

## PART 1600—PUBLIC AVAILABILITY OF DOCUMENTS AND RECORDS

### Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

- Sec.
- 1600.1 General provisions.
  - 1600.2 Public reading room.
  - 1600.3 Requests for records.
  - 1600.4 Timing of responses to requests.
  - 1600.5 Responses to requests.
  - 1600.6 Disclosure of requested records
  - 1600.7 Special procedures for confidential Commercial information
  - 1600.8 Appeals.
  - 1600.9 Preservation of records.
  - 1600.10 Fees.

### Subpart B—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

- 1600.21 General provisions.
- 1600.22 Requests for access to records.
- 1600.23 Responsibility for responding to requests for access to records.
- 1600.24 Responses to requests for access to records.
- 1600.25 Appeals from denials of requests for access to records.
- 1600.26 Requests for amendment or correction of records.
- 1600.27 Requests for accountings of record disclosures.
- 1600.28 Preservation of records.
- 1600.29 Fees.
- 1600.30 Notice of court-ordered and emergency disclosures.

AUTHORITY: 5 U.S.C. 552, 552a, 553; 20 U.S.C. 5608(a)(3).

Subpart A is also issued under 5 U.S.C. 571-574.

SOURCE: 66 FR 15034, Mar. 15, 2001, unless otherwise noted.

### Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

#### § 1600.1 General provisions.

(a) This subpart contains the rules that the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (the Foundation) follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These rules should be read together with the FOIA, which provides additional information about access to records. Re-

quests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, which are processed under subpart B of this part, are processed under this subpart also. Information routinely provided to the public as part of a regular Foundation activity (for example, press releases, annual reports, informational brochures and the like) may be provided to the public without following this subpart. As a matter of policy, the Foundation makes discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(b) This subpart applies to all Foundation programs, including the U.S. Institute for Environmental Conflict Resolution (USIECR).

#### § 1600.2 Public reading room.

(a) The Foundation maintains a public reading room that contains the records that the FOIA requires to be made regularly available for public inspection and copying. An index of reading room records shall be available for inspection and copying and shall be updated at least quarterly.

(b) The public reading room is located at the offices of the Foundation, 110 S. Church Avenue, Suite 3350, Tucson, Arizona.

(c) The Foundation also makes reading room records created on or after November 1, 1996, available electronically, if possible, at the Foundation's web site (which can be found at [www.udall.gov](http://www.udall.gov)). This includes the index of the reading room records, which will indicate which records are available electronically.

#### § 1600.3 Requests for records.

(a) *How made and addressed.* You may make a request for records of the Foundation by writing to the General Counsel, Morris K. Udall Foundation, 110 South Church Avenue, Suite 3350, Tucson, Arizona 85701-1650. If you are making a request for records about yourself, see § 1600.21 for additional requirements. If you are making a request for records about another individual, either a written authorization signed by

#### § 1600.4

#### 36 CFR Ch. XVI (7-1-11 Edition)

that individual permitting disclosure of those records to you or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) will help the processing of your request. For the quickest possible handling, you should mark both your request letter and the envelope "Freedom of Information Act Request."

(b) *Description of records sought.* You must describe the records that you seek in enough detail to enable Foundation personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. If the Foundation determines that your request does not reasonably describe records, it will tell you either what additional information is needed or why your request is otherwise insufficient. If your request does not reasonably describe the records you seek, the response to your request may be delayed.

(c) *Types of records not available.* The FOIA does not require the Foundation to:

(1) Compile or create records solely for the purpose of satisfying a request for records;

(2) Provide records not yet in existence, even if such records may be expected to come into existence at some future time; or

(3) Restore records destroyed or otherwise disposed of, except that the Foundation must notify the requester that the requested records have been destroyed or disposed of.

(d) *Agreement to pay fees.* If you make a FOIA request, your request shall be considered an agreement by you to pay all applicable fees charged under § 1600.10, up to \$25.00, unless you seek a waiver of fees. The Foundation ordinarily will confirm this agreement in an acknowledgment letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

#### § 1600.4 Timing of responses to requests.

(a) *In general.* The Foundation ordinarily shall respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) The Foundation may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request. The anticipated number of pages involved may be considered by the Foundation in establishing processing tracks. If the Foundation sets a page limit for its faster track, it will advise those whose request is placed in its slower track(s) of the page limits of its faster track(s).

