

deposit shall extend an offer to the requester to consult with Office personnel in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of the requester.

(3) Fees should be paid in full prior to issuance of requested copies. In the event the requester is in arrears for previous requests copies will not be provided for any subsequent request until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Assistant to the Director for Administration, Office of Management and Budget, Washington, DC 20503.

(5) A receipt for fees paid will be given upon request.

PART 1303—PUBLIC INFORMATION PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT

ORGANIZATION

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- 1303.70 Waiver or reduction of charges.

AUTHORITY: 5 U.S.C. 552, as amended by Pub. L. 93-502 and Pub. L. 99-570.

SOURCE: 47 FR 33483, Aug. 3, 1982, unless otherwise noted.

ORGANIZATION

§ 1303.1 General

This information is furnished for the guidance of the public and in compliance with the requirements of section

552 of title 5, United States Code, as amended.

§ 1303.2 Authority and functions.

(a) The Office of Management and Budget was established in the Executive Office of the President pursuant to Part I of Reorganization Plan No. 2 of 1970 (35 FR 7959), effective July 1, 1970. That plan transferred to the President all functions vested by law in the Bureau of the Budget, or its Director, and designated the Bureau of the Budget as the Office of Management and Budget. By Executive Order No. 11541 of July 1, 1970 (35 FR 10737), the President delegated all functions transferred to him by part I of the Plan to the Director of the Office of Management and Budget.

(b) The principal statutory functions of the Office of Management and Budget are contained in the Budget and Accounting Act of 1921 (42 Stat. 20, 31 U.S.C. 1-25); the Government Corporation Control Act (59 Stat. 597, 31 U.S.C. 841-869); the Budget and Accounting Procedures Act of 1950 (65 Stat. 832), the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93-344), the Office of Federal Procurement Policy Act (Pub. L. 93-400), the Privacy Act of 1974 (Pub. L. 93-579), and the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

(c) The functions of the Office of Management and Budget are carried out pursuant to the provisions of the statutes cited above and the provisions of various Executive orders—principally, Executive Order No. 8248 of September 8, 1939 (CFR Cum. Supp., p. 576), outlining certain functions to be performed by the Bureau of the Budget for the President, and Executive Order No. 11239 of June 28, 1965 (3 CFR Supp., p. 146), as amended, delegating certain functions of the President to the Director of the Bureau of the Budget, and, Executive Order No. 12991 on Federal Regulation. Under the terms of Executive Order No. 11541 of July 1, 1970, the assignments and delegations made in the earlier orders are to be considered as assignments to the Office of Management and Budget and its Director.

§ 1303.3 Organization.

The central organization of the Office of Management and Budget consists of:

Office of Management and Budget

§ 1303.10

(a) The Office of the Director, which includes the Director and the Deputy Director and their principal assistants, including the Deputy Assistant Director for Administration.

(b) The Administrator of the Office of Federal Procurement Policy.

(c) The Administrator of the Office of Information and Regulatory Affairs.

(d) Two Associate and Assistant Directors with Government-wide management responsibilities in specialized areas as follows:

(1) Legislative Reference.

(2) Management.

(e) Five program and budget Associate and Assistant Directors, as follows:

(1) Budget Review.

(2) National Security and International Affairs.

(3) Human Resources, Veterans, and Labor.

(4) Economics and Government.

(5) Natural Resources, Energy, and Science.

(f) The Office has no field organization.

(g) Units of the Office of Management and Budget are presently located in the Old Executive Office Building, 17th Street and Pennsylvania Avenue, NW., and in the New Executive Office Building, 17th and H Streets, NW., Washington, DC 20503. Regular office hours are from 9 a.m. to 5:30 p.m., Monday through Friday. Both buildings are under security control. Persons desiring to visit offices or employees of the Office of Management and Budget in either building will usually find it easier to do so if they write or telephone in advance for an appointment.

PROCEDURES

§ 1303.10 Methods of operation.

(a) The Office of Management and Budget maintains current indexes which identify information pertaining to matters issued, adopted, or promulgated after July 4, 1967, that are within the scope of 5 U.S.C. 552(a)(2). These indexes are updated quarterly and are published in the FEDERAL REGISTER. They are also available for public inspection and copying at the Office's Publication Office, Room G-236, New Executive Office Building, 17th and H Streets, NW., Washington, DC 20503.

The indexes may be examined between the hours of 9:00 a.m. and 5:30 p.m. on any day, except Saturdays, Sundays, and legal public holidays.

(b) The Deputy Assistant Director for Administration is responsible for acting on all initial requests. Individuals wishing to obtain any information listed on the indexes should address their request in writing to the Deputy Assistant Director for Administration, Office of Management and Budget, Washington, DC 20503, Phone 395-7250. Requests for information shall be as specific as possible.

