

§ 302.3**§ 302.3 Rules of procedure, description of forms available, the places at which forms may be obtained, and instructions as to the scope and content of all papers, reports, or examinations.**

Forms regarding the following listed matters and instructions relating thereto may be obtained upon application to the offices listed below.

Application for Peace Corps, Office of Recruitment, Room P-301.

Volunteer Service, Peace Corps, 806 Connecticut Avenue NW., Washington, DC 20526, or the Peace Corps area recruitment offices listed in § 302.2(a)(2).

§ 302.4 Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretation of general applicability formulated and adopted by the agency.

The Peace Corps regulations published under the provisions of the Administrative Procedure Act are found in part 301 of title 22 of the Code of Federal Regulations and the FEDERAL REGISTER. These regulations are supplemented from time to time by amendments appearing initially in the FEDERAL REGISTER.

PART 303—INSPECTION AND COPYING OF RECORDS: RULES FOR COMPLIANCE WITH FREEDOM OF INFORMATION ACT

Sec.

303.1 Purpose.

303.2 Definitions.

303.3 Records generally available.

303.4 Availability of records.

303.5 Records which may be exempt from disclosure.

303.6 Manner of requesting records—appeals.

303.7 Authority to release and certify records.

303.8 Location of records.

303.9 Identification of records.

303.10 Schedule of fees.

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§ 303.1 Purpose.

The purpose of this part is to prescribe rules for the inspection and copying of opinions, policy statements, staff manuals, instructions, and other records of the Peace Corps pursuant to 5 U.S.C. 552.

§ 303.2 Definitions.

As used in this part, the following definitions shall apply:

(a) *The Agency* means Peace Corps.

(b) *Records* includes all books, papers, maps, photographs, films, tapes, or other documentary material or copies thereof, regardless of physical form or characteristics, made in or received by the Peace Corps and preserved as evidence of its organization, functions, policies, decisions, procedures, operations or other activities but does not include books, magazines, or other materials acquired solely for library purposes and available in the library of the agency.

(c) *Identifiable* means, in the context of a request for a record, one which is reasonably described in a manner sufficient to permit the location of the material requested.

(d) *Unit* means an office of the Agency headed by a senior official who shall be responsible for making initial determinations of availability of documents or records requested hereunder. The head of any such Unit may delegate his or her responsibility hereunder to his or her Deputy or some other official during any absence of such official. At present, the units of the Agency for the purposes hereof consist of, the Office of the Director; the Executive Secretariat; the Office of Private Sector Development; the Office of Executive Talent Search; the Office of General Counsel and Legislative Liaison; the Office of Public Affairs; the Office of the Associate Director for Marketing, Recruitment, Placement and Staging; the Office of the Associate Director for International Operations; and the Office of the Associate Director for Management.

§ 303.3 Records generally available.

The agency will make promptly available to any member of the public the following documents:

Peace Corps

§ 303.5

(a) All final opinions and orders made in the adjudication of cases.

(b) Statements of policy and interpretation adopted by the agency which have not been published in the FEDERAL REGISTER.

(c) Administrative staff manuals and instructions to the staff which affect a member of the public.

(d) A current index, which shall be updated at least quarterly, covering so much of the foregoing materials as may have been issued, adopted or promulgated after July 4, 1967, is maintained by the Agency and copies of same or any portion thereof shall be furnished upon request at a cost not to exceed the cost of duplication. The Agency deems further publication of such index in the FEDERAL REGISTER both unnecessary and impractical.

(e) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, the Agency may delete identifying details from materials furnished under this section.

(f) Brochures, flyers and other similar material shall be furnished to the extent that same are available. Copies of any such brochures and flyers which are out of print shall be furnished upon request at the cost of duplication, provided, however, that in the event no copy exists, the Agency shall not be responsible for reprinting the same.