(2) If the Foundation uses multitrack processing, it may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of its faster track(s).

(c) *Unusual circumstances.* (1) Where the statutory time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the Foundation decides to extend the time limits on that basis, the Foundation shall as soon as practicable notify the requester in writing of the unusual circumstances and of the date by which processing of the request can be expected to be completed. Where the extension is for more than 10 working days, the Foundation shall provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period for processing the request or a modified request.

(2) Where the Foundation reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

(d) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(2) You may ask for expedited processing of a request for records at any time.

(3) In order to request expedited processing, you must submit a statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, if you are a requester within the category in paragraph (d)(1)(ii) of this section, and you are not a full-time member of the news media, you must establish that you are a person whose main professional activity or occupation is information dissemination, though it need not be your sole occupation; you also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within 10 calendar days of receipt of a request for expedited processing, the Foundation will decide whether to grant it and will notify you of the decision. If a request for expedited treatment is granted, the request will be given priority and processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

#### § 1600.5 Responses to requests.

(a) *Acknowledgments of requests.* On receipt of your request, the Foundation ordinarily will send an acknowledgment letter to you, which will confirm your agreement to pay fees under § 1600.3(d) and provide an assigned request number for further reference.

(b) *Referral to another agency.* When a requester seeks records that originated in another Federal government agency, the Foundation will refer the request to the other agency for response. If the Foundation refers the request to another agency, it will notify the requester of the referral. A request for any records classified by some other

agency will be referred to that agency for response.

(c) *Grants of requests.* Ordinarily, the Foundation will have 20 business days from when your request is received to determine whether to grant or deny your request. Once the Foundation determines to grant a request in whole or in part, it will notify you in writing. The Foundation will inform you in the notice of any fee charged under § 1600.10 and will disclose records to you promptly on payment of any applicable fee. Records disclosed in part will be marked or annotated to show the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also will be indicated on the record, if technically feasible.

(d) *Adverse determinations of requests.* If the Foundation denies your request in any respect, it will notify you of that determination in writing. Adverse determinations, or denials of requests, consist of: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited treatment. The denial letter shall be signed by the General Counsel or his/her designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any FOIA exemption applied by the component in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

## § 1600.6

## 36 CFR Ch. XVI (7-1-11 Edition)

(4) A statement that the denial may be appealed under §1600.8(a) and a description of the requirements for appeal.

### § 1600.6 Disclosure of requested records.

(a) The Foundation shall make requested records available to the public to the greatest extent possible in keeping with the FOIA, except that the following records are exempt from the disclosure requirements:

(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which are, in fact, properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of the Foundation;

(3) Records specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or that the statute establishes particular criteria for withholding information or refers to particular types of matters to be withheld. An example that applies to the Foundation is the confidentiality protection for dispute resolution communications provided by the Administrative Dispute Resolution Act of 1996 (ADRA, 5 U.S.C. 571-574).

(4) Records containing trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Foundation;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) could reasonably be expected to interfere with enforcement proceedings;

(ii) would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a recorded or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) could reasonably be expected to endanger the life or physical safety of any individual.

(8) Records contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Geological or geophysical information and data, including maps, concerning wells.

(b) If a requested record contains exempted material along with non-exempted material, all reasonable segregable nonexempt material shall be disclosed.

(c) Even if an exemption described in paragraph (a) of this section may be reasonably applicable to a requested record, or portion thereof, the Foundation may elect under the circumstances of any particular request not to apply the exemption to such requested record, or portion thereof, subject to the provisions in §1600.7 for confidential commercial information. The fact that the exemption is not applied by the Foundation to any requested

record, or portion thereof, has no precedential significance as to the application or non-application of the exemption to any other requested record, or portion thereof, no matter when the request is received.

**§1600.7 Special procedures for confidential commercial information.**

(a) *Definitions.* For purposes of this section:

(1) *Business submitter* means any person or entity which provides confidential commercial information, directly or indirectly, to the Foundation and who has a proprietary interest in the information.

