

§ 1820.2

and (g)(1), and reports received as a result of such referrals;

(2) Matters referred by the Special Counsel to heads of agencies under 5 U.S.C. 1215(c)(2); and

(3) Matters referred to heads of agencies under 5 U.S.C. 1214(e), together with certifications from the heads of agencies under such subsection.

(b) The list is available to the public between 8:30 a.m. and 5 p.m. weekdays (except legal holidays) in the Office of Special Counsel, 1730 M Street NW., Suite 201, Washington, DC 20036-4505.

[55 FR 47342, Nov. 14, 1989, as amended at 55 FR 47839, Nov. 16, 1990; 59 FR 64843, Dec. 16, 1994; 65 FR 81325, Dec. 26, 2000]

§ 1820.2 Procedures for obtaining records under the Freedom of Information Act.

Requests for records shall be made in writing. Requests should be addressed to the Office of Special Counsel, 1730 M Street NW., Suite 201, Washington, DC 20036-4505. Requests must be clearly and prominently marked "Freedom of Information Act Request" on both the envelope and the letter.

[54 FR 47342, Nov. 14, 1989, as amended at 59 FR 64843, Dec. 16, 1994; 65 FR 81325, Dec. 26, 2000]

§ 1820.3 Categories of requesters under the Freedom of Information Act.

There are four categories of requesters:

(a) *Commercial use requesters.* These requesters seek information for themselves or on behalf of someone else for a use or purpose that furthers commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. A requester will not be presumed to be a "commercial use requester" merely by submitting a request on corporate letterhead without further explanation of the use to which he plans to put the requested information. Similarly, a request submitted on the letterhead of a nonprofit organization without further explanation will not be presumed to be for a noncommercial purpose. The Office of Special Counsel will seek clarification from the requester where there is a reasonable doubt as to the intended use of the information.

5 CFR Ch. VIII (1-1-07 Edition)

(b) *Educational and noncommercial scientific institution requesters.* (1) An "educational institution" requester is associated with a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of vocational or professional education, that operates a program or programs of scholarly research, and seeks the information for a scholarly or scientific research goal of the institution, rather than for an individual goal.

(2) A "noncommercial scientific institution" requester is associated with an institution that is not operated on a "commercial" basis (as that term is defined by paragraph (a) 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.

(c) *News media requesters.* These requesters actively gather news for entities that are organized and operated to publish or broadcast news to the public. Freelance journalists may be news media requesters if they can demonstrate a solid basis for expecting publication through a news organization (such as by producing a publication contract or citing their past publication records), even though not actually employed by it. "News" means information about current events or information that would be of current interest to the public. News media "entities" include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public.

(d) All other requesters.

§ 1820.4 Free or partially free search time and partially free copying.

(a) *Free search time and partially free copying.* Educational and noncommercial scientific institution requesters and news media requesters who are requesting records for noncommercial use are entitled to free copying for the first 100 pages and free search time.

Office of Special Counsel

§ 1820.6

(b) *Partially free search time and partially free copying.* Requesters who are not commercial use requesters, educational or noncommercial scientific institution requesters, or news media requesters are “all other requesters”, and are entitled to two hours of free search time and free copying for the first 100 pages. Requests from record subjects for records about themselves filed in a system of records will continue to be treated under the fee provisions of the Privacy Act, which permits the assessment of fees only for copying.

§ 1820.5 Waiver or reduction of fees.

(a) The Associate Special Counsel for Investigation, the Deputy Associate Special Counsel for Prosecution, the Associate Special Counsel for Prosecution, the Deputy Special Counsel, and the Special Counsel may authorize waiver or reduction of fees that could otherwise be assessed if disclosure of the information requested:

(1) Is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and

(2) Is not primarily in the commercial interest of the requester.

(b) Satisfaction of paragraph (a)(1) of this section will be determined by all of the following:

(1) Whether the subject of the requested records concerns “the operations or activities of the Government.” The requested records concern identifiable operations or activities of the Government, and the connection between the records and the operations or activities is direct and clear, not remote or attenuated;

(2) Whether disclosure is “likely to contribute” to an understanding of Government operations or activities. An analysis of the substantive content of the releasable portions of the requested records reveals meaningfully informative information on the operations or activities of the Government that is not already in the public domain in duplicative or substantially identical form;

(3) Whether disclosure will contribute to “public understanding.” Considering the identity of the requester and his qualifications to make use of the information, disclosure will contribute to

the understanding of the public at large, and not to the individual understanding of the requester or a narrow segment of interested persons; and

(4) Whether the disclosure is likely to contribute “significantly” to public understanding of Government operations or activities. By an objective standard, the disclosure is likely to enhance the general public’s understanding of the subject matter in question more than minimally.

(c) Satisfaction of paragraph (a)(2) of this section will be determined by both of the following:

(1) Whether the requester has a commercial interest to be furthered by the disclosure. The requester does not seek to further a commercial, trade, or profit interest, as those terms are commonly understood; and

(2) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, compared to the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.” If the requester has a commercial interest, that interest is not greater than the public interest to be served by disclosure of the requested records.

§ 1820.6 Fees to be charged.

(a) Requests for records are subject to the following fees:

(1) *Commercial use requesters.* For search, review, and copying: Photocopies per page, \$0.25. Manual record search, \$2.50 per quarter hour if conducted by a clerical employee; \$5.00 per quarter hour if conducted by a professional or managerial employee. Search fees may be assessed even if the records in question are not located or if the records located are determined to be exempt from disclosure.

(2) *Educational and noncommercial scientific institution requesters, news media requesters.* For copying only: Photocopies per page, \$0.25, excluding the first 100 pages.

(3) *All other requesters.* For search and copying only: Photocopies per page (excluding the first 100 pages), \$0.25. Manual record search (excluding the first two hours), \$2.50 per quarter hour if conducted by a clerical employee; \$5.00