(g) The Agency will not be required to create or compile selected items from its file and records or to provide a requester with statistical or other data unless such data has been compiled by the Agency and is available in the form of a record in which event such record shall be made available as provided in this part.

§ 303.4 Availability of records.

All records of the Peace Corps, in addition to those ordinarily maintained and disseminated under § 303.3 hereof, requested under 5 U.S.C. 552(a)(3) and reasonably described in any request therefore shall be made promptly available upon request of any member of the public for inspection or copying upon compliance with procedures established in this part, except to the extent that a determination is made, in accord with the procedures set forth herein, that a record is exempt from

disclosure, and should be withheld in the public interest. All publications and other documents heretofore provided by the Peace Corps in the normal course of business will continue to be made available upon request to the appropriate unit of the Agency. No charge will be made for such documents unless necessary by reason of the fact that such document is no longer in print in which case the charge shall not exceed the cost of duplication as set forth herein.

§ 303.5 Records which may be exempt from disclosure.

The following categories are examples of records maintained by the Peace Corps which, under the provisions of 5 U.S.C. 552(b), may be exempted from disclosure:

(a) Records required to be withheld under criteria established by an Executive Order in the interest of national defense or foreign policy and which are in fact properly classified pursuant to any such Executive Order. Included in this category are records required by Executive Order No. 12356, as amended, to be classified in the interest of national defense or foreign policy.

(b) Records related solely to internal personnel rules and practices. Included in this category are internal rules and regulations relating to personnel management and operations which cannot be disclosed to the public without substantial prejudice to the effective performance of a significant function of the Agency.

(c) Records specifically exempted from disclosure by statute.

(d) Information of a commercial or financial nature including trade secrets given in confidence. Included in this category are records containing commercial or financial information obtained from any person and customarily regarded as privileged and confidential by the person from whom they were obtained.

(1) It is the policy of the Peace Corps not to release information which is a trade secret, or commercial or financial information which was obtained from a person and is privileged or confidential within the meaning of 5 U.S.C. 552(b)(4). It is also the policy of the Peace Corps to give submitters of

information which may be exempt from disclosure under 5 U.S.C. 552(b)(4) adequate opportunity to provide information at the administrative level which may establish such exemption.

(2) A person submitting information to the Peace Corps, if previously notified by the Peace Corps of his/her right to request confidential treatment for information, must request that the information be considered exempt from disclosure at the time of submission. Failure to do so will be deemed an acknowledgment that the submitter does not wish to claim exempt status.

(3) A person submitting information not covered by paragraph (d)(2) of this section which is the subject of a Freedom of Information Request, and which may be exempt from disclosure, shall be given prompt written notification of such request, unless it can be established that the information should not be disclosed, or that the information has already been lawfully published or made available to the public. Such notice must afford submitters at least ten working days in which to object to the disclosure of any requested information.

(4) Each request for exemption from disclosure under 5 U.S.C. 552(b)(4) as a trade secret or privileged or confidential commercial or financial information must:

(i) Specifically identify the exact material claimed to be confidential.

(ii) State whether or not the information identified has ever been released to a person not in a confidential relationship with the submitter.

(iii) State the basis for submitter's belief that the information is not commonly known or readily ascertainable by outside persons.

(iv) State how release of the information would cause harm to the submitter's competitive position.

(5) The agency will not normally decide whether material received with a request for exemption from disclosure under 5 U.S.C. 552(b)(4) is entitled to be withheld unless a request for disclosure is made. Any reasonably segregable portion of a record will be disclosed after deletion of any portions determined to be exempt.

(6) The agency will give careful consideration to all specified grounds for

exemption prior to making its administrative determination and, in all cases in which the determination is to disclose, provide the submitter with a statement of the reasons why its disclosure objection was not sustained. The Peace Corps will provide the submitter with at least ten days advance notice of the proposed release date of information in cases in which an objection to disclosure has been rejected.

