

to locate the records or if records located are determined to be exempt from disclosure.

(b) *Computer searches for records.* The Board will charge the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary, plus 23.5 percent, apportionable to the search. The Board may assess charges for time spent searching, even if the Board fails to locate the records or if records located are determined to be exempt from disclosure.

(c) *Duplication costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ × 14 inches, the charge will be \$.15 per page.

(2) The fee for reproducing copies of records over 8½ × 14 inches, or whose physical characteristics do not permit reproduction by routine electrostatic copying, shall be the direct cost of reproducing the records through Government or commercial sources. If the Board estimates that the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester had indicated in advance his/her willingness to pay fees as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(3) For copies prepared by computer, such as tapes or printouts, the Board shall charge the actual cost, including operator time, of producing the tape or printout. If the Board estimates that the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(4) For other methods of reproduction or duplication, the Board shall charge

the actual direct costs of producing the document(s). If the Board estimates that the allowable duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(d) Interest may be charged to those requesters who fail to pay fees charged. The Board may begin assessing interest charges on the amount billed starting on the 31st calendar day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code, and it will accrue from the date of the billing.

(e) The Board shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. The Board may choose to contract with private sector services to locate, reproduce, and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, the Board will inform requesters of the steps necessary to obtain records from those sources.

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

#### § 1631.15 Information to be disclosed.

(a) In general, all records of the Board are available to the public, as required by the Freedom of Information Act. However, the Board claims the right, where it is applicable, to withhold material under the provisions specified in the Freedom of Information Act as amended (5 U.S.C. 552(b)).

(b) *Records from non-U.S. Government source.* (1) Board personnel will generally consider two exemptions in the FOIA in deciding whether to withhold from disclosure material from a non-U.S. Government source.

Exemption 4 permits withholding of “trade secrets and commercial or financial information obtained from a person as privileged or confidential.” Exemption 6 permits withholding certain information, the disclosure of which “would constitute a clearly unwarranted invasion of personal privacy.”

(2)(i) *Exemption 4*. Commencing January 1, 1988, the submitter of confidential commercial information must, at the time the information is submitted to the Board or within 30 calendar days of such submission, designate any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. The submitter as part of its submission, must explain the rationale for the designation of the information as commercial and confidential.

(ii) Confidential commercial information means records provided to the Board by a submitter that arguably contains material exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(iii) After January 1, 1988, a submitter who does not designate portions of a submission as confidential commercial information waives that basis for nondisclosure unless the Board determines that it has substantial reason to believe that disclosure of the requested records would result in substantial harm to the competitive position of the submitter.

(3) When the Board determines that it has substantial reason to believe that disclosure of the requested records would result in substantial competitive harm to the submitter, and has no designation from the submitter, it shall notify the submitter of the following:

- (i) That a FOIA request has been received seeking the record,
- (ii) That disclosure of the record may be required,
- (iii) That disclosure of the record could result in competitive harm to the submitter,
- (iv) That the submitter has a period of seven workdays from date of notice within which it or a designee may object to the disclosure its records, and

(v) That a detailed explanation should be submitted setting forth all grounds as to why the disclosure would result in substantial competitive harm, such as, the general custom or usage in the business of the information in the record, the number and situation of the persons who have access to the record, the type and degree of risk of financial injury that release would cause, and the length of time the record needs to be kept confidential.

(4) In exceptional circumstances, the Board may extend by seven workdays the time for a submitter’s response for good cause.

(5) The Board shall give careful consideration to all specified grounds for nondisclosure prior to making an administrative determination on the issue of competitive harm.

(6) Should the Board determine to disclose the requested records, it shall provide written notice to the submitter, explaining briefly why the submitter’s objections were not sustained and setting forth the date for disclosure, which date may be less than 10 calendar days after the date of the letter to the submitter.

(7) A submitter who provided records to the Board prior to January 1, 1988, and did not designate which records contain confidential commercial information, shall be notified as provided in §1631.15(b)(3). After making such notification, the Board will follow the procedures set forth in §1631.15(b)(4)–(6).

(8) The Board will, as a general rule, look favorably upon recommendations for withholding information about ideas, methods, and processes that are unique; about equipment, materials, or systems that are potentially patentable; or about a unique use of equipment which is specifically outlined.

(9) The Board will not withhold information that is known through custom or usage in the relevant trade, business, or profession, or information that is generally known to any reasonably educated person. Self-evident statements or reviews of the general state of the art will not ordinarily be withheld.

(10) The Board will withhold all cost data submitted, except the total estimated costs from each year of a contract. It will release these total estimated costs and ordinarily release explanatory material and headings associated with the cost data, withholding only the figures themselves. If a contractor believes that some of the explanatory material should be withheld, that material must be identified and a justification be presented as to why it should not be released.

(11) *Exemption 6.* This exemption is not a blanket exemption for all personal information submitted by a non-U.S. Government source. The Board will balance the need to keep a person's private affairs from unnecessary public scrutiny with the public's right to information on Board records. As a general practice, the Board will release information about any person named in a contract itself or about any person who signed a contract as well as information given in a proposal about any officer of a corporation submitting that proposal. Depending upon the circumstances, the Board may release most information in resumes concerning employees, including education and experience. Efforts will be made to identify information that should be deleted and offerors are urged to point out such material for guidance. Any information in the proposal, such as the names of staff persons, which might, if released, constitute an unwarranted invasion of personal privacy if released should be identified and a justification for non-release provided in order to receive proper consideration.

#### § 1631.16 Exemptions.

The Freedom of Information Act exempts from all of its publication and disclosure requirements nine categories of records which are described in 5 U.S.C. 552(b). These categories include such matters as national defense and foreign policy information, investigatory files, internal procedures and communications, materials exempted from disclosure by other statutes, information given in confidence and matters involving personal privacy.

#### § 1631.17 Deletion of exempted information.

Where requested records contain matters which are exempted under 5 U.S.C. 552(b) but which matters are reasonably segregable from the remainder of the records, they shall be disclosed by the Board with deletions. To each such record, the Board shall attach a written justification for making deletions. A single such justification shall suffice for deletions made in a group of similar or related records.

#### § 1631.18 Annual report.

The Executive Director will submit annually, on or before February 1, a Freedom of Information report covering the preceding fiscal year to the Attorney General of the United States. The report will include matters required by 5 U.S.C. 552(e).

[63 FR 41709, Aug. 5, 1998]

### Subpart B—Production in Response to Subpoenas or Demands of Courts or Other Authorities

#### § 1631.30 Purpose and scope.

This subpart contains the regulations of the Board concerning procedures to be followed when a subpoena, order, or other demand (hereinafter in this subpart referred to as a "demand") of a court or other authority is issued for the production or disclosure of:

- (a) Any material contained in the files of the Board;
- (b) Any information relating to materials contained in the files of the Board; or
- (c) Any information or material acquired by an employee of the Board as a part of the performance of his or her official duties or because of his or her official status.

#### § 1631.31 Production prohibited unless approved by the Executive Director.

No employee or former employee of the Board shall, in response to a demand of a court or other authority, produce any material contained in the files of the Board or disclose any information or produce any material acquired as part of the performance of his