

§212.36

with that decision, may appeal pursuant to the same procedures as apply under §212.36 and §212.37 of this part.

(f) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, Section (4)(A)(iv) of the FOIA, as amended, requires agencies to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits agencies from charging 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. These provisions work together so that, except for commercial use requesters, the Agency will not begin to assess fees until it has provided such free search and reproduction. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, the Agency will determine the cost of only ten minutes of search time and only five pages of reproduction. If this cost is equal to or less than the cost of processing the payment instrument—a figure which the Agency will from time to time review and determine—then there will be no charge to the requester.

(g) *Other provisions—(1) Charges for unsuccessful search.* The Agency will assess charges for time spent searching even if the Agency fails to locate the records or if records located are determined to be exempt from disclosure.

(2) *Aggregating requesters.* When the Agency 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 Agency will aggregate any such requesters and charge accordingly.

(3) *Effect of the Debt Collection Act of 1982 (Public Law 97-365).* The Agency will use the authorities of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

(4) *Remittances.* (i) Remittances will be in U.S. Dollars in the form of either a personal check or bank draft drawn on a bank in the United States or a money order.

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(ii) Remittances shall be made payable to the order of the U.S. Treasury and mailed to the Chief, Customer Outreach and Oversight Staff, at the address set forth in §212.33(a) of this part.

§212.36 Denial of request for access to records.

(a) If it is determined that the Agency cannot comply with all or part of a request for records, the person making the request shall be immediately notified of the determination, the reasons for the determination, the name and title of each officer responsible for the denial, and the right of the person to appeal the adverse determination.

(b) The denial of a request for records may be made, initially, only by the Chief, Customer Outreach and Oversight Staff, or his/her designee.

(c) (1) Any person who has been denied access to records pursuant to this section may appeal the relevant decision not later than thirty days after the date of the notification of denial or, in the case of a partial denial, not later than thirty days after the date the releasable documents are actually furnished to the person making the request, whichever is later. The appeal shall be in writing addressed to the Agency's FOIA Appeals Officer, who is:

The Director, Office of Administrative Services, Bureau for Management, Room 803, SA-2, Agency for International Development, 21st and Virginia Ave., N.W., Washington, D.C., 20523-0217.

(2) In order for the Agency to make a timely response to the appeal, both the text of the appeal and its envelope must be plainly marked "FOIA Appeal". The appeal must contain a reasonable description of the record sought and withheld, a copy of the initial decision to deny access and any other information that will enable the Appeals Officer to make the final decision.

§212.37 Procedures for agency consideration of appeals.

(a) Upon receipt of the appeal by the Appeals Officer, a maximum of twenty working days will normally be taken to decide the appeal. In unusual circumstances, as defined in §212.34, the twenty working days may be extended by ten working days or by the number