

§ 2201.8 Fees for copying, searching, and review.

(a) *Discretion in charging fees*—(1) *Fees required unless waived.* The Freedom of Information Act Officer shall charge the fees in paragraph (b) of this section unless the fees for a request are less than \$10, in which case no fees shall be charged. The Freedom of Information Act Officer shall, however, waive the fees in the circumstances stated in § 2201.9.

(2) *News media requests deemed not commercial.* Requests made for a commercial use are generally subject to higher fees than requests from a representative of the news media. For the purpose of this section, a request from a representative of the news media that supports the news dissemination function of the requester will not be considered to be for a commercial use.

(3) *Determination of commercial use request.* A 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. Where the Freedom of Information Act Officer 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 Freedom of Information Act Officer may seek clarification from the requester before assigning the request to a specific category for fee assessment purposes.

(b) *Types of fees*—(1) *Copying fee.* The fee per copy of each page up to 8½"×14" shall be \$.25 per copy per page. Copying fees shall not be charged for the first 100 pages of copies unless the copies are requested for a commercial use. One copy of a Commission or judge's decision will be provided free of charge. See § 2201.5(a).

(2) *Search fee.* The fee for searching for information and records shall be \$19 per hour of clerical time and \$46 per hour of professional time. Fees for searches of computerized records shall be the actual cost to the Commission but shall not exceed \$300 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer printouts shall be \$.40 per page. Commercial requesters

shall be charged for all search time. Time spent on unsuccessful searches shall be fully charged. However, search fees shall be limited or not charged as follows:

(i) *Easily identifiable decisions.* Search fees shall not be charged for searching for decisions that the requester identifies by name and date, or by docket number, or that are otherwise easily identifiable.

(ii) *Educational, scientific or news media requests.* No fee shall be charged if the request is not for a commercial use and is by an educational or scientific institution, whose purpose is scholarly or scientific research, or by a representative of the news media.

(iii) *Other non-commercial requests.* No fee shall be charged for the first two hours of searching if the request is not for a commercial use and is not by an educational or scientific institution, or a representative of the news media.

(iv) *Requests for records about self.* No fee shall be charged to search for records filed in the Commission's systems of records if the requester is the subject of the requested records. See the Privacy Act of 1974, 5 U.S.C. 552a(f)(5) (fees to be charged only for copying).

(3) *Review fee.* A review fee shall be charged only for commercial requests. The review fee shall be charged for the initial examination of documents located in response to a request to determine if it may be withheld from disclosure, and for the excision of withholdable portions, but shall not be charged for review by the Chairman under § 2201.7(c). The review fee is \$20 per hour.

(c) *Aggregation of requests.* When the Freedom of Information Act Officer reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Freedom of Information Act Officer may aggregate any such requests and charge accordingly.

(d) *Certification or authentication.* The fee for certification or authentication shall be \$3 per document.

(e) *Fees likely to exceed \$25.* If copying or search charges are likely to exceed \$25, the Freedom of Information Act

Officer shall notify the requester of the estimated amount of the charges, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. The notification shall offer the requester an opportunity to confer with the Freedom of Information Act Officer to reformulate the request to meet the requester's needs at a lower cost.

(f) *Advance payments.* Advance payment of fees will generally not be required. If, however, charges are likely to exceed \$250, the Freedom of Information Act Officer shall notify the requester of the likely cost and: if the requester has a history of prompt payment of FOIA charges, obtain satisfactory assurance of full payment; or if the requester has no history of payment, require an advance payment of an amount up to the full estimated charge. If the requester has previously failed to pay a fee within 30 days of the date of billing, the Freedom of Information Act Officer may request the requester to pay the full amount owed plus any interest owed as provided in paragraph (g) of this section or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated charges before the Freedom of Information Act Officer begins to process the new request or a pending request from that requester.

(g) *Interest on unpaid bills.* The Freedom of Information Act Officer shall begin assessing interest charges on unpaid bills starting on the thirty-first day after the date the bill was sent. The accrual of interest will be stayed when the Freedom of Information Act Officer receives a check in payment. Interest will be at the rate described in 31 U.S.C. 3717 and will accrue from the date of billing.

(h) *Debt collection procedures.* If bills are unpaid 60 days after the mailing of a written notice to the requester, the Freedom of Information Act Officer may resort to the debt collection procedures set out in the Debt Collection Act of 1982, Pub. L. 97-365, including disclosure to consumer credit reporting agencies (see 26 U.S.C. 6103) and use of

collection agencies to encourage payment. See 31 U.S.C. 3718 and 3302.

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§ 2201.9 Waiver of fees.

(a) *General.* The Freedom of Information Act Officer shall waive part or all of the fees assessed under § 2201.8(b) if two conditions are satisfied: 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 disclosure is not primarily in the commercial interest of the requester. The Freedom of Information Act Officer shall afford the requester the opportunity to show that he comes within these two conditions. The following factors may be considered in determining whether the two conditions are satisfied:

(1) Whether the subject of the requested records concerns the operations or activities of the government;

(2) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(3) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so, 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 primarily in the commercial interest of the requester.

(b) *Partial waiver of fees.* If the two conditions stated in paragraph (a) of this section are met, the Freedom of Information Act Officer will ordinarily waive all fees. In exceptional cases, however, only a partial waiver may be granted if the request for records would impose an exceptional burden or require an exceptional expenditure of Commission resources, and the request for a waiver minimally satisfies the "public interest" requirement in paragraph (a) of this section.

§ 2201.10 Maintenance of statistics.

(a) The Freedom of Information Act Officer shall maintain records of:

(1) The number of determinations made by the agency not to comply with