cost of the reproduction

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machinery. For copies of records prepared by computer, such as tapes or printouts, the Authority, the General Counsel or the Panel shall charge the actual cost, including operator time, of production of the tape or printout.

(5) *Forwarding material to destination.* Postage, insurance and special fees will be charged on an actual cost basis.

(e) *Aggregating requests.* When the Authority, the General Counsel or the Panel reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Authority, the General Counsel or the Panel will aggregate any such requests and charge accordingly.

(f) *Charging interest.* Interest at the rate prescribed in 31 U.S.C. 3717 may be charged those requesters who fail to pay fees charged, beginning on the 30th day following the billing date. Receipt of a fee by the Authority, the General Counsel or the Panel, whether processed or not, will stay the accrual of interest.

(g) *Advanced payments.* The Authority, the General Counsel or the Panel will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The Authority, the General Counsel or the Panel estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then the Authority, the General Counsel or the Panel will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), in which case the Authority, the General Counsel or the Panel requires the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that the requester has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee

before the agency begins to process a new request or a pending request from that requester. When the Authority, the General Counsel or the Panel acts under paragraph (g)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extension of these time limits) will begin only after the Authority, the General Counsel or the Panel has received fee payments described above.

(h) Requests for copies of transcripts of hearings should be made to the official hearing reporter. However, a person may request a copy of a transcript of a hearing from the Authority, the Panel or the General Counsel, as appropriate. In such instances, the Authority, the General Counsel or the Panel, as appropriate, may, by agreement with the person making the request, make arrangements with commercial firms for required services to be charged directly to the requester.

(i) Payment of fees shall be made by check or money order payable to the U.S. Treasury.

[52 FR 26128, July 13, 1987, as amended at 62 FR 60997, Nov. 14, 1997]

§2411.11 Compliance with subpoenas.

No member of the Authority or the Panel, or the General Counsel, or other officer or employee of the Authority, the Panel, or the General Counsel shall produce or present any files, documents, reports, memoranda, or records of the Authority, the Panel or the General Counsel, or testify in behalf of any party to any cause pending in any arbitration or in any court or before the Authority or the Panel, or any other board, commission, or administrative agency of the United States, territory, or the District of Columbia with respect to any information, facts, or other matter to their knowledge in their official capacity or with respect to the contents of any files, documents, reports, memoranda, or records of the Authority, the Panel or the General Counsel, whether in answer to a subpoena, subpoena duces tecum, or otherwise, without the written consent of