(7) The Peace Corps will notify the submitter promptly of any instance in which a requester brings suit seeking to compel disclosure of its information. Submitters should not request exemption from disclosure unless they are prepared to assist the agency in the defense of any judicial proceeding brought to compel disclosure.

(e) Interagency or intra-agency memoranda or letters which would not ordinarily be available by law to a party in litigation with the Agency. Included in this category are memoranda, letters, interagency and intra-agency communications and internal drafts, opinions and interpretations prepared by staff or consultants and records of deliberations of staff, ordinarily used in arriving at policy determinations and decisions.

(f) Personnel, medical and similar files. Included in this category are personnel and medical information files of staff, volunteer applicants, former and current trainees/volunteers, lists of names and home addresses and other files or material containing private or personal information, the disclosure of which would amount to a clearly unwarranted invasion of the privacy of any person to whom the information pertains.

(g) Investigatory records compiled for law enforcement purposes. Included in this category are files compiled for the enforcement of all laws, or prepared in connection with government litigation and adjudicative proceedings; provided however, that such records shall be made available to the extent that their production will not (1) interfere with enforcement proceedings; (2) deprive a person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source,

and in the case of a record 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, confidential information furnished only by the confidential source; (5) disclose investigative techniques and procedures; or (6) endanger the life or physical safety of law enforcement personnel.

(h) In the event any document or record requested hereunder shall contain material which is exempt from disclosure under this section, any reasonably segregable portion of such record shall, notwithstanding such fact, and to the extent feasible, be provided to any person requesting same, after deletion of the portions which are exempt under this section.

(i) Documents or records determined to be exempt from disclosure hereunder may nonetheless be provided upon request in the event it is determined that the provision of such document would not violate the public interest or the right of any person to whom such information might pertain, and that disclosure is not prohibited by law or executive order.

§ 303.6 Manner of requesting records—appeals.

(a) Requests under the Freedom of Information Act (5 U.S.C. 552) for access to Peace Corps records may be filed in person or by mail with the Director of Administrative Services, Peace Corps, 806 Connecticut Avenue NW., Washington, DC 20526. All requests and the envelope in which they are sent must be plainly marked "FOIA Request." Personal written requests will be received from between 10 a.m. and 4 p.m., Monday through Friday, except for official holidays. FOIA requests and appeals shall be deemed received when actually received by the Director of Administrative Services.

(b) Requested records which are reasonably described shall either be made available within ten working days after receipt of any such request or a written notice that the request cannot be complied with will be provided to the person making such request within such ten day period. Any such notice of inability to comply shall specify the rea-

sons for refusal and the right of the person making such request to appeal such adverse determination. In the event a request for a record or document is made to the Director of Administrative Services, and such office does not have the requested material, the requester shall be immediately notified.

(c) Upon receipt of a notice of failure to comply, a person making a request for information, records, or documents may, within 15 calendar days from the receipt of such notice, appeal such adverse determination to the Director of the Peace Corps or designee. Such appeal shall be in writing and shall specify the date upon which the notice of failure or refusal to comply was received by the person making such request. The Director or designee shall make a determination with respect to such appeal within 20 working days after receipt of such appeal. Notice of such determination shall be provided in writing to the person making the request. If the original denial of the request for records is upheld in whole or in part, such notice shall include notification of the right of the person making such request to have judicial review of the denial and appeal as provided under the Freedom of Information Act (5 U.S.C. 552).

(d) The time limits specified above for initial compliance, and appeal from a refusal to comply, may be extended by the Agency upon written notice to the person making the request. Such notice shall set forth the reasons for such extension and the date upon which determination is expected. Such extension may be applied at either the initial stage or the appellate stage, or both, provided that the aggregate of such extensions shall not exceed ten working days. Circumstances justifying an extension will include the following:

(1) Time necessary to search and collect requested records from segments of the Agency separate from the office processing the request;

(2) Time necessary to search, collect and appropriately examine a voluminous number of records demanded in a single request; or

§ 303.7

22 CFR Ch. III (4-1-02 Edition)

(3) Time necessary for consultation with another agency having a substantial interest in the determination of the request, or among two or more components of the agency which have an interest in the subject matter of the request.

