§ 70.28–70.37 [Reserved]

Subpart C—Costs for Production of Records

§ 70.38 Definitions.

The following definitions apply to this subpart:

(a) Request, in this subpart, includes any request, as defined by § 70.2(f), as well as any appeal filed in accordance with § 70.22.

(b) Direct costs means those expenditures which a component actually incurs in searching for and duplicating (and in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the Federal employee performing work (the basic rate of pay for the Federal employee plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are kept.

(c) Reproduction means the process of making a copy of a record necessary to respond to a request. Such copy can take the form of paper, microform, audio-visual materials or electronic records (e.g., magnetic tape or disk).

(d) Search means the process of looking for and retrieving records or information that is responsive to a FOIA request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Disclosure officers will ensure that searches are done in the most efficient and least expensive manner reasonably possible. A search does not include the review of material, as defined in paragraph (e) of this section, which is performed to determine whether material is exempt from disclosure.

(e) Review means the process of examining records, including audio-visual, electronic mail, etc., located in response to a request to determine whether any portion of the located record is exempt from disclosure, and accordingly may be withheld. It also includes the act of preparing materials for disclosure, i.e., doing all that is necessary to excise them and otherwise prepare them for release. Review time includes time spent contacting any submitter, and considering and responding to any objections to disclosure made by a submitter under § 70.26, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(f) Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade or profit interests, which can include furthering those interests through litigation. Components will determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester’s stated use, the component will provide the requester a reasonable opportunity to submit further clarification.

(g) Educational institution means an institution which:

1. Is a preschool, public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, and
2. Operates a program or programs of scholarly research. To qualify under this definition, the program of scholarly research in connection with which the information is sought must be carried out under the auspices of the academic institution itself as opposed to the individual scholarly pursuits of persons affiliated with an institution. For example, a request from a professor to assist him or her in writing of a book, independent of his or her institutional responsibilities, would not qualify under this definition, whereas a request predicated upon research funding granted to the institution would meet its requirements. A request from a student enrolled in an individual course of study at an educational institution would not qualify as a request from the institution.
§ 70.39 Statutes specifically providing for setting of fees.

This subpart will not apply to fees charged under any statute, other than the FOIA, that specifically requires an agency to set and collect fees for particular types of records.

§ 70.40 Charges assessed for the production of records.

(a) General. There are three types of charges assessed in connection with the production of records in response to a request, charges for costs associated with:

(1) Searching for or locating responsive records (search costs),
(2) Reproducing such records (reproduction costs), and
(3) Reviewing records to determine whether any materials are exempt (review costs).

(b) There are four types of requesters:
(i) Commercial use requesters,
(ii) Educational and non-commercial scientific institutions,
(iii) Representatives of the news media, and
(iv) All other requesters.

(2) Depending upon the type of requester, as set forth in paragraph (b)(1) of this section, the charges outlined in paragraph (c) of this section may be assessed.

(c) Types of charges that will be assessed for each type of request.

(1) Commercial use request. When a requester makes a commercial use request, search costs, reproduction costs and review costs will be assessed in their entirety.

(2) Educational or non-commercial scientific institution request. When an educational or non-commercial scientific institution makes a request, only reproduction costs will be assessed, excluding charges for the first 100 pages.

(3) Request by representative of news media. When a representative of the news media makes a request, only reproduction costs will be assessed, excluding charges for the first 100 pages.

(4) All other requests. Requesters making a request which does not fall within paragraphs (c)(1), (2), or (3) of this section will be charged search costs and reproduction costs, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. Where computer searches are involved, the monetary equivalent of two hours of search time by a professional employee will be deducted from the total cost of computer processing time.

(d) Charges for each type of activity.

(1) Search costs. (i) When a search for records is performed by a clerical employee, a rate of $5.00 per quarter hour will be applicable. When a search is performed by professional or supervisory personnel, a rate of $10.00 per
quarter hour will be applicable. Components will charge for time spent searching even if they do not locate any responsive records or they withhold the records located as exempt from disclosure.

