

Merit Systems Protection Board

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(i) To limit the request so that it may be processed within the time limit, or

(ii) To arrange with the Board a different time frame for processing the request or a changed request.

(2) *Expedited processing.* Where a requester shows a “compelling need” and in other cases determined by the Board, a decision whether to provide expedited processing of a request and notification of that decision to the requester will be made within 10 workdays of the date of the request. An example of a compelling need could be that a failure to obtain the records expeditiously could reasonably be expected to be a threat to the life or physical safety of a person or that there is urgency to inform the public about actual or alleged Federal Government activity by a person primarily engaged in distributing information. Where the Board approves expeditious processing, the Board will process the request within 5 workdays from the date of the decision to grant the expeditious processing. If, in order to fully satisfy the request, the Board requires the standard or additional processing time, or if it decides that good cause for expedited processing has not been made, it will provide written notice of its decision to the requester and will inform the requester of the right to administrative and court review of the decision. A showing of a compelling need must be made by a statement certified to be true to the best of the requester’s knowledge and belief.

[64 FR 51039, Sept. 21, 1999, as amended at 65 FR 48886, Aug. 10, 2000]

§ 1204.12 Fees.

(a) *General.* The Board will charge the requester fees for services provided in processing requests for information. Those fees will be charged according to the schedule in paragraph (d) of this section, and will recover the full allowable direct costs that the Board incurs. Fees may be charged for time spent searching for information, even if the Board fails to locate responsive records, and even if it determines that the information is exempt from disclosure.

(b) *Definitions.* (1) The term *direct costs* means the costs to an agency for

searching for and copying (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of each employee performing work at the rate of \$5 per quarter hour. Overhead expenses, such as costs of space and of heating or lighting the facility in which the records are stored, are not included in direct costs.

(2) The term *search*, as defined by 5 U.S.C. 552(a)(3)(D), means either manual or automated review of Board records to locate those records asked for, and includes all time spent looking for material in response to a request, including page-by-page or line-by-line identification of material within documents. Searches will be done in the most efficient and least expensive way to limit costs for both the Board and the requester. Searches may be done manually or by computer using existing programming. The Board will make a reasonable effort to search for the records in electronic form or format, except when such effort would interfere to a large extent with the operation of the Board’s automated information system.

(3) The term *duplication* means the process of copying a document or electronically maintained information in response to a FOIA request. Copies can take the form of paper, microfilm, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others. The copy provided will be in a form or format requested if the record is readily reproducible by the Board in that form or format. The Board will make a reasonable effort to maintain its records in forms or formats that are reproducible.

(4) The term *review* includes the process of examining documents to determine whether any portion of them may be exempt from disclosure under the FOIA, when the documents have been located in response to a request that is for a commercial use. The term also includes processing any documents for disclosure, e.g., doing all that is necessary to edit them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues.

(5) The term *commercial use request* means a request 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 the person on whose behalf the request is made. In deciding whether a requester properly belongs in this category, the Board will decide the use the requester will make of the documents requested. Also, where the Board has reasonable cause to doubt the use a requester will make of the records requested, or where that use is not clear from the request, the Board will seek additional clarification before assigning the request to a specific category.

(6) The term *educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education that operates a program or programs of scholarly research.

(7) The term *noncommercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is used above, and that is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(8) The term *representative of the news media* means 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 concerns current events or that would be of current interest to the public.

(c) *Categories of requesters.* There are four categories of FOIA requesters: Commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. To be included in the category of educational and noncommercial scientific institutions, requesters must show that the request is authorized by a qualifying institution and that they are seeking the records not for a commercial use, but to further scholarly or scientific research. To be included in the news media category, a requester must meet the definition in paragraph (b)(8)

of this section and the request must not be made for a commercial use. To avoid commercial use charges, requesters must show that they should be included in a category or categories other than that of commercial use requesters. The Board will decide the categories to place requesters for fee purposes. It will make these determinations based on information given by the requesters and information otherwise known to the Board.

(d) The Board will not charge a requester if the fee for any request is less than \$100 (the cost to the Board of processing and collecting the fee).

(1) When the Board receives a request:

(i) From a commercial use requester, it will charge fees that recover the full direct costs for searching for the information requested, reviewing it for release at the initial request stage, reviewing it after an appeal to determine whether other exemptions not considered before the appeal apply to it, and copying it.

(ii) From an educational and noncommercial scientific institution or, to the extent copying exceeds 100 pages, from a representative of the news media, it will charge fees only for the cost of copying the requested information.

(iii) From all other requesters, to the extent copying exceeds 100 pages and search time exceeds 2 hours, it will charge fees for the full direct cost of searching for and copying requested records.

(2) When the Board reasonably believes that a requester or group of requesters is attempting to divide a request into more than one request to avoid payment of fees, the Board will combine the requests and charge fees accordingly. The Board will not combine multiple requests on unrelated subjects from one requester.

(3) When the Board decides that charges for a request are likely to exceed \$250, the Board will require the requester to pay the entire fee in advance before continuing to process the request.

(4) When a requester has an outstanding fee charge or has not paid a fee on time, the Board will require the requester to pay the full amount of the

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estimated fee in advance before the Board begins to process a new or pending request from that requester, and before it applies administrative time limits for making a decision on the new or pending request.

(e) *Fee schedule.* (1) Fees for document searches for records will be charged at a rate of \$5 per quarter hour spent by each Board employee performing the search.

(2) Fees for computer searches for records will be \$5 per quarter hour spent by each employee operating the computer equipment and/or developing a new inquiry or report.

(3) Fees for review at the initial administrative level to determine whether records or portions of records are exempt from disclosure, and for review after an appeal to determine whether the records are exempt on other legal grounds, will be charged, for commercial use requests, at a rate of \$5 per quarter hour spent by each reviewing employee.

(4) Fees for photocopying records is 20 cents a page, the fee for copying audio tapes is the direct cost up to \$15 per cassette tape; the fee for copying video tapes is the direct cost up to \$20 per tape; and the fee for computer printouts is 10 cents a page. The fee for duplication of electronically maintained information in the requester's preferred format will be \$21 for copying computer tapes and \$4 for copying records on computer diskettes, if it is feasible for the Board to reproduce records in the format requested. Fees for certified copies of the Board's records will include a \$4 per page charge for each page displaying the Board's seal and certification. When the Board estimates that copying costs will exceed \$100, it will notify the requester of the estimated amount unless the requester has indicated in advance a willingness to pay an equal or higher amount.

(f) *Fee waivers.* (1) Upon request, the Clerk of the Board, Regional Director, or Chief Administrative Judge, as appropriate, will furnish information without charge or at reduced rates if it is established that disclosure "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activi-

ties of the government." This decision will be based on:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) Whether disclosure of the requested information is likely to contribute to public understanding of the subject of the disclosure; and

(iv) The significance of the contribution the disclosure would make to public understanding of government operations or activities.

(2) If information is to be furnished without charge or at reduced rates, the requester must also establish that disclosure of the information is not primarily in the commercial interest of the requester. This decision will be based on:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) Whether 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.

(3) The requester must establish eligibility for a waiver of fees or for reduced fees. The denial of a request for waiver of fees may be appealed under subpart C of this part.

§ 1204.13 Denials

(a) The Board may deny: A request for reduced fees or waiver of fees; a request for a record, either in whole or in part; a request for expeditious processing based on the requester's compelling need; or a request that records be released in a specific electronic format. The denial will be in writing, will state the reasons, and will notify the requester of the right to appeal.

(b) If the Board applies one or more of the exemptions provided under the FOIA to deny access to some or all of