(e) The time limits provided in this section are mandatory and a person requesting records shall be deemed to have exhausted his or her administrative remedies with respect to such request in the event the Agency fails to comply within the said applicable time limit provisions as extended in accord with this section. In unusual circumstances in which additional time is necessary to collect and review the records requested, the Act provides that a court of appropriate jurisdiction may allow the agency additional time for such purpose. Alternatively, the Agency and the person making such request may agree as to a reasonable time for completion of Agency work upon such request.

(f) Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of the persons primarily responsible for the denial of such request.

(g) Upon receipt of a request for a record or document the Director of the Office of Administrative Services will promptly make an initial determination as to whether the request for the record reasonably describes such record with sufficient specificity to determine the unit of the Agency to which such request should be referred. Upon making such initial determination, he shall immediately refer such request to the head of the unit concerned. Upon receipt of the request the head of the unit shall promptly determine whether the description of the record contained in the request is sufficient to permit its identification and production.

(h) If the Director of Administrative Services or the head of the unit concerned determines that the description contained in the request is not sufficient to reasonably describe the record requested, the requester shall be so advised and shall be permitted to amend the request to provide any additional information which would better identify the record. The requester shall be

provided with appropriate assistance from the head of the unit concerned, the Director of Administrative Services or any member of their staffs. A request which is amended in accord herewith shall be deemed to have been received by the Agency on the date of receipt of the amended request.

(i) If the head of the unit concerned determines that the record requested is reasonably described so as to permit its identification, he or she shall make it available unless he or she determines, after consultation with the General Counsel, that (1) the record is exempt from disclosure and (2) it should be withheld in the public interest or to protect the rights of persons to whom the information pertains. When such a determination is made the requester shall be immediately notified in writing as provided herein.

(j) Peace Corps offices overseas are not responsible for maintenance of Freedom of Information Act indexes, documents, or records (other than materials normally kept and maintained in such offices). FOIA requests received by overseas employees are to be forwarded to the Director, Office of Administrative Services, for processing. Such a request shall be considered received when actually received by the Director of Administrative Services.

(k) The Peace Corps maintains recruiting offices in many states. These offices are not responsible for maintaining Freedom of Information Act indexes, reading rooms, or other records or documents. Requests to any Recruiting Office or Service Center Office for materials not given out in the normal course of business shall be referred to the Director of Administrative Services. The request shall be in writing and shall be deemed received when actually received by the Director of Administrative Services.

§ 303.7 Authority to release and certify records.

(a) Authority is hereby delegated to the Director of Administrative Services, Office of Management, to furnish, pursuant to these regulations, copies of records to any person entitled thereto, and upon request to provide certified

Peace Corps

§ 303.10

copies thereof for use in judicial proceedings or other official matters as provided below.

(b) The Director of Administrative Services and his or her deputy, are hereby designated to act as authentication officers. When both the authentication officers are unavailable, any other persons within such office designated by the Director of Administrative Services may act in his or her place and stead. The authentication officer is hereby authorized to sign and initial certificates of authentication for and in the name of the Director of the Peace Corps. The form of authentication shall be as follows:

CERTIFICATE OF AUTHENTICITY

In _____ testimony whereof, I
_____, Director of the Peace
Corps, have hereunder caused my name to be
subscribed by the authentication officer of
said agency at Washington, DC, this _____
day of _____, 19____.

Director of the Peace Corps.

By _____
Authentication Officer, Peace Corps.

(c) The authentication officer is also hereby authorized to issue such statements, certificates, or other documents as may be required in connection with judicial proceedings or other official matters to show that, after a thorough search of Peace Corps records, a requested record has not been found. (See Rule 44(b) Federal Rules of Civil Procedure.)

