

## Federal Housing Finance Board

## §910.9

judicial review of this final action under 5 U.S.C. 552(a)(4).

(3) In unusual circumstances, the FOIA Officer may extend the time limit in paragraph (a)(2) of this section for a period not to exceed 10 working days by notifying the requester in writing of the reasons for the extension and the date on which a determination is expected.

(b) *Appeal during pendency of judicial review.* If a requester files an action in a United States district court under 5 U.S.C. 552(a)(4) concerning a request for Finance Board records before exhausting the administrative appeals process for that request under paragraph (a) of this section, the Finance Board may:

(1) Initiate and process an administrative appeal; or

(2) Continue to process an administrative appeal previously filed under paragraph (a) of this section.

[63 FR 37485, July 13, 1998, as amended at 65 FR 8257, 8258, Feb. 18, 2000; 65 FR 20346, Apr. 17, 2000]

### §910.9 Fees.

(a) *Fees.* Except as otherwise provided in a statute specifically providing for setting fees for particular types of records or in this section, the Finance Board shall assess against each requester the direct costs of responding to a request for records.

(1) If the records are requested for a commercial use, the direct costs are limited to the reasonable operating costs the Finance Board incurs to search, review, and duplicate records.

(2) If the records are not requested for a commercial use and the requester is an educational institution, non-commercial scientific institution, or representative of the news media, the direct costs are limited to the reasonable operating costs the Finance Board incurs to duplicate records in excess of 100 pages.

(3) If neither the request nor the requester is described in paragraphs (a)(1) or (2) of this section, the direct costs are limited to the reasonable operating costs the Finance Board incurs to search in excess of two hours and duplicate records in excess of 100 pages.

(4) For purposes of this section, the term:

(i) *Commercial use request* means a request from, or on behalf of, a person who seeks records 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.

(ii) *Educational institution* means a preschool, public or private elementary or secondary school, or institution of undergraduate, graduate, professional, or vocational higher education that operates a program of scholarly research.

(iii) *Non-commercial scientific institution* means a nonprofit institution operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iv) *Representative of the news media* means a requester who is actively gathering information that is about current events or would be of current interest to the public for an entity that is organized and operated to publish or broadcast news to the public.

(b) *Fees when no records are provided.* The Finance Board may assess a fee for the direct costs of searching for a requested record the Finance Board cannot locate or if located, determines to be exempt from disclosure under §910.5.

(c) *Interest.* The Finance Board may assess interest at the rate prescribed in 31 U.S.C. 3717 on any unpaid fees beginning 31 days after the earlier of the date of the determination under §910.4 or the date a fee statement is mailed to a requester. Interest shall accrue from such date.

(d) *Exceptions.* Notwithstanding paragraphs (a) or (b) of this section, the FOIA Officer may determine not to assess a fee or to reduce a fee if:

(1) The routine cost of collecting and processing the fee is likely to equal or exceed the amount of the fee.

(2) The fee is equal to or less than 10 dollars.

(3) Disclosure of the record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(i) A requester may apply in writing to the FOIA Officer for a waiver of fees

**§910.9**

**12 CFR Ch. IX (1-1-06 Edition)**

under this paragraph (d)(3). A fee waiver request shall include the following:

(A) The requester's interest in and proposed use of the record;

(B) Whether the requester will derive income or other benefit from the record;

(C) An explanation of how the public will benefit from disclosure, including the requester's ability and intention to disseminate the information to the public; and

(D) The requester's expertise in the subject area of the record.

(ii) In determining whether disclosure of a record is in the public interest, the FOIA Officer shall consider whether the record:

(A) Concerns identifiable operations or activities of the Finance Board;

(B) Is meaningfully informative in relation to the subject matter of the request;

(C) Contributes to an understanding of the subject matter by the public at large, and the significance of that contribution; and

(D) Furthers, or is primarily in, the requester's commercial interest.

(e) *Aggregating requests.* If the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the FOIA Officer may aggregate such requests and assess fees in accordance with this section.

(f) *Collecting fees.* (1) The Finance Board shall deem any request for Finance Board records as an agreement by the requester to pay fees and interest assessed in accordance with this section.

(2) To pay fees and interest assessed under this section, a requester shall deliver to the Office of Management, located at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC. 20006, a check or money order made payable to the "Federal Housing Finance Board."

(3) Prior to disclosing any record, the FOIA Officer may require a requester to agree in writing to pay actual fees and interest incurred in accordance with this section if the estimated fee will likely exceed \$25 but not \$250.

(4) The FOIA Officer may require a requester to pay an estimated fee in advance if:

(i) It is determined that the fee will likely exceed \$250;

(ii) The requester previously has failed to pay a fee assessed under this section within 30 days of the earlier of the date of the determination under §910.4 or the date a fee statement was transmitted to a requester; or

(iii) The requester previously has failed to timely pay a fee assessed in accordance with the FOIA regulation of another federal agency.