(c) Upon receipt of any request for information or records, the Deputy Assistant Director for Administration will determine within 10 days (excepting Saturdays, Sundays and legal public holidays) whether it is appropriate to grant the request and will immediately provide written notification to the person making the request. If the request is denied, the written notification to the person making the request shall include the names of the individuals who participated in the determination and a notice that an appeal may be lodged including the format and content of any such appeal within the Office of Management and Budget. (Receipt of a request as used herein means the date the request is received in the office of the Deputy Assistant Director for Administration.)

(d) Appeals shall be set forth in writing and addressed to the Deputy Assistant Director for Administration at the address specified in paragraph (b) of this section. The appeal shall include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the Deputy Director, or his designee, within 20 days (excepting Saturdays, Sundays, and legal public holidays). If, on appeal, the denial is in whole or in part upheld, the written determination will also contain a notification of the provisions for judicial review and the names of the persons who participated in the determination.

(e) In unusual circumstances, the time limits prescribed in paragraphs (c) and (d) of this section may be extended for not more than 10 working days (excepting Saturdays, Sundays, or legal public holidays). Extensions may

be granted by the Deputy Assistant Director for Administration. The extension period may be split between the initial request and the appeal but in no instance may the total period exceed 10 working days. Extensions will be by written notice to the persons making the request and will set forth the reasons for the extension and the date the determination is expected. As used herein, but only to the extent reasonably necessary to the proper processing of the particular request, the term “unusual circumstances” means:

(1) The need to search for and collect the requested records from establishments that are separated from the office processing the request;

(2) The need to search for, collect, and 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 practical speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency which have a substantial subject matter interest therein.

AVAILABILITY OF INFORMATION

§ 1303.20 Inspection, copying, and exceptions.

(a) When a request for information has been approved pursuant to § 1303.10 above, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the Deputy Assistant Director for Administration at the address or telephone number listed in § 1303.10(c). Such materials may be copied manually without charge, and reasonable facilities will be made available for that purpose. Also, copies of individual pages of such materials will be made available at the price per page specified in § 1303.30(a); however, the right is reserved to limit to a reasonable quantity the copies of such materials which may be made available in this manner when copies also are offered for sale by the Superintendent of Documents.

(b) Certain functional units of the Office of Management and Budget solely

advise and assist the President, and therefore these units are not covered by 5 U.S.C. 552. However, the Director or the Deputy Director, acting on his behalf, may determine that a record which falls in one of the following categories shall be made available. These units carry out activities that provide advice and assistance to the President with regard to:

(1) The formulation and preparation of the Federal Budget.

(2) The processing and enrolled bills and determinations of the relationships of pending and proposed legislation to the program of the President.

(3) The compensation of Federal employees.

(4) The establishment and organization of new agencies and the reorganization of existing programs and agencies, and

(5) The preparation of Executive Orders and Proclamations.

(c) Except to the extent that the Director or Deputy Director, acting on his behalf, determines that a record which falls within one of the following categories shall be made available, this section shall not apply to matters that are:

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy, and (ii) are in fact properly classified pursuant to such Executive Order.

(2) Related solely to the internal personnel rules and practices of the Office.

(3) Specifically exempted from disclosure by statute, provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues, or (ii) establishes particular criteria for withholding or refers to particular types of matter to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Interagency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Office.

(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 that furnished information on a confidential basis, and, in the case of a record or information compiled by a 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 information 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) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the regulation or supervision of financial institutions; or

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

[47 FR 33483, Aug. 3, 1982, as amended at 52 FR 49152, Dec. 30, 1987]

CHARGES FOR SEARCH AND REPRODUCTION

§ 1303.30 Definitions.

For the purpose of these regulations:

(a) All the terms defined in the Freedom of Information Act apply.

(b) A *statute specifically providing for setting the level of fees for particular types of records* (5 U.S.C. 552(a)(4)(A)(vi))

means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of records, in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

Statutes, such as the User Fee Statute, which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents do not supersede the Freedom of Information Act under section (a)(4)(A)(vi) of that statute.

(c) The term *direct costs* means those expenditures that OMB actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(d) The term *search* 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. OMB employees should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, employees should not engage in line-by-line search when merely duplicating an

entire document would prove the less expensive and quicker method of complying with a request. *Search* should be distinguished, moreover, from *review* of material in order to determine whether the material is exempt from disclosure (see paragraph (f) of this section). Searches may be done manually or by computer using existing programming.

(e) The term *duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(f) The term *review* refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (g) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(g) The term '*commercial use*' request 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. In determining whether a requester properly belongs in this category, OMB must determine the use to which a requester will put the documents requested. Moreover, where an OMB employee 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 employee should seek additional clarification before assigning the request to a specific category.