§ 303.8 Location of records.

The Agency will maintain a central records room at its headquarters in Washington, DC. The headquarters of the Peace Corps is presently located at 806 Connecticut Avenue, NW., Washington, DC. The present location of the central records room shall be the Paperwork and Records Management Branch, the location of which may change from time to time. The specific location of the records room may be determined by requesting such information from the Director, Office of Administrative Services.

§ 303.9 Identification of records.

(a) In order for the Agency to locate records and make them available it is

necessary that it be able to identify the specific records sought. Persons wishing to inspect or secure copies of records should therefore seek to describe and identify them as fully and as accurately as possible. In cases where requests are submitted which are not sufficient to permit identification, the officer receiving the request will endeavor to assist the person seeking the records in filling in necessary details.

(b) Among the kinds of information which a person seeking records should try to provide in order to permit an identification of a record are the following:

(1) The unit or program of the Agency which may be responsible for or may have produced the record.

(2) The specific event or action, if any, and if known, to which the record refers.

(3) The date of the record or the period to which it refers or relates, if known.

(4) The type of record, such as an application, a contract, or a report.

(5) Personnel of the office who may have prepared or have knowledge of the record.

(6) Citation to newspapers or publications which are known to have referred to the record.

§ 303.10 Schedule of fees.

(a) *General.* It is the policy of the Peace Corps to encourage the widest possible distribution of information concerning programs under its jurisdiction. To the extent practicable, this policy will be applied under this part so as to permit requests for inspection or copies of records to be met without substantial cost to the person making the request. Search and reproduction charges will be made in accordance with paragraph (c) of this section. On a case-by-case basis, the Peace Corps will conduct a thorough review of all fee waiver requests and will grant waivers of reductions in fees only in those cases in which the requester establishes that the disclosure of the information will primarily benefit the general public. The Agency shall charge fees that recoup the full direct costs incurred. The most efficient and least costly methods to comply with requests for documents made under the FOIA shall be used.

When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, the Agency shall inform requesters of the steps necessary to obtain records from those sources.

(b) *Definitions.* The Agency adopts the following definitions contained in OMB's "Uniform Freedom of Information Act Fee Schedule and Guidelines," that relate to this section:

(1) The term *direct costs* means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to an FOIA request.

(2) 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.

(3) The term *duplication* refers to the process of making a copy of a document necessary to respond to an 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.

(4) The term *review* refers to the process of examining documents located in response to a request that is for a commercial use 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.

(5) 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.

(6) 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, and an institution of vocational education, which operates a

program or programs of scholarly research.

(7) 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 (b)(5) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) 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 made 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 will 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 the Agency will also look to the past publication record of a requester in making a determination.

(c) *Fees to be charged*—(1) *Manual searches for records.* Whenever feasible, the Agency will charge at the salary rate(s) (i.e. basic pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), the Agency may establish an average rate for the range of grades typically involved.

(2) *Computer searches for records.* The Agency 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 an FOIA request and operator/programmer salary apportionable to the search. When the Agency can establish a reasonable Agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches, it may do so and charge accordingly.

(3) *Review of records.* Only requesters who are seeking documents for commercial use will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges shall be assessed only for the initial review; i.e., the review undertaken the first time the Agency analyzes the applicability of a specific exemption to a particular record or portion of a record. The Agency will not charge for review at the administrative appeal level of an exemption already applied. However, if records or portions of records withheld in full under an exemption which is subsequently determined not to apply are reviewed again to determine the applicability of other exemptions not previously considered, the cost for such a subsequent review is properly assessable. Where a single class of reviewers is typically involved in the review process, the Agency may establish a reasonable Agency-wide average and charge accordingly.

(4) *Duplication of records.* The charge for paper copy reproduction of documents as of the date of publication is three cents per page. This charge represents the average Agency-wide direct cost of making such copies, taking into account the salary of the operators as well as the cost of the reproduction machinery. The rate shall be adjusted annually. Current rates may be requested from the Director, Office of Administrative Services. For copies prepared by computer, such as tapes or printouts, the Agency will charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, the Agency will charge the actual direct costs of producing the document or documents.