(2) *Commercial-use requester* means requesters seeking 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 determining whether a requester properly belongs in this category, the Foundation shall determine, whenever reasonably possible, the use to which a requester will put the documents requested. Where the Foundation has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Foundation shall seek additional clarification before assigning the request to a specific category.

(3) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from disclosure under Exemption 4 of the FOIA, because disclosure could reasonably be expected to cause substantial competitive harm.

(b) *In general.* Confidential commercial information provided to the Foundation by a business submitter shall not be disclosed pursuant to an FOIA request except in accordance with this section.

(c) *Designation of business information.* Business submitters should use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). Any such designation will expire 10 years after the records

were submitted to the government, unless the submitter requests, and provides reasonable justification for, a designation period of longer duration.

(d) *Predisclosure notification.* (1) Except as is provided for in paragraph (i) of this section, the Foundation shall, to the extent permitted by law, provide a submitter with prompt written notice of an FOIA request or administrative appeal encompassing its confidential business information whenever required under paragraph (e) of this section. Such notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(2) Whenever the Foundation provides a business submitter with the notice set forth in paragraph (e)(1) of this section, the Foundation shall notify the requester that the request includes information that may arguably be exempt from disclosure under Exemption 4 of the FOIA and that the person or entity who submitted the information to the Foundation has been given the opportunity to comment on the proposed disclosure of information.

(e) *When notice is required.* The Foundation shall provide a business submitter with notice of a request whenever—

(1) The business submitter has in good faith designated the information as business information deemed protected from disclosure under 5 U.S.C. 552(b)(4); or

(2) The Foundation has reason to believe that the request seeks business information the disclosure of which may result in substantial commercial or financial injury to the business submitter.

(f) *Opportunity to object to disclosure.* Through the notice described in paragraph (d) of this section, the Foundation shall, to the extent permitted by law, afford a business submitter at least 10 working days within which it can provide the Foundation with a detailed written statement of any objection to disclosure. Such statement shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential and

## § 1600.8

why disclosure would cause competitive harm. Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* (1) The Foundation shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose confidential commercial business information. Whenever the Foundation decides to disclose such information over the objection of a business submitter, the Foundation shall forward to the business submitter a written notice at least 10 working days before the date of disclosure containing—

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained,

(ii) A description of the confidential commercial information to be disclosed, and

(iii) A specified disclosure date.

(2) Such notice of intent to disclose likewise shall be forwarded to the requester at least 10 working days prior to the specified disclosure date.

(h) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the Foundation shall promptly notify the business submitter of such action.

(i) *Exceptions to predisclosure notification.* The requirements of this section shall not apply if—

(1) The Foundation determines that the information should not be disclosed;

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

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

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such a case, the Foundation will provide the submitter with written notice of any final decision to disclose confidential com-

## 36 CFR Ch. XVI (7-1-11 Edition)

mercial information within a reasonable number of days prior to a specified disclosure date.

### § 1600.8 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with the Foundation's response to your request, you may appeal an adverse determination denying your request, in any respect, to the Executive Director of the Foundation, 110 S. Church Avenue, Suite 3350, Tucson, AZ 85701-1650. You must make your appeal in writing, and it must be received by the Executive Director within 60 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the determination (including the assigned request number, if known) that you are appealing. For the quickest possible handling, you should mark your appeal letter and the envelope "Freedom of Information Act Appeal."

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part shall contain a statement of the reason(s) for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If you wish to seek review by a court of any adverse determination, you must first appeal it under this section.

### § 1600.9 Preservation of records.

The Foundation will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

**§ 1600.10 Fees.**

(a) *In general.* The Foundation will charge you for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (i) of this section. The Foundation ordinarily will collect all applicable fees before sending copies of requested records to you. You must pay fees by check or money order made payable to the United States Treasury.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person seeking information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. If the Foundation determines that you will put the records to a commercial use, either because of the nature of your request itself or because the Foundation has reasonable cause to doubt your stated use, the Foundation will provide you a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses that the Foundation 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 employee performing the work and the cost of operating duplication machinery.

(3) *Duplication* means the process of making a copy of a record, or the information contained in it, available in response to a FOIA request. Copies can take the form of paper, microfilm, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. The Foundation will honor your specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution

of vocational education, which operates a program or programs of scholarly research.