(5) The Finance Board shall promptly refund to a requester any estimated advance fee paid under paragraph (f)(4) of this section that exceeds the actual fee. The FOIA Officer shall assess the requester for the amount by which the actual fee exceeds the estimated advance fee payment.

(6) The FOIA Officer may administratively close a request if the requester previously has failed to pay a fee assessed under this section or in accordance with the FOIA regulation of another federal agency unless the requester can substantiate that the debt was paid.

(g) *Fee schedule.* The Finance Board shall assess fees in accordance with the following schedule:

Search		
Supervisory/Professional Staff	.....	\$53.00 per hour
Clerical Staff	.....	\$28.00 per hour
Computer Operator	.....	\$48.00 per hour
Review	.....	\$53.00 per hour
Duplication		
Photocopies	.....	\$.10 per page
Diskettes	.....	\$.50 per diskette
CD-ROMs	.....	\$1.00 per CD
Transcription of audio tape.	.....	\$4.50 per page
Certification, seal and attestation.	.....	\$5.00 per document
Delivery		
Facsimile transmission (long distance).	.....	long distance charges plus \$.25 per page
Facsimile transmission (local).	.....	\$.25 per call plus \$.25 per page
Express delivery service	.....	actual cost

## Federal Housing Finance Board

## §911.2

[63 FR 37485, July 13, 1998, as amended at 64 FR 5930, Feb. 8, 1999, as amended at 65 FR 8257, 8258, Feb. 18, 2000; 65 FR 20346, Apr. 17, 2000; 67 FR 12844, Mar. 20, 2002; 68 FR 39812, July 3, 2003]

### PART 911—AVAILABILITY OF UNPUBLISHED INFORMATION

Sec.

- 911.1 Definitions.
- 911.2 Purpose and scope.
- 911.3 Prohibition on unauthorized use and disclosure of unpublished information.
- 911.4 Requests for unpublished information by document or testimony.
- 911.5 Consideration of requests.
- 911.6 Persons and entities with access to unpublished information.
- 911.7 Availability of unpublished information by testimony.
- 911.8 Availability of unpublished information by document.
- 911.9 Fees.

AUTHORITY: 5 U.S.C. 301; 12 U.S.C. 1422b(a)(1).

SOURCE: 64 FR 44106, Aug. 13, 1999, unless otherwise noted. Redesignated at 65 FR 8256, Feb. 18, 2000.

#### §911.1 Definitions.

As used in this part:

*Legal proceeding* means any administrative, civil, or criminal proceeding, including a grand jury or discovery proceeding, in which neither the Finance Board nor the United States is a party.

*Supervised entity* means a Bank, the Office of Finance, and the Financing Corporation.

*Unpublished information* means information and documents created or obtained by the Finance Board in connection with the performance of official duties, whether the information or documents are in the possession of the Finance Board, a current or former Finance Board employee or agent, a supervised entity, a Bank member, government agency, or some other person or entity; and information and documents created or obtained by, or in the memory of, a current or former Finance Board employee or agent, that was acquired in the person's official capacity or in the course of performing official duties. It does not include information or documents the Finance Board must disclose under the Freedom of Information Act (5 U.S.C. 552), Pri-

vacy Act (5 U.S.C. 552a), or the Finance Board's implementing regulations (12 CFR parts 910 and 913, respectively). It also does not include information or documents that were previously published or disclosed or are customarily furnished to the public in the course of the performance of official duties such as the annual report the Finance Board submits to Congress pursuant to section 2B(d) of the Act (12 U.S.C. 1422b(d)), press releases, Finance Board forms, and materials published in the FEDERAL REGISTER.

[64 FR 44106, Aug. 13, 1999, as amended at 65 FR 8258, Feb. 18, 2000; 67 FR 12844, Mar. 20, 2002]

#### §911.2 Purpose and scope.

(a) *Purpose.* The purposes of this part are to:

(1) Maintain the confidentiality and control the dissemination of unpublished information;

(2) Conserve the time of employees for official duties and ensure that Finance Board resources are used in the most efficient manner;

(3) Maintain the Finance Board's impartiality among private litigants; and

(4) Establish an orderly mechanism for the Finance Board to process expeditiously and respond appropriately to requests for unpublished information.

(b) *Scope.* (1) This part applies to a request for and use and disclosure of unpublished information, including a request for unpublished information by document or testimony arising out of a legal proceeding in which neither the Finance Board nor the United States is a party. It does not apply to a request for unpublished information in a legal proceeding in which the Finance Board or the United States is a party or a request for information or records the Finance Board must disclose under the Freedom of Information Act, Privacy Act, or the Finance Board's implementing regulations.

(2) This part does not, and may not be relied upon to create any substantive or procedural right or benefit enforceable against the Finance Board.