

## Department of the Navy, DoD

## § 701.49

judgments as to whether the information is important enough to be made public.

(f) Disclosure of the information “is not primarily in the commercial interest of the requester.”

(1) The existence and magnitude of a commercial interest. If the request is determined to be of a commercial interest, DON activities should address the magnitude of that interest to determine if the requester’s commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, DON activities may draw inference from the requester’s identity and circumstances of the request. Activities are reminded that in order to apply the commercial standards of the FOIA, the requester’s commercial benefit must clearly override any personal or non-profit interest.

(2) The primary interest in disclosure. Once a requester’s commercial interest has been determined, DON activities should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester’s commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research may recog-

nize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(g) The factors and examples used in this section are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, DON activities should rule in favor of the requester.

(h) The following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(1) A record is voluntarily created to prevent an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(2) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. \$15.00-\$30.00).

### § 701.49 Payment of fees.

(a) Normally, fees will be collected at the time of providing the documents to the requester when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs, and the fees do not exceed \$250.00.

(b) However, after all work is completed on a request, and the documents are ready for release, DON activities may request payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed previously to pay a fee in a timely fashion (*i.e.*, within 30 calendar days from the date of the billing).

(c) 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

**§ 701.50**

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 history of payment.

(d) Advance payment of a fee is also applicable when a requester has previously failed to pay fees in a timely fashion (*i.e.*, 30 calendar days) after being assessed in writing by the activity. Further, 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 of the estimated fee before the activity begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and confirmed with respective finance and accounting offices.

**§ 701.50 Effect of the Debt Collection Act of 1982.**

The Debt Collection Act of 1982 (Pub. L. 97-365) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. DON activities may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717. DON activities should verify the current interest rate with respective finance and accounting offices. After one demand letter has been sent and 30 calendar days have lapsed with no payment, DON activities may submit the debt to respective finance and accounting offices for collection.

**§ 701.51 Refunds.**

In the event that a DON activity discovers that it has overcharged a requester or a requester has overpaid, the DON activity shall promptly refund the charge to the requester by reimburse-

**32 CFR Ch. VI (7-1-05 Edition)**

ment methods that are agreeable to the requester and the activity.

**§ 701.52 Computation of fees.**

(a) It is imperative that DON activities compute all fees to ensure accurate reporting in the Annual FOIA Report, but ensure that only applicable fees be charged to the requester. For example, although we calculate correspondence and preparation costs, these fees are not recoupable from the requester.

(b) DD 2086, Record of Freedom of Information (FOI) Processing Cost, should be filled out accurately to reflect all processing costs, as requesters may solicit a copy of that document to ensure accurate computation of fees. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

**§ 701.53 FOIA fee schedule.**

The following fee schedule shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. The appropriate fee category of the requester shall be applied before computing fees.

(a) Manual search.

Type	Grade	Hourly rate
Clerical .....	E9/GS8 and below .....	\$12.00
Professional .....	O1-O6/GS9-GS15 .....	25.00
Executive .....	O7/GS16/ES1 and above	45.00

(b) *Computer search.* Fee assessments for computer search consist of two parts; individual time (hereafter referred to as human time) and machine time.

(1) *Human time.* Human time is all the time spent by humans performing the necessary tasks to prepare the job for a machine to execute the run command. If execution of a run requires monitoring by a human, that human time may be also assessed as computer search. The terms "programmer/operator" shall not be limited to the traditional programmers or operators. Rather, the terms shall be interpreted in their broadest sense to incorporate any human involved in performing the