(5) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(6) *Representative of the news media, or news media requester*, 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 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 where they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. For *freelance* journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but the Foundation shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure—for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review

time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means the process of looking for and retrieving records or information responsive to a 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.

(c) *Fees*. In responding to FOIA requests, the Foundation will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (i) of this section:

(1) *Search*. Search fees will be charged for all requests, except for those by educational institutions, noncommercial scientific institutions, or representatives of the news media (subject to the limitations of paragraph (d) of this section). Charges may be made for time spent searching even if no responsive record is located or if the record(s) are withheld as entirely exempt from disclosure.

(2) *Duplication*. Duplication fees will be charged for all requests, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record, the fee will be ten cents per page. For other forms of duplication (including copies produced by computer, such as tapes or printouts), the Foundation will charge the direct costs, including operator time, of producing the copy.

(3) *Review*. Review fees will be charged only for commercial use requests. Review fees will be charged only for the initial record review—in other words, the review done when the Foundation determines whether an exemption applies to a particular record or record portion at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable where it is made

necessary by such a change of circumstances.

(4) *Searches and reviews—amounts of fees*. (i) For each quarter hour spent in searching for and/or reviewing a requested record, the fees will be: \$4.00 for clerical personnel; \$7.00 for professional personnel; and \$10.25 for managerial personnel.

(ii) For computer searches of records, you will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(4) of this section) will be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs will include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for responsive records, as well as the costs of operator/programmer salary apportionable to the search.

(d) *Limitations on charging fees*. (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) Review fees will be charged only for commercial use requests.

(3) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for commercial use requests, the Foundation will provide the first 100 pages of duplication and the first two hours of search time to requesters without charge. These provisions work together, so that the Foundation will not begin to assess fees until after providing the free search and reproduction. For example, if a request involves three hours of search time and duplication of 105 pages of documents, the Foundation will charge only for the cost of one hour of search time and five pages of reproduction.

(5) Whenever a total fee calculated under paragraph (d) of this section is \$14.00 or less for any request, no fee will be charged.

(e) *Notice of anticipated fees in excess of \$25.00*. When the Foundation determines or estimates that the fees will be more than \$25.00, it will notify you of

the actual or estimated amount of the fees, unless you have indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the Foundation will advise you that the estimated fee may be only a portion of the total fee. In cases in which you have been notified that actual or estimated fees amount to more than \$25.00, the request will not be considered received and further work will not be done on it until you agree in writing to pay the anticipated total fee. A notice under this paragraph will offer you an opportunity to discuss the matter with Foundation personnel in order to reformulate the request to meet your needs at a lower cost.

(f) *Charging interest.* The Foundation may charge interest on any unpaid bill starting on the 31st day following the date of billing. 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 Foundation.

(g) *Aggregating requests.* Where the Foundation 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, it may aggregate those requests and charge accordingly. The Foundation may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, they will be aggregated only if there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(h) *Advance payments.* (1) No advance payment (that is, payment before work is begun on a request) will ordinarily be required, except as described in paragraphs (h)(2) and (3) of this section. Payment owed for work already completed (that is, a prepayment before copies are sent to you) is not considered an advance payment.

(2) Where the Foundation determines or estimates that a total fee to be charged under this section will be more than \$250.00, it may require you to make an advance payment of an

amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives satisfactory assurance of full payment from you and you have a history of prompt payment.

(3) If you have previously failed to pay a properly charged FOIA fee within 30 days of the date of billing, the Foundation may require you to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before it begins to process a new request or continues to process a pending request from you.

(4) In cases in which the Foundation requires advance payment or payment due under paragraph (h)(2) or (3) of this section, the request shall not be considered received and further work will not be done on it until the required payment is received.

(i) *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 (c) of this section where the Foundation 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) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted for those records.

(3) If you request a waiver or reduction of fees, your request should address the factors listed in paragraph (i)(1) of this section.

### **Subpart B—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974**

#### **§ 1600.21 General provisions.**

(a) *Purpose and scope.* This subpart contains the rules that the Morris K. Udall Scholarship and Excellence in