

Peace Corps

§ 303.13

name of the agency to which the request has been referred and the part of the request that has been referred.

(4) *Effect of consultations and referrals on timing of response.* All consultations and referrals will be handled according to the date the FOIA request was initially received by the Peace Corps.

(5) *Agreements with other agencies.* The Peace Corps may make agreements with other agencies to eliminate the need for consultations or referrals for particular types of records.

§ 303.11 Denials.

(a) A denial of a written request for a record that complies with the requirements of § 303.8 shall be in writing and shall include, as applicable:

(1) A reference to the applicable exemption or exemptions in § 303.9(a) upon which the denial is based;

(2) An explanation of how the exemption applies to the requested records;

(3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;

(4) An estimate of the volume of requested matter denied unless providing such estimate would harm the interest protected by the exemption under which the denial is made, if other than the FOIA Officer;

(5) The name and title of the person or persons responsible for denying the request, if other than the FOIA Officer; and

(6) An explanation of the right to appeal the denial and the procedures for submitting an appeal, including the address of the official to whom appeals should be submitted.

(b) A partial deletion of a record made available to a requester shall be deemed a denial of a record for purposes of paragraph (a) of this section. All denials shall be treated as final opinions under § 303.5(b).

§ 303.12 Appeals.

(a) Any person whose written request has been denied is entitled to appeal the denial within 20 business days by writing to the Associate Director of the Office of Management or, in the case of a denial of a request for OIG Records, the Inspector General, at the address given in § 303.5(a). The envelope

and letter should be clearly marked "Freedom of Information Act Appeal." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) The decision of the Associate Director for the Office of Management or the Inspector General on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requester, the matters described in § 303.11(a)(1) through (4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requester within 20 business days after receipt of the appeal, unless an additional period is justified pursuant to § 303.8(i) and such period taken together with any earlier extension does not exceed 10 business days. The decision by the Associate Director for the Office of Management or the Inspector General shall constitute the final action of the Peace Corps. All such decisions shall be treated as final opinions under § 303.5(b).

§ 303.13 Fees.

(a) For information routinely provided by the Peace Corps to the public in the normal course of doing business, such as informational or recruiting brochures, no fees will be charged.

(b) For each a commercial use request, fees will be limited to reasonable standard charges for document search, review, and duplication.

(c) For each request for records sought by a representative of the news media or by an educational or non-commercial scientific institution, fees shall be limited to reasonable standard charges for document duplication after the first 100 pages.

(d) For all other requests, fees shall be limited to reasonable standard charges for search time after the first 2 hours and duplication after the first 100 pages.

(e) The schedule of reasonable standard charges for services regarding the

§ 303.13

22 CFR Ch. III (4–1–09 Edition)

production or disclosure of the Peace Corps records is as follows:

(1) Manual search and review of records: Salary rate of employee[s] performing the search and review plus 16%. Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) Computer time: Actual costs as incurred;

(3) Duplication by paper copy: 15 cents per page;

(4) Duplication by other methods: Actual costs as incurred;

(5) Certification of true copies: \$1.00 each;

(6) Packing and mailing records: Actual costs as incurred; and

(7) Special delivery or express mail: Actual charges as incurred.

(f) *Fee waivers*: Fees will be waived or reduced below the fees established under paragraph (e) of this section 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 Peace Corps or Federal government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether the 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 Federal government, the Peace Corps shall consider the following four criteria:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the Peace Corps or Federal government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of Peace Corps or Federal government operations or activities;

(iii) 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

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public under-

standing of Peace Corps or Federal government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Peace Corps shall consider the following two factors:

(i) 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,

(ii) 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.”

(3) These fee waiver/reduction provisions will be subject to appeal in the same manner as appeals from denial under § 303.12.

(g) No fee will be charged under this section unless the cost of routine collection and processing of the fee payment is likely to exceed the average cost of processing a payment.

(h) Requesters must agree to pay all fees charged for services associated with their requests. The Peace Corps will assume that requesters agree to pay all charges for services associated with their requests up to \$25 unless otherwise indicated by the requester.

(i) No requester will be required to make an advance payment of any fee unless:

(1) The requester has previously failed to pay a required fee to another federal agency or to Peace Corps within 30 days of the date of billing, in which case an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. (The request will not be deemed to have been received by the Peace Corps until such payment is made.); or

(2) The Peace Corps determines that an estimated fee will exceed \$250, in which case the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within 5 business days of receipt of the request by

Peace Corps

§ 303.14

the Peace Corps. The notification shall offer the requester the opportunity to confer with appropriate representatives of the Peace Corps for the purpose of reformulating the request so as to meet the needs of the requester at a reduced cost. The request will not be deemed to have been received by the Peace Corps for purposes of the initial 20-day response period until the requester makes a deposit on the fee in an amount determined by the Peace Corps.

(j) Interest may be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(k) The Agency is not required to process a request for a requester who has not paid FOIA fees owed to another Federal agency.

(l) If the Peace Corps reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Peace Corps shall aggregate such requests and charge accordingly. Likewise, the Peace Corps will aggregate multiple requests for documents received from the same requester within 45 business days.

(m) The Peace Corps reserves the right to limit the number of copies of any document that will be provided to any one requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

[68 FR 66008, Nov. 25, 2003, as amended at 72 FR 27056, May 14, 2007]

§ 303.14 Procedures for responding to a subpoena.

(a) *Purpose and scope.* (1) This part sets forth the procedures to be followed in proceedings in which the Peace Corps is not a party, whenever a subpoena, order or other demand (collectively referred to as a “demand”) of a court or other authority is issued for:

(i) The production or disclosure of any material contained in the files of the Agency;

(ii) The production or disclosure of any information relating to material contained in the files of the Agency;

(iii) The production or disclosure of any information or material acquired by any person while such person was an employee of the Agency as a part of the performance of his official duties or because of his official status, or

(iv) The production of an employee of the Agency for the deposition or an appearance as a witness in a legal action or proceeding.

(2) For purposes of this part, the term “employee of the Agency” includes all officers and employees of the Agency appointed by, or subject to the supervision, jurisdiction or control of, the director of the Agency, including personal services contractors. Also for purposes of this part, records of the Agency do not include records of the Office of Inspector General.

(3) This part is intended to provide instructions regarding the internal operations of the Agency, and is not intended, and does not and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law by a party against the Agency.

(4) This part applies to:

(i) State and local court, administrative and legislative proceedings; and

(ii) Federal court and administrative proceedings.

(5) This part does not apply to:

(i) Congressional requests or subpoenas for testimony or documents;

(ii) Employees or former employees making appearances solely in their private capacity in legal or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents or domestic relations); Any questions whether the appearance relates solely to the employee's or former employee's private capacity should be referred to the Office of the General Counsel.

(6) Nothing in this part otherwise permits disclosure of information by the Agency except as is provided by statute or other applicable law.

(b) *Procedure in the event of a demand for production or disclosure.* (1) No employee or former employee of the Agency shall, in response to a demand of a court or other authority set forth in