AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

§ 455.9 Disclosure of record to a person other than the individual to whom the record pertains.

An individual to whom a record is to be disclosed in person may have a person of his or her own choosing accompany the individual when the record is disclosed.

§ 455.10 Fees.

(a) The Commission will not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of the process of disclosing the record to an individual, the Commission will not charge the individual for the cost of making that copy.

(b) If an individual requests the Commission to furnish him or her with a copy of the record (when a copy has not otherwise been made as a necessary part of the process of disclosing the record to the individual), the Commission will charge a fee of $0.25 per page (maximum per page dimension of 8½×13 inches) to the extent that the request exceeds $5.00 in cost to the Commission. Requests not exceeding $5.00 in cost to the Commission will be met without cost to the requester.

§ 455.11 Penalties.

Title 18 U.S.C. 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of $10,000 or imprisonment for not more than five years or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. Section 552a(i)(3) of the Privacy Act (5 U.S.C. 552a(i)(3)), makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Section 552a(i) (1) and (2) of the Privacy Act (5 U.S.C. 552a(i) (1) and (2)) provide penalties for violations by agency employees of the Privacy Act or regulations established thereunder.

§ 455.12 Exemptions.

No Commission records system is exempted from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a (j) and (k).

PART 456—NATIONAL CAPITAL PLANNING COMMISSION (FREEDOM OF INFORMATION ACT REGULATIONS)

Sec.
456.1 Introduction.
456.2 Organization.
456.3 Definitions.
456.4 Public access to information.

AUTHORITY: 5 U.S.C. 552, as amended.

SOURCE: 47 FR 44229, Oct. 7, 1982, unless otherwise noted.

§ 456.1 Introduction.

The following regulations implement the Freedom of Information Act, as amended, 5 U.S.C. 552 (hereinafter the ''Act''), and provide procedures by which information may be obtained from the National Capital Planning Commission (hereinafter the ''Commission''). Official records made available pursuant to the Act shall be furnished to members of the public as prescribed herein.

§ 456.2 Organization.

The Commission is the central planning agency for the Federal Government in the National Capital. The Commission is composed of ex-officio, the Secretary of the Interior, the Secretary of Defense, the Administrator of the General Services Administration, the Mayor of the District of Columbia, the Chairman of the Council of the District of Columbia, and the Chairman of the Committees on the District of Columbia of the Senate and the House of Representatives, or their alternates; and five citizens, three of whom are appointed by the President, and two of whom are appointed by the Mayor of the District of Columbia. The Commission is assisted by a staff headed by an Executive Director. The staff is organized functionally as follows:

(a) Office of the Executive Director;

(b) Legal Section;

(c) Secretariat Section;

(d) Management Services Section;

(e) Planning and Programming Division;

(f) Review and Implementation Division;

(g) Planning Services Division;
(h) Carto/Graphics Division; and,
(i) Public Affairs Division.

[47 FR 44229, Oct. 7, 1982, as amended at 52 FR 34373, Sept. 11, 1987]

§456.3 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Direct costs.* This term means those expenditures which the Commission actually incurs in searching for, duplicating and reviewing records.

(b) *Search.* This term includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(c) *Duplication.* This term refers to the process of making a copy of a document necessary to respond to a Freedom of Information Act request.

(d) *Review.* This term refers to the process of examining documents located in response to a request that is for commercial use to determine whether any portion of any document located is permitted to be withheld, and includes processing any documents for disclosure.

(e) *Commercial use request.* This term refers to 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.

(f) *Educational institution.* This term refers to 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, and an institution of vocational education, which operates a program or programs of scholarly research.

(g) *Non-commercial scientific institution.* This term refers to a non-profit institution 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.

(h) *Representative of the news media.* This term refers to 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 is about current events or that would be of current interest to the public. Examples of news media entities include 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. In the case of ''freelance'' journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

[52 FR 34373, Sept. 11, 1987]

§456.4 Public access to information.

(a) *General policy.* It is the Commission's general policy to facilitate the broadest possible availability and dissemination of information to the public. The Commission's staff is available to assist the public in obtaining information formally by using the procedures herein or informally by discussions with the staff. The Commission's staff may, therefore, continue to furnish informally to the public information, which, prior to the amendments to the Act contained in Public Law 93–502, enacted November 21, 1974, was customarily furnished in the regular performance of their duties, provided the staff do so in a manner not inconsistent with these regulations. In addition, to the extent permitted by other laws, the Commission will make available records which it is authorized to withhold under the Act when it determines that such disclosure is in the public interest.