(5) *Other charges.* (i) The Agency shall recover the full cost of certifying that records are true copies. The Agency will charge the salary rate(s) (i.e. basic pay plus 16 percent) of the employee(s) certifying the records.

(ii) The Agency shall recover the full cost of sending records by special methods such as express mail, etc. The Agency shall not furnish the records until payment for such service has been received by the Agency. The Agency is not required to comply with requests for special mailing services.

(6) *Restrictions on assessing fees.* (i) With the exception of requesters seeking documents for a commercial use, the Agency will provide the first 100 pages of duplication and the first two hours of search time without charge. The Agency will not charge fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself. Except for commercial use requesters, the Agency will not begin to assess fees until after the free search and reproduction services have been provided.

(ii) The elements to be considered in determining the "cost of collecting a fee," are the administrative costs to the Agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account. The per-transaction cost to the Treasury to handle such remittance will not be considered in the Agency's determination.

(iii) For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which will normally be "8½ x 11" or "11 by 14."

(iv) The term *search time* in this context means manual search. To apply this term to searches made by computer, the Agency will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. 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 Agency will begin assessing charges for computer search.

(d) *Payment of Cost.* (1) A request for documents must state that the requester will pay any or all reasonably necessary costs, or costs up to an amount specified in such request. If the head of the unit or the Director of Administrative Services determines that the anticipated cost for search and duplication of the records requested will be in excess of \$25, or in excess of the limit specified in the request, the Director of Administrative Services shall advise the requester promptly after receipt of the initial request. Such notification shall specify the anticipated cost of search and reproduction of the records requested. The requester may thereafter amend his or her request to specify fewer documents or agree to accept the estimate of anticipated costs, in which case the request shall be deemed received by the Agency upon the receipt date of the requester's response. A requester may, prior to making a request, ask for an estimate of cost from the Director of Administrative Services who shall promptly respond to such request.

(2) *Method of Payment.* Payment shall be sent or delivered to the Collections Officer, Accounting Division. Such payment must be by check or money order payable to Peace Corps—FOIA. A receipt for fees shall be provided upon request.

(e) *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 Act prescribes specific levels of fees for each of these categories:

(1) *Commercial use requesters.* The Agency will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought for commercial use. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents.

(2) *Educational and non-commercial scientific institution requesters.* The Agency will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclu-

sion 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.

(3) *Requesters who are representatives of the news media.* The Agency will 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 definition described in paragraph (b)(8) of this section, 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 function of the requester shall not be considered to be a request that is for a commercial use.

(4) *All other requesters.* Requesters who do not fit into any of the categories above will be charged fees which recover the full 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 will be furnished without charge. Requests from individuals for records about themselves filed in the Agency's systems of records will continue to be treated under the fee provisions published in the Agency's Privacy Act regulations (22 CFR part 308).

(f) *Waiving or Reducing Fees—(1) General.* The Agency will furnish documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A requester may, in his or her original request, or subsequently, ask for a fee waiver or that documents be furnished at a reduced charge. A request for documents shall not be deemed to have been received until a determination of the question of fee waiver or reduction has been

Peace Corps

§ 303.10

made, provided however, that such determination shall be made within five working days from the receipt of a fee waiver request. A request for waiver or reduction of fees shall specify the amount of reduction requested and the reasons which cause the requester to feel that the criteria for waiver or reduction of fees have been met.

(2) *Procedures.* (i) Upon receipt of a fee waiver or fee reduction request the Director of Administrative Services will promptly determine whether such request should be granted in whole or in part. The request shall be reviewed in accordance with the following Statutory Freedom of Information Act fee waiver criteria:

(A) Whether disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government"; and

(B) That disclosure of the information "is not primarily in the commercial interest of the requester."

