

## Department of the Navy, DoD

## § 701.44

made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(3) Representative of the news media does not include private libraries, private repositories of Government records, information vendors, data brokers or similar marketers of information whether to industries and businesses, or other entities.

(4) Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought. Fees shall be waived or reduced if the fee waiver criteria have been met.

(e) All other requesters. DON activities shall charge requesters who do not fit into any of the categories described in paragraph (a) through (d) fees which recover the full direct cost of searching for and duplicating records, except that the first 2 hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought. Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. DON activities are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest.

### § 701.43 Fee declarations.

Requesters should submit a fee declaration appropriate for the categories in paragraphs (a) through (c) of this section, if fees are expected to exceed the minimum fee threshold of \$15.00.

(a) Commercial. Requesters should indicate a willingness to pay all search, review and duplication costs.

(b) Educational or noncommercial scientific institution or news media. Requesters should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(c) All others. Requesters should indicate a willingness to pay assessable search and duplication costs if more than 2 hours of search effort or 100 pages of records are desired.

(d) If the conditions in paragraphs (a) through (c) are not met, then the request need not be processed and the requester shall be so informed.

### § 701.44 Restrictions.

(a) No fees may be charged by any DON activity if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, activities shall provide the first 2 hours of search time, and the first 100 pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved 2 hours and 10 minutes of search time, and resulted in 105 pages of documents, an activity would determine the cost of only 10 minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than, the cost to the activity for billing the requester and processing the fee collected, no charges would result.

(b) Requesters receiving the first 2 hours of search and the first 100 pages of duplication without charge are entitled to such only once per request. Consequently, if a DON activity, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DON activity, or another Federal agency to action their portion of the request, the referring activity shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(c) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the DON activity of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to

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the Department of Treasury to handle such remittance is negligible and shall not be considered in activity determinations.

(d) For the purposes of the restrictions in this section, the word "pages" refers to paper copies of a standard size, which will normally be "8½×11" or "11×14." Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout however, might meet the terms of the restriction.

(e) In the case of computer searches, the first 2 free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal \$24.00 (2 hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time. In the event the direct operating cost of the hardware configuration cannot be determined, computer search shall be based on the salary scale of the operator executing the computer search.

### § 701.45 Fee assessment.

(a) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(b) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, DON activities shall analyze each request to determine the category of the requester. If the activity's determination regarding the category of the requester is different than that claimed by the requester, the activity shall:

(1) Notify the requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (*i.e.*, 30 calendar

days), the DON activity shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(2) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the activity.

(c) Estimate of fees. DON activities must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among activities, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should the activity's actual costs exceed the amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(d) Advance payment of fees. DON activities may not require advance payment of any fee (*i.e.*, before work is commenced or continued on a request) unless the requester has failed to pay fees in a timely fashion (*i.e.*, 30 calendar days from the date of the assessed billing in writing), or the activity has determined that the fee will exceed \$250.00.

(e) When a DON activity estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, the activity shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no payment history.

(f) Where a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 calendar days from the date of the billing), the DON activity may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount