

## § 1820.7

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

per quarter hour if conducted by a professional or managerial employee.

(b) *Method of search.* (1) Any "search", which includes all time spent looking for material that is responsive to a request, will be done in the most efficient and least expensive manner in order to minimize costs for both the agency and the requester.

(2) For researches made by computer, costs will be assessed when the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent equals the equivalent dollar amount of two hours of salary of the person performing the search.

(c) *Review charges.* Only commercial use requesters will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. These charges will be assessed only for initial review (*i.e.*, the review undertaken when first analyzing the applicability of a specific exemption to a particular record or portion of record), and not for review at the administrative appeal level of an exemption already applied. However, charges will be assessed for a second review of records or portions of records withheld in full under an exemption which is subsequently determined not to apply in order to determine the applicability of other exemptions not previously considered. Review charges shall not include costs incurred in resolving issues of law or policy that may be raised in the course of processing a request.

(d) *Copying.* A "page" of copying refers to a paper copy of standard size, normally 8½"×11" or 11×14". However, copies may also take the form of microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(e) *Nonassessment of fees.* No fees will be assessed to any requester, including commercial use requesters, if the cost of routine collection and processing of the fee would be equal to or greater than the fee itself. To make this determination, the OSC will consider the administrative costs of receiving and recording a requester's remittance and processing the fee for deposit.

(f) *Other charges.* Complying with requests for special services, such as certification of records as true copies and

sending records by special methods (e.g., express mail) is entirely at the discretion of the Office. Since neither the Freedom of Information Act nor its fee structure covers these kinds of services, the OSC will assess fees to recover the full costs of providing these services should the Office elect to provide them.

(g) *Aggregating requests.* If the Office of Special Counsel reasonably believes that a requester or a group of requesters acting in concert is filing a series of requests for the purpose of evading the assessment of fees, the OSC may aggregate the requests and assess fees accordingly. One element to be considered in determining reasonable belief is the time period within which the requests are filed. Multiple requests of this type filed within a 30-day period may be presumed to have been made to avoid fees. In no case will the Office aggregate requests on unrelated subjects from one requester.

(h) *Advance notice of fees.* If it is likely that fees will exceed \$25, the requester will first be notified of the estimated amount, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. The notice will offer the requester the opportunity to confer with personnel of the Office of the Special Counsel with the object of reformulating the request to meet his or her needs at a lower cost.

### § 1820.7 Payments and collections.

(a) *Payments.* Payment of fees shall be made by check or money order payable to the United States Treasury.

(b) *Advance payments.* A requester is not required to make an advance payment unless:

(1) The OSC estimates or determines that the requester may be required to pay fees in excess of \$250, in which case the requester will be notified of the estimated cost. The requester must then furnish satisfactory assurance of full payment if the requester has a history of prompt payment of Freedom of Information Act fees. If the requester has no history of payment, then the requester may be required to furnish an advance payment up to the full estimated cost; or

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(2) The requester has previously failed to pay a fee assessed in a timely fashion (*i.e.*, within 30 days of the date of billing), in which case the requester may be required to—

(i) Pay the full amount owed plus any applicable interest as provided in paragraph (d) of this section, or prove payment of the alleged amount in arrears, and

(ii) Make an advance payment of the full amount of the estimated cost before a new or pending request will be processed.

(c) *Effect of nonpayment.* When the OSC acts under either paragraph (b)(2)(i) or (b)(2)(ii) of this section, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) of the Freedom of Information Act will begin only after the fee payments described above have been received.

(d) *Interest charges.* Interest may be charged to any requester who fails to pay fees assessed within 30 days of the date of billing. Interest will be assessed on the 31st day following the day on which the bill for fees was sent, and will be calculated at the rate prescribed in 31 U.S.C. 3717. Receipt of fees, even if not processed, will stay the accrual of interest.

(e) *Collections.* If the OSC deems it appropriate in order to encourage repayment of fees assessed in accordance with these regulations, the OSC will use the procedures authorized by the Debt Collection Act of 1982 (Public Law No. 97-365), including disclosure to consumer reporting agencies and use of collection agencies.

### § 1820.8 Appeals.

Any denial, in whole or in part, of a request for records of the Office of Special Counsel shall advise the requester of his right to appeal the denial to the Special Counsel or the Special Counsel's designee. The requester shall submit his appeal in writing within 30 days of the denial. The appeal shall be addressed to the Special Counsel at 1730 M Street NW., Suite 201, Washington, DC 20036-4505. When a request is denied on appeal, the requester shall be

advised of his right to seek judicial review.

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

### § 1820.9 Disclosures by authorized officials.

No employee or former employee of the Office of Special Counsel shall, in response to a demand of a court or other authority, produce or disclose any information or records acquired as part of the performance of his official duties or because of his official status without the prior approval of the Special Counsel or the Special Counsel's duly authorized designee.

## PART 1830—PRIVACY

Sec.

1830.1 Access to records and identification.

1830.2 Medical records.

1830.3 Requests for amendment of records.

1830.4 Appeals.

1830.5 Exemptions.

AUTHORITY: 5 U.S.C. 552a(f), 1212(g).

SOURCE: 54 FR 47344, Nov. 14, 1989, unless otherwise noted.

### § 1830.1 Access to records and identification.

(a) Individuals may request access to records pertaining to them that are maintained as described in the Privacy Act, 5 U.S.C. 552a, by addressing an inquiry to the Office of Special Counsel either by mail or by appearing in person at the Office of Special Counsel at 1730 M Street, NW., Suite 201, Washington, DC 20036-4505, during business hours on a regular business day. Requests in writing should be clearly and prominently marked "Privacy Act Request." Requests for copies of records shall be subject to duplication fees set forth in § 1820.6 of this chapter.

(b) Individuals making a request in person shall be required to present satisfactory proof of identity, preferably a document bearing the individual's photograph. Requests by mail or submitted other than in person should contain sufficient information to enable the Office of Special Counsel to determine that the requester and the subject of the record are one and the