

writing, signed by the Deputy Director of the Office.

(c) If the decision is in favor of the person making the request, the Deputy Director shall order records promptly made available to the person making the request.

(d) A denial in whole or in part of a request on appeal shall set forth the exemption relied on and a brief explanation of how the exemption applied to the records withheld and the reasons for asserting it, if different from that described by the General Counsel or his or her designee under § 2502.10. The denial shall state that the person making the request may, if dissatisfied with the decision on appeal, file a civil action in the district in which the person resides or has his principal place of business, in the district where the records are located, or in the District of Columbia.

(e) No personal appearance, oral argument or hearing will ordinarily be permitted in connection with an appeal to the Office of Administration.

(f) On appeal, the Office may reduce any fees previously assessed.

[45 FR 47112, July 14, 1980. Redesignated and amended at 49 FR 28234, July 11, 1984; 56 FR 5742, Feb. 13, 1991]

CHARGES FOR SEARCH AND REPRODUCTION

§ 2502.11 Definitions.

For the purpose of this part:

(a) All the terms defined in the Freedom of Information Act apply.

(b) A *statute specifically providing for setting the level of fees for particular types of records* (5 U.S.C. 552(a)(4)(vi)) means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of agencies in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return overdue revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

Statutes, such as the User Fee Statute, which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents do not supersede the Freedom of Information Act under section (a)(4)(A)(vi) of that statute.

(c) The term *direct costs* means those expenditures that OA incurs in searching for and duplicating (and in the case of commercial requestors, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the 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.

(d) 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. OA employees should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requestor. For example, employees should not engage in a line-by-line search when merely duplicating an entire document would prove the least expensive and quicker method of complying with a request. *Search* should be distinguished, moreover, from *review* of material in order to determine whether the material is exempt from disclosure (see paragraph (f) of this section). Searches may be done manually or by computer using existing programming.

(e) 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, microform, audio-visual materials, or machine readable (e.g. magnetic tape or disk), among others.

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The copy provided must be in a form that is reasonably usable by the requestors.

(f) The term *review* refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (g) 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.

(g) 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 requestor or the person on whose behalf the request is made. In determining whether the requestor properly belongs in this category, OA must determine the use to which a requestor will put the documents requested. Moreover, where an OA employee has reasonable cause to doubt the use to which a requestor will put the records sought, or where that use is not clear from the request itself, the employee should seek additional clarification before assigning the request to a specific category.

(h) 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, or an institution of vocational education, that operates a program or programs of scholarly research.

(i) 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 (g) 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.

(j) 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

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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 and 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. In the case of *free lance* journalists, they 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 OA may also look to the past publication record of a requestor in making this determination.

[56 FR 5742, Feb. 13, 1991]

§ 2502.12 Fees to be charged—general.

OA should charge fees that recoup the full allowable direct costs it incurs. Moreover, it shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see definition in §2502.11(b)), such as the NTIS, OA should inform requestors of the steps necessary to obtain records from those sources.

(a) *Manual searches for records.* OA will charge at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the search.

(b) *Computer searches for records.* OA will charge at the actual direct cost of providing this service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.