(ii) There are six general factors which are considered in determining whether the statutory criteria for fee waiver have been met:

(A) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(B) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

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

(D) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

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

(F) The primary interest in disclosure: Whether the magnitude of the

identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(iii) The decision to refuse to waive or reduce fees as requested under paragraph (f)(1) of this section may be appealed to the Director of the Peace Corps or such official as he or she may designate. Appeals should contain as much information and documentation as possible to support the request for a waiver or reduction of fees. The requester will be notified within ten working days from the date of which the Agency received the appeal.

(g) *Administrative Actions to Improve Assessment and Collection of Fees.* The Agency shall ensure that procedures for assessing and collecting fees are applied consistently and uniformly.

(1) *Charging interest.* The Agency will 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 the Agency, 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, United States Code, will accrue from the date of the billing.

(2) *Charges for unsuccessful search.* The Agency will assess charges for time spent searching, even if the Agency fails to locate the records or if records located are determined to be exempt from disclosure.

(3) *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 the Agency 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, the Agency may aggregate any such requests and charge accordingly. The Agencies will not aggregate multiple requests on unrelated subjects from one requester.

(4) *Advance payments.* (i) Advance payment, i.e., payment before work is

commenced or continued on a request are not required unless:

(A) The Agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then, the Agency shall 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

(B) Where 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), the Agency may require the requester to pay the full amount owed plus any applicable interest as provided above, or to demonstrate that he 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.

(ii) When the Agency acts under paragraph (g)(4)(i) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (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 the Agency has received fee payments described above.

(5) Effect of the Debt Collection Act of 1982 (Pub. L. 97-365). The Agency will follow those debt collection procedures published in 22 CFR part 309 where appropriate, to encourage repayment.

[53 FR 8178, Mar. 14, 1988]

PART 304—CLAIMS AGAINST GOVERNMENT UNDER FEDERAL TORT CLAIMS ACT

GENERAL PROVISIONS

Sec.

304.1 Scope; definitions.

PROCEDURES

304.2 Administrative claim; when presented; appropriate Peace Corps Office.

304.3 Administrative claim; who may file.

304.4 Administrative claim; evidence and information to be submitted.

304.5 Investigations.

304.6 Claims investigation.

304.7 Authority to adjust, determine, compromise, and settle claims.

304.8 Limitations on authority.

304.9 Referral to Department of Justice.

304.10 Review of claim.

304.11 Final denial of claim.

304.12 Action on approved claim.

AUTHORITY: 28 U.S.C. 2672; 28 CFR 14.11; secs. 4 and 5(h), 75 Stat. 612, 22 U.S.C. 2503; E.O. 11041, as amended, 27 FR 7859, 3 CFR 1959-1963 Comp., page 623; sec. 2(6), State Department Delegation of Authority No. 85-11A, as amended.

SOURCE: 34 FR 5840, Mar. 28, 1969, unless otherwise noted.

GENERAL PROVISIONS

§ 304.1 Scope; definitions.

(a) This subpart applies to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of the Peace Corps, a person serving the Peace Corps under invitational travel orders, or a Peace Corps Volunteer or trainee while acting within the scope of his office or employment.

(b) This subpart is not applicable to claims arising in a foreign country; it is applicable to claims arising in Puerto Rico and the Virgin Islands.

(c) This subpart is issued subject to and consistent with applicable regulations on administrative claims under the Federal Tort Claims Act issued by the Attorney General (31 FR 16616; 28 CFR part 14).

(d) For the purposes of this subpart, the term "General Counsel" means the General Counsel of the Peace Corps or his designee.

PROCEDURES

§ 304.2 Administrative claim; when presented; appropriate Peace Corps Office.

(a) For purposes of this subpart, a claim shall be deemed to have been presented when the Peace Corps receives, at a place designated in paragraph (b) of this section, an executed