(b) *Established place of obtaining information.* Information may be obtained only from the Commission's offices, which are located at 1325 G Street, NW., Washington, DC 20576. Its official hours are 8:00 a.m. to 6:00 p.m., Monday through Friday, excluding legal holidays.

(c) *Information sources within the Commission.* Requests for Commission publications, offered for sale or informal

requests for general information on the Commission should be directed to the Public Affairs Officer. All formal requests for agency records pursuant to the Act must be directed to the Freedom of Information Officer.

Any request directed initially to the wrong information source will be correctly routed by the Commission's staff and the requesting party will be so notified. The ten-day time period within which the Commission is required to determine whether to comply with a request shall not begin to run until the request reaches, or with the exercise of due diligence should have reached, the appropriate information source.

(d) *Information routinely available.* The following types of information shall be routinely available (subject to the fee schedule, infra) for public dissemination without recourse to the Commission's formal information request procedures unless such information falls within one of the exemptions to agency disclosure listed in 5 U.S.C. 552(b):

(1) Correspondence between the Commission and the public;

(2) Executive Director's Recommendations;

(3) Committee Reports;

(4) Commission Memorandums of Actions; and

(5) Maps.

Requests for information, other than maps, shall be directed to the Freedom of Information Officer; map requests shall be directed to the Public Affairs Officer.

(e) *Formal requests for information.* All formal requests for information pursuant to the Act shall be made in writing to the Freedom of Information Officer. To expedite internal handling of such requests, the words ''Freedom of Information Request'' shall appear on the face of the envelope bearing such request. The request shall state that the request is made pursuant to the Freedom of Information Act; shall reasonably describe the information sought, including the date the Commission received or produced the requested information, if known; shall state, pursuant to the fee schedule set forth infra, the maximum fee the party making the request would be willing to pay for the duplication of the requested records without further approval; and shall, if possible, provide a telephone number at which the requesting party can be contacted to facilitate handling of the request.

(f) *Commission response to formal requests.* The Freedom of Information Officer, upon request for information made in compliance with these regulations, shall determine within ten days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor and of the right of such person to appeal to the head of the agency any adverse determination. In unusual circumstances as specified infra, the ten-day time limit may be extended by written notice to the person making the request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this paragraph, ''unusual circumstances'' means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from establishments that are separate from the Commission's offices;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(g) *Determination to grant request.* If the Freedom of Information Officer makes a determination to grant a request in whole or in part, the person making such request will be so notified in writing. The notice shall also include a description of the information to be made available, a statement of the time when and the place where such information may be inspected or

alternatively, the procedure for duplication and delivery (by mail or other means) of the information to the requesting party and a statement of the total fees chargeable to the requesting person pursuant to the fee schedule infra.

(h) *Determination to deny request-appeal procedure.* If the Freedom of Information Officer makes a determination to deny, in whole or in part, a request for information, he shall so notify the party making the request in writing. Any appeal of such determination shall be made in writing to the Chairman of the Commission and shall include a brief statement of the legal, factual, or other basis for the party's objection to the initial decision. The Chairman shall, within twenty days (excepting Saturdays, Sundays, and legal holidays) of the receipt of any such appeal determine whether to grant or deny the appeal and shall, immediately upon making his decision, give written notice of the decision to the party, including a brief statement of the reasons therefor.

(i) *Waiver.* Whenever a waiver of any of the procedures set forth herein would further the purpose of the Act by causing the public disclosure of non-confidential information within the time period required by the Act, the Freedom of Information Officer may, in the context of individual requests for information, waive any of the procedural requirements herein.

(j) *Schedule of fees.* (1) The Commission may charge the following fees for the production of information pursuant to the Act:

(i) Publications offered for sale—as marked.

(ii) Commission reports—$0.25/page.

(iii) Committee reports—$0.25/page.

(iv) Commission Memorandums of Actions—$0.25/page.

(v) Transcripts of Commission meetings and Committee meetings—$0.25/page.

(vi) Other records—$0.25/page.

(vii) Map publications—microfilm printout—$1.00/each; ozalid maps—$0.30/linear foot.

(viii) Manual record research: $2.25 per quarter hour if conducted by a clerical employee; $5.00 per quarter hour if conducted by a professional or managerial employee. The Commission may charge for search costs, where applicable, even if there is ultimately no disclosure of records.

(ix) Review charges: $5.00 per quarter hour. The Commission may charge for review costs, where applicable, even if there is ultimately no disclosure of records.