(i) For computer searches of records, requesters will be charged the direct costs of conducting the search, except as provided in paragraph (c)(4) of this section.

(ii) If the search for requested records requires transportation of the searcher to the location of the records or transportation of the records to the searcher, all transportation costs in excess of $5.00 may be added to the search cost.

(2) Reproduction costs. The standard copying charge for records in black and white paper copy is $0.15 per page. This charge includes the operator’s time to duplicate the record. When responsive information is provided in a format other than 8½ x 11 or 11 x 14 inch black and white paper copy, such as computer tapes, disks and color copies, the requester may be charged the direct costs of the tape, disk, audio-visual or whatever medium is used to produce the information, as well as the direct cost of reproduction, including operator time. The disclosure officer may request that if a medium is requested other than paper, the medium will be provided by the requester.

(3) Review costs. Costs associated with the review of records, as defined in “70.38(e), will be charged for work performed by a clerical employee at a rate of $5.00 per quarter hour when applicable. When professional or supervisory personnel perform work, a rate of $10.00 per quarter hour will be charged, when applicable. Except as noted in this paragraph, charges may only be assessed for review the first time the records are analyzed to determine the applicability of specific exemptions to the particular record or portion of the record. Thus a requester would not be charged for review at the administrative appeal level with regard to the applicability of an exemption already applied at the initial level. When, however, a record has been withheld pursuant to an exemption which is subsequently determined not to apply and is reviewed again at the appellate level to determine the potential applicability of other exemptions, the costs attendant to such additional review will be assessed.

(4) Mailing cost. Where requests for copies are sent by mail, no postage charge will be made for transmitting by regular mail a single copy of the requested record to the requester, or for mailing additional copies where the total postage cost does not exceed $5.00. However, where the volume of paper copy or method of transmittal requested is such that transmittal charges to the Department are in excess of $5.00, the transmittal costs will be added.

(e) Aggregating requests for purposes of assessing costs. (1) Where a disclosure officer reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the disclosure officer may aggregate those requests and charge accordingly.

(2) Disclosure officers may presume that multiple requests of this type made within a 30-day period have been submitted in order to avoid fees. Where requests are separated by a longer period, disclosure officers will aggregate them only where a solid basis exists for determining that aggregation is warranted under all of the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(f) Interest charges. Disclosure officers will assess interest on an unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982, (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(g) Authentication of copies. (1) Fees. The FOIA does not require certification or attestation under seal of copies of records provided in accordance
with its provisions. Pursuant to provisions of the general user-charge statute, 31 U.S.C. 9701 and Subchapter II of title 29 U.S.C., the following charges will be made when, upon request, such services are nevertheless rendered by the agency in its discretion:

(i) For certification of true copies, $10.00 each certification.

(ii) For attestation under the seal of the Department, $10.00 each attestation under seal.

2 Authority and form for attestation under seal. Authority is hereby given to any officer or officers of the Department of Labor designated as authentication officer or officers of the Department to sign and issue attestations under the seal of the Department of Labor.

(h) Transcripts. Fees for transcripts of an agency proceeding will be assessed in accordance with the provisions of this Subpart.

(i) Privacy Act requesters. A request from an individual or on behalf of an individual for a record maintained by that individual’s name or other unique identifier which is contained within a component’s system of records will be treated under the fee provisions at 29 CFR 71.6.

§ 70.41 Reduction or waiver of fees.

(a) Requirements for waiver or reduction of fees. (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (d) of §70.40 where a Disclosure Officer determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested 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

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the requirement of paragraph (a)(1)(i) of this section is met, components 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.” The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(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. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public’s understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to “public understanding.” The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area and ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media will satisfy this consideration.

(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. The public’s understanding of the subject in question must be enhanced by the disclosure to a significant extent.

(3) To determine whether the requirement of paragraph (a)(1)(i) of this section is met, components will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. The Disclosure Officer will
consider any commercial interest of the requester (with reference to the definition of “commercial use request” in §70.38(f)), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any 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.” A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The Disclosure Officer ordinarily will presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted only for those records.

