

National Counterintelligence Center

§ 1800.21

printed (if available)_Per 100
pages_5.00_Published (if available)_Per
item_NTIS_

(2) *Application of schedule.* Personnel search time includes time expended in either manual paper records searches, indices searches, review of computer search results for relevance, personal computer system searches, and various reproduction services. In any event where the actual cost to NACIC of a particular item is less than the above schedule (e.g., a large production run of a document resulted in a cost less than \$5.00 per hundred pages), then the actual lesser cost will be charged.

(3) *Other services.* For all other types of output, production, or reproduction (e.g., photographs, maps, or published reports), actual cost or amounts authorized by statute. Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item to be released, and an allocated cost of the equipment used in making the item, or, if the production is effected by a commercial service, then that charge shall be deemed the actual cost for purposes of this part.

(h) *Limitations on collection of fees—(1) In general.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the administrative costs to NACIC of billing, receiving, recording, and processing the fee for deposit to the Treasury Department and, as of the date of these regulations, is deemed to be \$10.00.

(2) *Requests for personal information.* No fees will be charged for requesters seeking records about themselves under the FOIA; such requests are processed in accordance with both the FOIA and the Privacy Act in order to ensure the maximum disclosure without charge.

(i) *Fee categories.* There are four categories of FOIA requesters for fee purposes: “commercial use” requesters, “educational and non-commercial scientific institution” requesters, “representatives of the news media” requesters, and “all other” requesters. The categories are defined in §1800.2, and applicable fees, which are the same in two of the categories, will be assessed as follows:

(1) “Commercial use” requesters: Charges which recover the full direct costs of searching for, reviewing, and duplicating responsive records (if any);

(2) “Educational and non-commercial scientific institution” requesters as well as “representatives of the news media” requesters: Only charges for reproduction beyond the first 100 pages;

(3) “All other” requesters: Charges which recover the full direct cost of searching for and reproducing responsive records (if any) beyond the first 100 pages of reproduction and the first two hours of search time which will be furnished without charge.

(j) *Associated requests.* A requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information actually sought for the purpose of avoiding or reducing applicable fees. In such instances, NACIC may aggregate the requests and charge the applicable fees.

§ 1800.14 Fee estimates (pre-request option).

In order to avoid unanticipated or potentially large fees, a requester may submit a request for a fee estimate. Pursuant to the Electronic Freedom of Information Act Amendments of 1996, NACIC will endeavor within twenty (20) days to provide an accurate estimate, and, if a request is thereafter submitted, NACIC will not accrue or charge fees in excess of our estimate without the specific permission of the requester.

Subpart C—NACIC Action On FOIA Requests

§ 1800.21 Processing of requests for records.

(a) *In general.* Requests meeting the requirements of §§1800.11 through 1800.13 shall be accepted as formal requests and processed under the Freedom of Information Act, 5 U.S.C. 552, and these regulations. Pursuant to the Electronic Freedom of Information Act Amendments of 1996, upon receipt, NACIC shall within twenty (20) days record each request, acknowledge receipt to the requester in writing, and thereafter effect the necessary

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taskings to the NACIC components reasonably believed to hold responsive records.

(b) *Database of "officially released information."* As an alternative to extensive tasking and as an accommodation to many requesters, NACIC maintains a database of "officially released information" which contains copies of documents released by NACIC. Searches of this database can be accomplished expeditiously. Moreover, requests that are specific and well-focused will often incur minimal, if any, costs. Requesters interested in this means of access should so indicate in their correspondence. Consistent with the mandate of the Electronic Freedom of Information Act Amendments of 1996, on-line electronic access to these records is available to the public. Detailed information regarding such access is available from the point of contact specified in § 1800.3.

(c) *Effect of certain exemptions.* In processing a request, NACIC shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12958 and may jeopardize intelligence sources or methods protected pursuant to section 103(c)(6) of the National Security Act of 1947. In such circumstances, NACIC, in the form of a final written response, shall so inform the requester and advise of his or her right to an administrative appeal.

(d) *Time for response.* Pursuant to the Electronic Freedom of Information Act Amendments of 1996, NACIC will utilize every effort to determine within the statutory guideline of twenty (20) days after receipt of an initial request whether to comply with such a request. However, should the volume of requests require that NACIC seek additional time from a requester pursuant to § 1800.33, NACIC will inform the requester in writing and further advise of his or her right to file an administrative appeal of any adverse determination.

§ 1800.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access.* (1) NACIC components tasked pursuant to a FOIA request shall search all relevant record systems within their cognizance. They shall:

- (i) Determine whether a record exists;
- (ii) Determine whether and to what extent any FOIA exemptions apply;
- (iii) Approve the disclosure of all non-exempt records or portions of records for which they are the originator; and
- (iv) Forward to the Coordinator all records approved for release or necessary for coordination with or referral to another originator or interested party.

(2) In making these decisions, the NACIC component officers shall be guided by the applicable law as well as the procedures specified at § 1800.31 and § 1800.32 regarding confidential commercial information and personal information (about persons other than the requester).

(b) *Referrals and coordinations.* As applicable and within twenty (20) days, pursuant to the Electronic Freedom of Information Act Amendments of 1996, of receipt by the Coordinator, any NACIC records containing information originated by other NACIC components shall be forwarded to those entities for action in accordance with paragraph (a) of this section and return. Records originated by other federal agencies or NACIC records containing other federal agency information shall be forwarded to such agencies within twenty (20) days of our completion of initial action in the case for action under their regulations and direct response to the requester (for other agency records) or return to NACIC (for NACIC records).

§ 1800.23 Payment of fees, notification of decision, and right of appeal.

(a) *Fees in general.* Fees collected under this part do not accrue to the National Counterintelligence Center and shall be deposited immediately to the general account of the United States Treasury.

(b) *Notification of decision.* Upon completion of all required review and the