(2) The Commission may charge the above-stated fees for the production of information pursuant to the Act, based upon the following requester classifications:

(i) *Commercial use requester.* The Commission may charge requesters in this category for all the direct costs of searching for, reviewing for release, and duplicating the records sought. In determining whether a request is for commercial use, the Commission will look to the use to which a requester will put the documents requested. Where a requester does not explain the use or where the explanation is insufficient, the Commission may draw reasonable inferences from the requester's identity.

(ii) *Educational and non-commercial scientific institution requesters.* The Commission shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. Requesters must show that the request is being made as authorized by or under the auspices of a qualifying institution and that the records sought are not for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or non-commercial scientific research (if the request is from a non-commercial scientific institution).

(iii) *Representatives of the news media.* The Commission shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages.

(iv) *All other requesters.* The Commission may charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct costs of searching for and reproducing records that are responsive to the request, excluding the first 100 pages and first two hours of search time. Requests from record subjects for records about themselves filed in the

Commission's system of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(3) The Commission keeps on file a limited quantity of back copies of Executive Director's Recommendations, Committee Reports, and Commission Memorandums of Actions. The Commission will first attempt to fill specific requests for these documents from its supply of back copies and until the supply is exhausted, the Commission will provide the documents at no charge. Once the supply is exhausted, the requested documents will be provided in accord with the fee schedule.

(4) The Commission may not charge fees to any requester if the cost of collecting the fee would be equal to or greater than the fee itself. The minimum fee for the production of information will be $2.00 (over and above the first free 100 pages and 2 hours search time, where applicable). The Commission's Freedom of Information Officer shall provide documents furnished under the Act without any charge or at a charge reduced below the fees established under § 456.3(j)(1) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and it is not primarily in the commercial interest of the requester.

(5) In deciding whether a fee waiver or reduction under § 456.4(j)(4) is justified, the Commission will consider the following factors:

(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) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to ''public understanding''; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities.

(v) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest disclosure, that disclosure is ''primarily in the commercial interest of the requester.''

(k) *Prior approval or advance deposit of fees.* (1) Where the agency estimates that duplication, review or search charges are likely to exceed $25.00, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those estimated. Where the fees anticipated to result from a request are substantially greater than the amount estimated in the written request, the persons requesting the information shall be immediately notified of the estimated fees and his approval of such fees requested. Such person shall also be afforded the opportunity to revise his or her request to reduce the fees but satisfy his or her needs for information.

(2) Where the Freedom of Information Officer determines that fees are likely to exceed $250.00, the Commission may require advance payment of the fee in whole or in part. Where a requester has previously failed to pay a fee charged in a timely manner or is presently in arrears, the Commission may require the requester to pay the full amount owed and to make an advance payment of the full amount of the estimated fees before the agency begins to process a new request or completes a pending request.

(3) The dispatch of any such request for an estimated fee approval or advance deposit shall suspend, until a reply is received by the Freedom of Information Officer, the period pursuant to 5 U.S.C., 552 and paragraph (f) supra

within which the Freedom of Information Officer must respond to a written request for information.

(4) A requester may not file multiple requests at the same time, each seeking portions of a document(s), solely in order to avoid payment of fees. When the Commission reasonably believes a requester(s) is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Commission may aggregate any such requests and charge accordingly.

(l) *Payment of fees.* Fees charged a person for the production of information must be paid in full prior to release of the information. Payment of fees shall be made by a personal check, postal money order or bank draft on a bank in the United States, made payable to the order of the Treasurer of the United States.

[47 FR 44229, Oct. 7, 1982. Redesignated and amended at 52 FR 34373–34374, Sept. 11, 1987]

PART 457—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL CAPITAL PLANNING COMMISSION

Sec.

457.101 Purpose.
457.102 Application.
457.103 Definitions.
457.104—457.109 [Reserved]
457.110 Self-evaluation.
457.111 Notice.
457.112—457.129 [Reserved]
457.130 General prohibitions against discrimination.
457.131—457.139 [Reserved]
457.140 Employment.
457.141—457.148 [Reserved]
457.149 Program accessibility: Discrimination prohibited.
457.150 Program accessibility: Existing facilities.
457.151 Program accessibility: New construction and alterations.
457.152—457.159 [Reserved]
457.160 Communications.
457.161—457.169 [Reserved]
457.170 Compliance procedures.
457.171—457.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22887 and 22896, June 23, 1986, unless otherwise noted.

§ 457.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 457.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 457.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.