(5) Requests for the waiver or reduction of fees must address the factors listed in paragraph (a) of this section, insofar as they apply to each request.

Submission. Requests for waiver or reduction of fees must be submitted along with the request or before processing of the request has commenced.

(c) Appeal rights. The procedures for appeal under 70.22 and 70.23 will control.

§ 70.42 Consent to Pay Fees.

(a) The filing of a request under this subpart will be deemed to constitute an agreement by the requester to pay all applicable fees charged under this part up to and including $25.00, unless the requester seeks a waiver of fees. When making a request, the requester may specify a willingness to pay a greater or lesser amount.

(b) No request will be processed if a disclosure officer reasonably believes that the fees are likely to exceed the amount to which the requester has originally consented, absent supplemental written consent by the requester to proceed after being notified of this determination.

(c) When the estimated costs are likely to exceed the amount of fees to which the requester has consented, the requester must be notified. Such notice may invite the requester to reformulate the request to satisfy his or her needs at a lower cost.

§ 70.43 Payment of fees.

(a) De minimis costs. Where the cost of collecting and processing a fee to be assessed to a requester exceeds the amount of the fee which would otherwise be assessed, no fee need be charged. Fees which do not exceed $15.00 usually need not be collected.

(b) How payment will be made. Requesters will pay fees by check or money order made payable to the Treasury of the United States.

(c) Advance payments and billing. (1) Prior to beginning to process a request, the disclosure officer will make a preliminary assessment of the amount that can properly be charged to the requester for search and review time and copying costs. Where a disclosure officer determines or estimates that a total fee to be charged under this section will be more than $250.00, the disclosure officer will require the requester to make an advance payment of an amount up to the entire anticipated fee before beginning to process the request. The disclosure officer may waive the advance payment where the disclosure officer receives a satisfactory assurance of full payment from a requester who has a history of prompt payment of an amount similar to the one anticipated by the request.

(2) Where a requester has previously failed to pay a properly charged FOIA fee to any component of the Department of Labor within 30 days of the date of billing, a disclosure officer will require the requester to pay the full amount due, plus any applicable interest as provided in §70.40(f) and to make
§ 70.44 Other rights and services.

Nothing in this subpart will be construed to entitle any person, as of right, to any service or to the disclosure of any records to which such person is not entitled under the FOIA.

§ 70.45–70.52 [Reserved]

Subpart D—Public Records and Filings

§ 70.53 Office of Labor-Management Standards.

(a) The following documents in the custody of the Office of Labor-Management Standards are public information available for inspection and/or purchase of copies in accordance with paragraphs (b) and (c) of this section.


(2) Data and information contained in any report or other document filed pursuant to the reporting requirements of 29 CFR part 458, which are the regulations implementing the standards of conduct provisions of the Civil Service Reform Act of 1978, 5 U.S.C. 7120, and the Foreign Service Act of 1980, 22 U.S.C. 4117. The reporting requirements are found in 29 CFR 458.3.


(c) Pursuant to 29 U.S.C. 435(c) which provides that the Secretary will by regulation provide for the furnishing of copies of the documents listed in paragraph (a) of this section, upon payment of a charge based upon the cost of the service, these documents are available at a cost of $.15 per page for record copies furnished. Authentication of copies is available in accordance with the fee schedule established in §70.40. In accordance with 5 U.S.C. 552(a)(4)(A)(vi), the provisions for fees, fee waivers and fee reductions in subpart C of this part do not supersede these charges for these documents.

(d) Upon request of the Governor of a State for copies of any reports or documents filed pursuant to sections 201, 202, 203, or 211 of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 524–528, 79 Stat. 888, 73 Stat. 530, 29 U.S.C. 431–433, 441), or for information contained therein, which have been filed by any person whose principal place of business or headquarters is in such State, the Office of Labor-Management Standards will:

(1) Make available without payment of a charge to the State agency designated by law or by such Governor, such requested copies of information and data, or