

## § 1631.11

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20005, and be clearly labeled as a “Freedom of Information Act Appeal.”

(b)(1) The General Counsel will act upon the appeal of a denial of a request for expedited processing within 5 work days of its receipt.

(2) The General Counsel will act upon the appeal of a denial of a request for records within 20 work days of its receipt.

(c) The General Counsel will decide the appeal in writing and mail the decision to the requester.

(d) If the appeal concerns an expedited processing request and the decision is in favor of the person making the request, the General Counsel will order that the request be processed on an expedited basis. If the decision concerning a request for records is in favor of the requester, the General Counsel will order that the subject records be promptly made available to the person making the request.

(e) If the appeal of a request for expedited processing of records is denied, in whole or in part, the General Counsel’s decision will set forth the basis for the decision. If the appeal of a request for records is denied, in whole or in part, the General Counsel’s decision will set forth the exemption relied on and a brief explanation of how the exemption applies to the records withheld and the reasons for asserting it, if different from the reasons described by the FOIA Officer under §1631.9. The denial of a request for records will state that the person making the request may, if dissatisfied with the decision on appeal, file a civil action in Federal court. (A Federal court does not have jurisdiction to review a denial of a request for expedited processing after the Board has provided a complete response to the request.)

(f) No personal appearance, oral argument, or hearing will ordinarily be permitted in connection with an appeal of a request for expedited processing or an appeal for records.

(g) On appeal of a request concerning records, the General Counsel may reduce any fees previously assessed.

[63 FR 41708, Aug. 5, 1998]

### § 1631.11 Fees to be charged—categories of requesters.

(a) There are four categories of FOIA requesters; commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters. The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories:

(1) When records are being requested for commercial use, the fee policy of the Board is to levy full allowable direct cost of searching for, reviewing for release, and duplicating the records sought. Commercial users are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents, nor waiver or reduction of fees, based on an assertion that disclosure would be in the public interest. The full allowable direct cost of searching for, and reviewing, records will be charged even if there is ultimately no disclosure of records. Commercial use is defined as a use that furthers the commercial trade or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, the Board will look to the use to which a requester will put the documents requested.

(2) When records are being requested by representatives of the news media, the fee policy of the Board is to levy reproduction charges only, excluding charges for the first 100 pages. The phrase “representatives of the news media” refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g. electronic dissemination of

newspapers through telecommunications services), such alternative media would be included in this category. In the case of freelance journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Board may also look to the past publication record of a requester in making this determination.

(3) When records are being requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of the Board is to levy reproduction charges only, excluding charges for the first 100 pages. The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. The term "noncommercial scientific institution" refers to an institution that is not operated on a commercial basis as that term is defined under paragraph (a)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(4) For any other request which does not meet the criteria contained in paragraphs (a) (1) through (3) of this section, the fee policy of the Board is to levy full reasonable direct cost of searching for and duplicating the records sought, except that the first 100 pages of reproduction and the first two hours of search time will be furnished

without charge. If computer search time is required, the first two hours of computer search time will be based on the hourly cost of operating the central processing unit and the operator's hourly salary plus 23.5 percent. When the cost of the computer search, including the operator time and the cost of operating the computer to process the request, equals the equivalent dollar amount of two hours of the salary of the person performing the search, *i.e.*, the operator, the Board shall begin assessing charges for computer search. Requests from individuals requesting records about themselves filed in the Board's systems of records shall continue to be treated under the provisions of the Privacy Act of 1974, which permit fees only for reproduction. The Board's fee schedule is set out in §1631.14 of this part.

(b) Except for requests that are for a commercial use, the Board may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Board believes that a requester or, on rare occasions, 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 Board may aggregate any such requests and charge accordingly. For example, it would be reasonable to presume that multiple requests of this type made within a 30 calendar day period had been made to avoid fees. For requests made over a long period, however, the Board must have a reasonable basis for determining that aggregation is warranted in such cases. Before aggregating requests from more than one requester, the Board must have a reasonable basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may the Board aggregate multiple requests on unrelated subjects from one requester.

(c) In accordance with the prohibition of section (4)(A)(iv) of the Freedom of Information Act, as amended, the Board shall not charge fees to any

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requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) For commercial use requesters, if the direct cost of searching for, reviewing for release, and duplicating the records sought would not exceed \$25, the Board shall not charge the requester any costs.

(2) For requests from representatives of news media or educational and non-commercial scientific institutions, excluding the first 100 pages which are provided at no charge, if the duplication cost would not exceed \$25, the Board shall not charge the requester any costs.

(3) For all other requests not falling within the category of commercial use requests, representatives of news media, or educational and noncommercial scientific institutions, if the direct cost of searching for and duplicating the records sought, excluding the first two hours of search time and first 100 pages which are free of charge, would not exceed \$25, the Board shall not charge the requester any costs.

[55 FR 41052, Oct. 9, 1990, as amended at 63 FR 41708, Aug. 5, 1998]

### § 1631.12 Waiver or reduction of fees.

(a) The Board may waive all fees or levy a reduced fee when disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Board or Federal Government and is not primarily in the commercial interest of the requester. In making its decision on waiving or reducing fees, the Board will consider the following factors:

(1) Whether the subject of the requested records concerns the operations or activities of the Board or the Government,

(2) Whether the disclosure is likely to contribute to an understanding of Government operations or activities (including those of the Board),

(3) Whether the disclosure is likely to contribute significantly to public understanding of TSP or Government operations or activities,

(4) Whether the requester has a commercial interest that would be

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furthered by the requested disclosure, and

(5) 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) A fee waiver request must indicate the existence and magnitude of any commercial interest that the requester has in the records that are the subject of the request.

### § 1631.13 Prepayment of fees over \$250.

(a) When the Board estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, the Board may require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) When a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 calendar days of the date of the billing), the Board may require the requester to pay the full amount owed plus any applicable interest as provided in § 1631.14(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(c) When the Board acts under paragraph (a) or (b) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.*, 20 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the Board has received fee payments under paragraph (a) or (b) of this section.

[55 FR 41052, Oct. 9, 1990, as amended at 63 FR 41709, Aug. 5, 1998]

### § 1631.14 Fee schedule.

(a) *Manual searches for records.* The Board will charge at the salary rate(s) plus 23.5 percent (to cover benefits) of the employee(s) conducting the search. The Board may assess charges for time spend searching, even if the Board fails