

Office of the Secretary, Education**§5.53**

(41 CFR parts 101-111), and the Records Control Schedules.

§5.19 Records of other departments and agencies.

Requests for records which originated in or concern matters which originated in another Department or Government agency may be forwarded to the Department or agency primarily concerned and the requester so notified.

Subpart C—Freedom of Information Officer**§5.32 Freedom of information officer.**

The Freedom of Information Officer shall be responsible for determining whether records of the Department must be withheld from disclosure and shall have authority to deny requests for records of the Department.

Subpart D—Procedures for Requesting Access to Records**§5.51 Procedure.**

(a) A request for any information or record may be made at any appropriate office of the Department.

(b) If a request is made at any office of the Department and the information or record is not located where the request is made, the requester shall be referred to the proper office, or if the request is put in writing it may be forwarded to the proper office.

(c) A request should reasonably identify the requested record by brief description. Requesters who have detailed information which would assist in identifying the records requested are urged to provide such information in order to expedite the handling of the request. Envelopes in which written requests are submitted should be clearly identified as a Freedom of Information request.

(d) Determination of whether records will be released or withheld will be made within 10 working days from date of receipt in the office having custody of the records. This time may be extended by written notice for no longer than an additional 10 working days, only in unusual circumstances. Unusual circumstances mean:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

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

If such extension is made, the requester will be notified in writing with an explanation of why the extension was necessary and the date on which a determination will be made.

§5.52 Copies of records.

Copies of available records shall be produced as promptly as possible upon receipt of the fee therefor. Copying service shall be limited to not more than two copies of any single page, except that additional copies may be made where administrative considerations permit. Records which are published or available for sale need not be copied.

§5.53 Denial of requests for records.

Written requests for inspection or copying of records shall be denied only by the Freedom of Information Officer. Denials of requests shall be in writing and shall contain the reasons for the denial and provide the requester with appropriate information on how to exercise the right of appeal under subpart G of this part. Such notification shall also set forth the names and titles or positions of each person responsible for the denial of such request if such person or persons is other than the Freedom of Information Officer.

Subpart E—Fees and Charges

SOURCE: 52 FR 32525, Aug. 27, 1987, unless otherwise noted.

§ 5.60

34 CFR Subtitle A (7-1-08 Edition)

§ 5.60 Schedule of fees.

(a) Fees and charges are charged under this part as follows:

(1) *Search for records*—(i) *General*. Full search fees are charged for records requested by commercial use requesters. For records requested by representatives of the news media or educational or noncommercial scientific institutions whose purpose is scholarly or scientific research, no search fee is charged if the records requested are not for commercial use. For other requesters, if the records requested are not for commercial use, the first two hours of search time are provided without charge, except as limited in paragraph (a)(1)(iii) of this section. Search fees are recorded and assessed to the nearest quarter hour.

(ii) *Manual search*. The charge for a manual search is calculated by determining the search time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the employee conducting the search plus 16 percent of that rate.

(iii) *Computer search*. The charge for a computer search is calculated by determining the search time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the computer operator plus 16% of that rate plus \$287 per hour for computer operation. Two hours of search time on a computer search is deemed to have been spent if the cost of the search equals the equivalent of two hours of the computer operator's basic rate of pay per hour plus 16 percent of that rate.

(2) *Review of records*. Review fees are charged only for commercial use requests and only for the initial review. The review rate is calculated by determining the review time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the employee conducting the review plus 16% of that rate. If records requested under this part are stored elsewhere than the headquarters of the Department at Washington, DC, the mailing and handling costs of returning those records to the headquarters for review is added to the review costs.

(3) *Duplication of records*. No duplication fee is charged for the first 100

pages, except for commercial use requests. Duplication charges for paper copy reproduction of documents on photocopy machines is \$0.10 per page.

(4) *Certification of records*. The charge for certifying records is \$5 per record certified.

(5) *Other*. If no specific fee has been established for a service, or the request for a service does not fall under one of the categories in paragraphs (a)(1)–(4) of this section due to the amount or type of service, the Secretary is authorized to establish an appropriate fee, based on direct costs on a case-by-case basis as provided in the FOIA.

(b) If the Secretary awards a contract for a search or duplication of records for a FOI request, the fees charged are the actual costs under the contract.

(c) Fees are not charged if the total amount of the fee is less than \$5. If the total amount of the fee is \$5, or more, applicable search and review costs are charged even if no records are located or disclosed. The Secretary does not refund fees paid for services actually rendered.

(d) If the FOI Officer reasonably believes that a requester or group of requesters acting in concert is attempting to break down a request into multiple requests for the purpose of avoiding fee assessment, those requests and fees are aggregated and charged accordingly.

§ 5.61 Notification of estimated fees.

If the estimated fees under this section total more than \$25, or more than the maximum amount specified in the request if that amount exceeds \$25, the requester is:

(a) Notified promptly of the amount of the estimated fee or that portion of the fee as can readily be estimated; and

(b) Offered the opportunity to reformulate the request.

§ 5.62 Advance payment of fees.

(a) If the estimated fee for processing a request exceeds \$250, the FOI Officer:

(1) Notifies the requester of the anticipated cost and obtains satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees; or

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(2) Requires an advance payment if the requester has no history of payment.

(b) If a requester has previously failed to pay a fee in a timely fashion, the FOI Officer does not process any subsequent request until the requester pays the arrears in full, including interest, and makes an advance payment of the estimated fee for the new request.

(c) Requests under this section are not deemed to have been received for purposes of §5.51(d) until the Department receives the satisfactory assurance or advance payment.

§ 5.63 Payment of fees and interest.

(a) If a requester does not pay a fee under this subpart within 30 days after the date the billing was sent, interest is assessed at the rate prescribed under 31 U.S.C. 3717. The Secretary may use the procedures authorized under the Debt Collection Act of 1982 to collect fees due under this subpart, including disclosure to consumer reporting or collection agencies.

(b) Fee payments must 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. Fee payments must be made payable to the U.S. Department of Education and mailed to the FOI Officer, Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. A receipt for fees paid is given upon request.

§ 5.64 Waiver or reduction of fees.

(a) The Secretary may, in accordance with the FOIA, waive or reduce all or part of any fee provided for in this section if the Secretary determines that it is:

(1) In the public interest because furnishing the information can be considered as primarily benefiting the general public and is likely to contribute significantly to public understanding of the operations or activities of the government; and

(2) Is not primarily in the commercial interest of the requester.

(b) In making the determination to waive or reduce a fee under paragraph (a) of this section, the Secretary considers the following factors:

(1) Whether the subject of the requested records concerns the operations or activities of the government.

(2) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(3) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so, 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.

Subpart F—Availability of Specific Records**§ 5.70 Policy.**

This subpart specifies the types of records which the Department shall, in keeping with its policy of fullest possible disclosure, make available for inspection and copying. For clarity and purposes of guidance, there are also set forth below the kinds or portions of records which generally will not be released, except as may be determined under §5.74. The appendix to this part contains some examples of the kinds of materials which, in accordance with §5.72, will generally be released and other materials which, in accordance with §5.73, are not normally available. In the event that any record contains both information which is disclosable and that which is not disclosable under this regulation, the nondisclosable information will be deleted and the balance of the record disclosed.

§ 5.71 Protection of personal privacy and proprietary information.

As set forth with more particularity below, certain types of information in whatever record or document contained shall not be disclosed where disclosure would be inconsistent with individual rights of personal privacy or would violate obligations of confidentiality.

(a) No disclosure will be made of information of a personal and private nature, such as information in personnel and medical files, in welfare and social