

shall be forwarded to the requester at the same time.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the bureau shall promptly notify the business submitter.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The bureau determines that the information shall not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

§ 1.7 Fees for services.

(a) *In general.* This fee schedule is applicable uniformly throughout the Department of the Treasury and pertains to requests processed under the Freedom of Information Act. Specific levels of fees are prescribed for each of the following categories of requesters. Requesters are asked to identify the applicable fee category they belong to in their initial request in accordance with § 1.5(b).

(1) *Commercial use requesters.* These requesters are assessed charges which recover the full direct costs of searching for, reviewing, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of duplication of documents. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the Department is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The Department may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records, or no records are located.

(2) *Educational and Non-Commercial Scientific Institution Requesters.* Records shall be provided to requesters in these categories for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible, requesters must show that the request is made

under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include requesters who want records for use in meeting individual academic research or study requirements.

(3) *Requesters who are Representatives of the News Media.* Records shall be provided to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(4) *All Other Requesters.* Requesters who do not fit any of the categories described above shall be charged fees that will recover the full direct cost of searching for and duplicating records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. The Department may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located. Requests from persons for records about themselves filed in the Department's systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for duplication, after the first 100 pages are furnished free of charge.

(b) *Fee waiver determination.* Where the initial request includes a request for reduction or waiver of fees, the responsible official shall determine whether to grant the request for reduction or waiver before processing the request and notify the requester of this decision. If the decision does not waive all fees, the responsible official shall advise the requester of the fact that fees shall be assessed and, if applicable, payment must be made in advance pursuant to § 1.7(e)(2).

(c) *When fees are not charged.* (1) No fee shall be charged for monitoring a requester's inspection of records.

(2) Fees shall be charged in accordance with the schedule contained in paragraph (g) of this section for services rendered in responding to requests for records, unless any one of the following applies:

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(i) Services were performed without charge;

(ii) The cost of collecting a fee would be equal to or greater than the fee itself; or,

(iii) The fees were waived or reduced in accordance with paragraph (d) of this section.

(d) *Waiver or reduction of fees.* (1) Fees may be waived or reduced on a case-by-case basis in accordance with this paragraph by the official who determines the availability of the records, provided such waiver or reduction has been requested in writing. Fees shall be waived or reduced by this official when it is determined, based upon the submission of the requester, that a waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Fee waiver/reduction requests shall be evaluated against the fee waiver policy guidance issued by the Department of Justice on April 2, 1987.

(2) Normally no charge shall be made for providing records to state or foreign governments, international governmental organizations, or local government agencies or offices.

(3) Appeals from denials of requests for waiver or reduction of fees shall be decided in accordance with the criteria set forth in paragraph (d)(1) of this section by the official authorized to decide appeals from denials of access to records. Appeals shall be addressed in writing to the office or officer specified in the appropriate appendix to this subpart within 35 days of the denial of the initial request for waiver or reduction and shall be decided within 20 days (excluding Saturdays, Sundays, and legal public holidays).

(4) Appeals from an adverse determination of the requester's category as described in § 1.5(b)(2) and provided in § 1.5(i)(1) shall be decided by the official authorized to decide appeals from denials of access to records and shall be based upon a review of the requester's submission and the bureau's own records. Appeals shall be addressed in writing to the office or officer specified in the appropriate appendix to this sub-

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part within 35 days of the date of the bureau's determination of the requester's category and shall be decided within 20 days (excluding Saturdays, Sundays, and legal public holidays).

(e) *Advance notice of fees.* (1) When the fees for processing the request are estimated to exceed the limit set by the requester, and that amount is less than \$250, the requester shall be notified of the estimated costs. The requester must provide an agreement to pay the estimated costs; however, the requester shall also be given an opportunity to reformulate the request in an attempt to reduce fees.

(2) If the requester has failed to state a limit and the costs are estimated to exceed \$250.00, the requester shall be notified of the estimated costs and must pre-pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. The requester shall also be given an opportunity to reformulate the request in such a way as to constitute a request for responsive records at a reduced fee.

(3) When the Department or a bureau of the Department acts under paragraphs (e)(1) or (2) of this section, the administrative time limits of 20 days (excluding Saturdays, Sundays, and legal public holidays) from receipt of initial requests or appeals, plus extensions of these time limits, shall begin only after fees have been paid, a written agreement to pay fees has been provided, or a request has been reformulated.

(f) *Form of payment.* (1) Payment may be made by check or money order payable to the Treasury of the United States or the relevant bureau of the Department of the Treasury.

(2) The Department of the Treasury reserves the right to request prepayment after a request is processed and before documents are released.

(3) When costs are estimated or determined to exceed \$250, the Department shall either obtain satisfactory assurance of full payment of the estimated cost where the requester has a history of prompt payment of FOIA fees or require a requester to make an

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advance payment of the entire estimated or determined fee before continuing to process the request.

(4) If a requester has previously failed to pay a fee within 30 days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Department begins to process a new request or the pending request. Whenever interest is charged, the Department shall begin assessing interest on the 31st day following the day on which billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717. In addition, the Department shall take all steps authorized by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, including administrative offset pursuant to 31 CFR Part 5, disclosure to consumer reporting agencies and use of collection agencies, to effect payment.

(g) *Amounts to be charged for specific services.* The fees for services performed by a bureau of the Department of the Treasury shall be imposed and collected as set forth in this paragraph.

(1) *Duplicating records.* All requesters, except commercial requesters, shall receive the first 100 pages duplicated without charge. Absent a determination to waive fees, a bureau shall charge requesters as follows:

(i) \$.20 per page, up to 8½×14", made by photocopy or similar process.

(ii) Photographs, films, and other materials—actual cost of duplication.

(iii) Other types of duplication services not mentioned above—actual cost.

(iv) Material provided to a private contractor for copying shall be charged to the requester at the actual cost charged by the private contractor.

(2) *Search services.* Bureaus shall charge for search services consistent with the following:

(i) *Searches for other than electronic records.* The Department shall charge for search time at the salary rate(s) (basic pay plus 16 percent) of the employee(s) making the search. However, where a single class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), an average rate for the range of grades typically involved may be es-

tablished. This charge shall include transportation of personnel and records necessary to the search at actual cost. Fees may be charged for search time as prescribed in § 1.7, even if the search does not yield any responsive records, or if records are denied.

(ii) *Searches for electronic records.* The Department shall charge for actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output shall be actual direct costs. For requesters in the "all other" category, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search (i.e., the operator), the charge for the computer search will begin.

(3) *Review of records.* The Department shall charge commercial use requesters for review of records at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the review. However, when a single class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), an average rate for the range of grades typically involved may be established. Fees may be charged for review time as prescribed in § 1.7, even if records ultimately are not disclosed.

(4) *Inspection of records.* Fees for all services provided shall be charged whether or not copies are made available to the requester for inspection.

(5) *Other services.* Other services and materials requested which are not covered by this part nor required by the FOIA are chargeable at the actual cost to the Department. This includes, but is not limited to:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

(h) *Aggregating requests.* When the Department or a bureau of the Department reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency shall aggregate any such requests and charge accordingly.