

Department of Health and Human Services

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§ 5.42 Fees to be charged—general provisions.

(a) We may charge search fees even if the records we find are exempt from disclosure, or even if we do not find any records at all.

(b) If we are not charging you for the first two hours of search time, under § 5.41(c), and those two hours are spent on a computer search, then the two free hours are the first two hours of the operator's own operation. If the operator spends less than two hours on the search, we will reduce the total search fees by the average hourly rate for the operator's time, multiplied by two.

(c) If we are not charging you for the first 100 pages of duplication, under § 5.41 (b) or (c), then those 100 pages are the first 100 pages of photocopies of standard size pages, or the first 100 pages of computer printout. If we cannot use this method to calculate the fee reduction, then we will reduce your total duplication fee by the normal charge for photocopying a standard size page, multiplied by 100.

(d) We will not charge you any fee at all if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. As of May 1987, such costs among the units HHS ranged between \$6.00 and \$12.50.

(e) If we determine that you (acting either alone or together with others) are breaking down a single request into a series of requests in order to avoid (or reduce) the fees charged, we may aggregate all these requests for purposes of calculating the fees charged.

(f) We will charge interest on unpaid bills beginning on the 31st day following the day the bill was sent. We will use the provisions of Part 30 of this Title in assessing interest, administrative costs, and penalties and in taking actions to encourage payment.

(g) This subpart does not apply to requests for Social Security program records on Social Security number holders, wage earners, employers, and claimants, where the requests are governed by section 1106 of the Social Security Act, 42 U.S.C. 1306(c), and by 20 CFR 442.441.

§ 5.43 Fee schedule.

HHS charges the following fees:

(a) Manual searching for or reviewing of records—when the search or review is performed by employees at grade GS-1 through GS-8, an hourly rate based on the salary of a GS-5, step 7, employee; when done by a GS-9 through GS-14, an hourly rate based on the salary of a GS-12, step 4, employee; and when done by a GS-15 or above, an hourly rate based on the salary of a GS-15, step 7, employee. In each case, the hourly rate will be computed by taking the current hourly rate for the specified grade and step, adding 16% of that rate to cover benefits, and rounding to the nearest whole dollar. As of November 25, 1988, these rates were \$10, \$20, and \$37 respectively. When a search involves employees at more than one of these levels, we will charge the rate appropriate for each.

(b) Computer searching and printing—the actual cost of operating the computer plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.

(c) Photocopying standard size pages—\$0.10 per page. FOI Officers may charge lower fees for particular documents where—

(1) The document has already been printed in large numbers,

(2) The program office determines that using existing stock to answer this request, and any other anticipated FOI requests, will not interfere with program requirements, and

(3) The FOI Officer determines that the lower fee is adequate to recover the prorated share of the original printing costs.

(d) Photocopying odd-size documents (such as punchcards or blueprints), or reproducing other records (such as tapes)—the actual costs of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.

(e) Certifying that records are true copies. This service is not required by the FOIA. If we agree to provide it, we will charge \$10 per certification.

(f) Sending records by express mail, certified mail, or other special methods. This service is not required by the FOIA. If we agree to provide it, we will charge our actual costs.

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(g) Performing any other special service that you request and we agree to—actual costs of operating any machinery, plus actual cost of any materials used, plus charges for the time of our employees, at the rates given in paragraph (a) of this section.

§ 5.44 Procedures for assessing and collecting fees.

(a) *Agreement to pay.* We generally assume that when you request records you are willing to pay the fees we charge for services associated with your request. You may specify a limit on the amount you are willing to spend. We will notify you if it appears that the fees will exceed the limit and ask whether you nevertheless want us to proceed with the search.

(b) *Advance payment.* If you have failed to pay previous bills in a timely fashion, or if our initial review of your request indicates that we will charge you fees exceeding \$250, we will require you to pay your past due fees and/or the estimated fees, or a deposit, before we start searching for the records you want. If so, we will let you know promptly upon receiving your request. In such cases, the administrative time limits prescribed in § 5.35 of the part (i.e., ten working days from receipt of initial requests and 20 working days from receipt of appeals from initial denials, plus permissible extensions of these time limits) will begin only after we come to an agreement with you over payment of fees, or decide that fee waiver or reduction is appropriate.

(c) *Billing and payment.* We will normally require you to pay all fees before we furnish the records to you. We may, at our discretion, send you a bill along with or following the furnishing of the records. For example, we may do this if you have a history of prompt payment. We may also, at our discretion, aggregate the charges for certain time periods in order to avoid sending numerous small bills to frequent requesters, or to businesses or agents representing requesters. For example, we might send a bill to such a requester once a month. Fees should be paid in accordance with the instructions furnished by the person who responds to your requests.

45 CFR Subtitle A (10–1–10 Edition)

§ 5.45 Waiver or reduction of fees.

(a) *Standard.* We will waive or reduce the fees we would otherwise charge if disclosure of the information meets both of the following tests:

(1) It is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

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

These two tests are explained in paragraphs (b) and (c) of this section.

(b) *Public interest.* The disclosure passes the first test only if it furthers the specific public interest of being likely to contribute significantly to public understanding of government operations or activities, regardless of any other public interest it may further. In analyzing this question, we will consider the following factors.

(1) How, if at all, do the records to be disclosed pertain to the operations or activities of the Federal Government?

(2) Would disclosure of the records reveal any meaningful information about government operations or activities? Can one learn from these records anything about such operations that is not already public knowledge?

(3) Will the disclosure advance the understanding of the general public as distinguished from a narrow segment of interested persons? Under this factor we may consider whether the requester is in a position to contribute to public understanding. For example, we may consider whether the requester has such knowledge or expertise as may be necessary to understand the information, and whether the requester's intended use of the information would be likely to disseminate the information among the public. An unsupported claim to be doing research for a book or article does not demonstrate that likelihood, while such a claim by a representative of the news media is better evidence.

(4) Will the contribution to public understanding be a significant one? Will the public's understanding of the government's operations be substantially greater as a result of the disclosure?

(c) *Not primarily in the requester's commercial interest.* If the disclosure passes