(h) The term *educational institution* 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, or an institution

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

(i) The term *non-commercial scientific institution* refers to an institution that is not operated on a *commercial* basis (as that term is referenced in paragraph (g) 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.

(j) The term *representative of the news media* 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. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. 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 publication contract would be the clearest proof, but OMB may also look to the past publication record of a requester in making this determination.

[52 FR 49153, Dec. 30, 1987]

§ 1303.40 Fees to be charged—general.

OMB should charge fees that recoup the full allowable direct costs it incurs. Moreover, it shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see definition in Sections 1303.30(b)), such as the NTIS, OMB

should inform requesters of the steps necessary to obtain records from those sources.

(a) *Manual searches for records.* OMB will charge at the salary rate(s) (*i.e.*, basic pay plus 16 percent) of the employee(s) making the search.

(b) *Computer searches for records.* OMB will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(c) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; *i.e.*, the review undertaken the first time OMB analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

(d) *Duplication of records.* Records will be duplicated at a rate of \$.15 per page. For copies prepared by computer, such as tapes or printouts, OMB shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, OMB will charge the actual direct costs of producing the document(s). If OMB estimates that duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(e) *Other charges.* OMB will recover the full costs of providing services such

as those enumerated below when it elects to provide them:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail.

(f) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Deputy Assistant Director for Administration, Office of Management and Budget, Washington, DC 20503.

(g) A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

(h) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, OMB will provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, OMB will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account.

(2) For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of "8½ × 11" or "11 × 14." Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, does meet the terms of the restriction.

(3) Similarly, the term "search time" in this context has as its basis, manual search. To apply this term to searches made by computer, OMB will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of 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, OMB will begin assessing charges for computer search.

[52 FR 49153, Dec. 30, 1987]

§ 1303.50 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The specific levels of fees for each of these categories are:

(a) *Commercial use requesters.* When OMB receive a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. OMB may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see § 1303.60(b)).

(b) *Educational and non-commercial scientific institution requesters.* OMB shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and 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. Requesters must reasonably describe the records sought.

(c) *Requesters who are representatives of the news media.* OMB shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 1303.10(j), and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination func-

tion of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(d) *All other requesters.* OMB shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests for records about the requesters filed in OMB's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

[52 FR 49154, Dec. 30, 1987]

§ 1303.60 Miscellaneous fee provisions.

(a) *Charging interest—notice and rate.* OMB may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. The fact that the fee has been received by OMB within the thirty day grace period, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the billing.

(b) *Charges for unsuccessful search.* OMB may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure. If OMB estimates that search charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When OMB reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to

break a request down into a series of requests for the purpose of evading the assessment of fees, OMB may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(d) *Advance payments.* OMB may not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) OMB estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then, OMB will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing). Then, OMB may require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

When OMB acts under paragraph (d) (1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (*i.e.*, 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after OMB has received fee payments described above.

(e) *Effect of the Debt Collection Act of 1982 (Pub. L. 97-365).* OMB should comply with provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

[52 FR 49154, Dec. 30, 1987]

§ 1303.70 Waiver or reduction of charges.

Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where it is determined that disclosure is in the public interest because it 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.

[52 FR 49155, Dec. 30, 1987]

PART 1304—POST EMPLOYMENT CONFLICT OF INTEREST

Sec.

1304.4601 Purpose.

1304.4604 Definitions.

1304.4605 Post-employment restrictions.

1304.4606 Exemptions.

1304.4607 Advice to former Government employees.

1304.4608 Administrative Enforcement Procedures (18 U.S.C. 207(j); 5 CFR 737.27).

AUTHORITY: Title V, Section 501(a), Pub. L. 95-521, as amended, 92 Stat. 1864; and Sections 1 and 2, Pub. L. 96-28, 93 Stat. 76 [18 U.S.C. 207]; 5 CFR 737.

SOURCE: 45 FR 84007, Dec. 22, 1980, unless otherwise noted.

§ 1304.4601 Purpose.

(a) This section sets forth OMB's policy and procedures under the Ethics in Government Act of 1978, 18 U.S.C. 207, and the Office of Personnel Management's implementing regulations, 5 CFR part 737, for determining violations of restrictions on post-employment activities and for exercising OMB's administrative enforcement authority.

(b) These regulations bar certain acts by former Government employees which may reasonably give the appearance of making unfair use of prior Government employment and affiliations. OMB acts on the premise that it has the primary responsibility for the enforcement of restrictions on post-employment activities and that criminal enforcement by the Department of Justice should be undertaken only in cases involving aggravated circumstances.

(c) These regulations do not incorporate possible additional restrictions