

§ 2201.8

29 CFR Ch. XX (7–1–10 Edition)

of billing until the Commission receives full payment. Interest will be at the rate described in 31 U.S.C. 3717.

(i) *Debt collection procedures.* If bills are unpaid 60 days after the mailing of a written notice to the requester, the Commission's Office of Administration may resort to the debt collection procedures set out in the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

§ 2201.8 Waiver of fees.

(a) *General.* The FOIA Disclosure Officer shall waive part or all of the fees assessed under § 2201.7(b) if two conditions are satisfied: 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 disclosure is not primarily in the commercial interest of the requester. Where the FOIA Disclosure Officer 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 FOIA Disclosure Officer may seek clarification from the requester before assigning the request to a specific category for fee assessment purposes. The FOIA Disclosure Officer shall afford the requester the opportunity to show that the requester comes within these two conditions. The following factors may be considered in determining whether the two conditions are satisfied:

- (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.

(b) *Partial waiver of fees.* If the two conditions stated in paragraph (a) of this section are met, the FOIA Disclosure Officer will ordinarily waive all fees. In exceptional cases, however, only a partial waiver may be granted if the request for records would impose an exceptional burden or require an exceptional expenditure of Commission resources, and the request for a waiver minimally satisfies the “public interest” requirement in paragraph (a) of this section.

§ 2201.9 Appeal of denials.

A denial of a request for records, either in whole or in part, a request for expedited processing, or a request for fee waivers, may be appealed in writing to the Chairman of the Commission within 20 working days of the date of the letter denying an initial request. The Chairman shall act on the appeal under 5 U.S.C. 552(a)(6)(A)(ii) within 20 working days after the receipt of the appeal. If the Chairman wholly or partially upholds the denial of the request, the Chairman shall notify the requesting person that the requester may obtain judicial review of the Chairman's action under 5 U.S.C. 552(a)(4)(B)–(G).

§ 2201.10 Maintenance of statistics.

(a) The FOIA Disclosure Officer shall maintain records of:

- (1) The number of determinations made by the agency not to comply with the requests for records made to the agency and the reasons for those determinations;
- (2) The number of appeals made by persons, the results of those appeals, and the reason for the action upon each appeal that results in a denial of information;
- (3) A complete list of all statutes that the agency used to authorize the withholding of information under 5 U.S.C. 552(b)(3), which exempts information that is specifically exempted from disclosure by other statutes;
- (4) A description of whether a court has upheld the decision of the agency to withhold information under each of those statutes cited, and a concise description of the scope of any information upheld;
- (5) The number of requests for records pending before the agency as of