

105(b)(1) of the Ethics in Government Act of 1978, as amended, which authorizes an agency to charge reasonable fees to cover the cost of reproduction and mailing of public financial disclosure reports requested by any person.

**§ 2604.102 Applicability.**

(a) *General.* The FOIA and this rule apply to all OGE records. However, if another law sets forth procedures for the disclosure of specific types of records, such as section 105 of the Ethics in Government Act of 1978, 5 U.S.C. appendix, OGE will process a request for those records in accordance with the procedures that apply to those specific records. See 5 CFR 2634.603 and subpart G of this part. If there is any record which is not required to be released under those provisions, OGE will consider the request under the FOIA and this rule, provided that the special Ethics Act access procedures cited must be complied with as to any record within the scope thereof.

(b) *The relationship between the FOIA and the Privacy Act of 1974.* The Privacy Act of 1974, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records as defined in the Privacy Act. Requests from individuals for records about themselves which are contained in an OGE system of records will be processed under the provisions of the Privacy Act as well as the FOIA. OGE will not deny access by a first party to a record under the FOIA or the Privacy Act unless the record is not available to that individual under both the Privacy Act and the FOIA.

(c) *Records available through routine distribution procedures.* When the record requested includes material published and offered for sale (e.g., by the Superintendent of Documents, Government Printing Office) or which is available to the public through an established distribution system (such as that of the National Technical Information Service of the Department of Commerce), OGE will explain how the record may be obtained through those channels. If the requester, after having been advised of such alternative access, asks for regular FOIA processing instead, OGE will provide the record in

accordance with its usual FOIA procedures under this part.

**§ 2604.103 Definitions.**

As used in this part,

*Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

*Business information* means trade secrets or other commercial or financial information, provided to the Office by a submitter, which arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act.

*Business submitter* means any person who provides business information, directly or indirectly, to the Office and who has a proprietary interest in the information.

*Commercial use* means, when referring to a request, that the request is from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put. When a request is from a representative of the news media, a purpose or use supporting the requester's news dissemination function is not a commercial use.

*Direct costs* means those expenditures actually incurred in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include the salary of the employee performing the work and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

*Duplication* means the process of making a copy of a record. Such copies include paper copy, microform, audiovisual materials, and magnetic tapes, cards, and discs.

*Educational institution* means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institute of professional or vocational education, which operates a program of scholarly research.

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*FOIA Officer* means the OGE employee designated to handle various initial FOIA matters, including requests and related matters such as fees.

*Freedom of Information Act* or *FOIA* means 5 U.S.C. 552.

*He, his* and *him* include she, hers and her.

*Noncommercial scientific institution* means an institution that is not operated solely for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research the results of which are not intended to promote any particular product or industry.

*Office* or *OGE* means the United States Office of Government Ethics.

*Person* has the meaning given in 5 U.S.C. 551(2).

*Records* means any handwritten, typed, or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as electronic documents, electronic mail, punch-cards, magnetic tapes, cards or discs, paper tapes, audio or video recordings, maps, photographs, slides, microfilm and motion pictures) that are either created or obtained by the Office and are under Office control. It does not include objects or articles such as exhibits, models, equipment, and duplication machines or audiovisual processing materials.

*Representative of the news media* means a person actively gathering information for an entity organized and operated to publish or broadcast news to the public. News media entities include television and radio broadcasters, publishers of periodicals who distribute their products to the general public or who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media, such as electronic dissemination of text. Freelance journalists will be considered as representatives of a news media entity if they can show a solid basis for expecting publication through such an entity. A publication contract is such a basis, and the requester's past publication record may show such a basis.

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*Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

*Requester* means any person who makes a request for records to OGE.

*Review* means the process of initially, or upon appeal (see § 2604.501(b)(3)), examining documents located in a response to a request to determine whether any portion of any document is permitted to be withheld. It also includes processing documents for disclosure, such as redacting portions which may be withheld. Review does not include time spent resolving general legal and policy issues regarding the application of exemptions.

*Search* means the time spent looking for material manually or by automated means that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

*Working days* means calendar days, excepting Saturdays, Sundays, and legal public holidays.

[60 FR 10007, Feb. 23, 1995, as amended at 64 FR 28090, May 25, 1999; 66 FR 3439, Jan. 16, 2001]

### Subpart B—FOIA Public Reading Room Facility and Web Site; Index Identifying Information for the Public

#### § 2604.201 Public reading room facility and Web site.

(a)(1) *Location of public reading room facility.* The Office of Government Ethics maintains a public reading room facility at its offices located at 1201 New York Avenue, NW., Suite 500, Washington, DC 20005-3917. Persons desiring to utilize the reading room facility should contact the Office, in writing or by telephone at 202-208-8000 or FAX 202-208-8037, to arrange a time to inspect the materials available there.

(2) *Web site.* The records listed in paragraph (b) of this section, which are created on or after November 1, 1996, or which OGE is otherwise able to make electronically available (if feasible), along with the OGE FOIA and Public Records Guide and OGE's annual FOIA reports, are also available via OGE's Web site (Internet address: <http://www.usoge.gov>).