

## Office of the Secretary of Defense

## § 299.6

within 60 days of the date of the response letter and that the appeal must be addressed to the NSA/CSS FOIA Appeal Authority, National Security Agency, Ft. George G. Meade, MD 20755-6248. The following actions are considered adverse determinations:

- (1) Denial of records or portions of records;
  - (2) Inability of NSA/CSS to locate records;
  - (3) Denial of a request for the waiver or reduction of fees;
  - (4) Placement of requester in a specific fee category;
  - (5) Amount of estimate of processing costs;
  - (6) Determination that the subject of a request is not within the purview of NSA/CSS and that a search for records shall not be conducted;
  - (7) Denial of a requester for expeditious treatment; and
  - (8) Non-agreement regarding completion date of request.
- (o) The GC or his designee shall process appeals and make a recommendation to the Appeal Authority.

(1) Upon receipt of an appeal regarding the denial of information or the inability of the Agency to locate records, the GC or his designee shall provide a legal review of the denial and/or the adequacy of the search for responsive material, and make other recommendations as appropriate.

(2) If the Appeal Authority determines that additional information may be released, the information shall be made available to the requester within 20 working days from receipt of the appeal. The conditions for responding to an appeal for which expedited treatment is sought by the requester are the same as those for expedited treatment on the initial processing of a request. (See paragraph (f) of this section.)

(3) If the Appeal Authority determines that the denial was proper, the requester must be advised within 20 days after receipt of the appeal that the appeal is denied. The requester likewise shall be advised of the basis for the denial and the provisions for judicial review of the Agency's appellate determination.

(4) If a new search for records is conducted and produces additional material, the additional records shall be for-

warded to the Director of Policy, as the IDA, for review. Following his/her review, the Director of Policy shall return the material to the GC with his/her recommendation for release or withholding. The GC shall provide a legal review of the material, and the Appeal Authority shall make the release determination. Upon denial or release of additional information, the Appeal Authority shall advise the requester that more material was located and that the IDA and the Appeal Authority each conducted an independent review of the documents. In the case of denial, the requester shall be advised of the basis of the denial and the right to seek judicial review of the Agency's action.

(5) When a requester appeals the absence of a response to a request within the statutory time limits, the GC shall process the absence of a response as it would denial of access to records. The Appeal Authority shall advise the requester of the right to seek judicial review.

(6) Appeals shall be processed using the same multi-track system as initial requests. If an appeal cannot be responded to within 20 working days, the requirement to obtain an extension from the requester is the same as with initial requests. The time to respond to an appeal, however, may be extended by the number of working days (not to exceed 10) that were not used as additional time for responding to the initial request. That is, if the initial request is processed within 20 working days so that the extra 10 days of processing which an agency can negotiate with the requester are not used, the response to the appeal may be delayed for that 10 days (or any unused portion of the 10 days).

### § 299.6 Fees.

(a) Upon receipt of a request, DC3 shall evaluate the request to determine the fee category or status of the requester, as well as the appropriateness of a waiver or reduction of fees if requested. There are no fees associated with a Privacy Act request, except as stated in NSA/CSS Regulation 10-35, Implementation of the Privacy Act of 1974. If fees are assessable, a search

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cost estimate shall be sent to the Directorate(s) and Associate Directorate(s) expected to maintain responsive records. If DC3 assigns a fee category to a requester which differs from that claimed by the requester or determines that a waiver or reduction of fees is not appropriate, DC3 shall notify the requester of this discrepancy and of the estimated cost of processing the request. The requester shall be given 60 days to provide additional substantiation for the fee status claimed or for a fee waiver or reduction. The requester shall be advised that his/her request shall not be processed until the discrepancy over the fee category, fee waiver or reduction, or both are resolved. He/she shall also be advised of his/her right to appeal DC3's determination. A fee waiver or reduction shall be granted or denied in accordance with DoD 5400.7-R and based on information provided by the requester. If the requester does not respond to DC3's initial notification of the discrepancy in fee assessment within the 60 days, DC3's determination about that requester's fee status shall be final.

(b) Fees shall reflect only direct search, review (in the case of commercial requesters) and duplication costs, recovery of which are permitted by 5 U.S.C. 552. Fees shall not be used to discourage requesters.

(c) No minimum fee may be charged. Fees under \$25.00 shall be waived.

(d) Fees shall be based on estimates provided by appropriate organizational focal points. Upon completion of the processing of the request and computation of all assessable fees, the request shall be handled as follows:

(1) If the earlier cost estimate was under \$250.00 and the requester has not yet paid and has no payment history, the requester shall be notified of the actual cost and shall be sent a bill under separate cover. Upon receipt of payment, processing results and non-exempt information shall be provided to the requester.

(2) In cases where the requester paid prior to processing, if the actual costs exceed the estimated costs, the requester shall be notified of the remaining fees due. Processing results and non-exempt information shall be pro-

vided to the requester upon payment of the amount in excess or, if less than \$250.00, receipt of the requester's agreement to pay. If the requester refuses to pay the amount in excess, processing of the request will be terminated with notice to the requester.

(3) In cases where the requester paid prior to processing, if the actual costs are less than estimated fees which have been collected from the requester, processing results and the non-exempt information shall be provided to the requester, and the FOIA office shall advise Accounting and Financial Services of the need to refund funds to the requester.

(e) Fees for manual searches, review time and personnel costs associated with computer searches shall be computed according to the following schedule:

Type	Grade	Hourly rate
(1) Clerical .....	E9/GS8 and below ....	\$20
(2) Professional .....	O1–O6/GS9–GS15 ...	44
(3) Executive .....	O7/SCE/SLE/SLP ....	75
(4) Contractor .....	.....	44

(f) Fees for machine time involved in computer searches shall be based on the direct cost of retrieving information from the computer, including associated input/output costs.

(g) Search costs for audiovisual documentary material shall be computed as for any other record. Duplication costs shall be the actual, direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(h) Duplication fees shall be assessed according to the following schedule:

Type	Cost per page
(1) Office Copy .....	\$.15
(2) Microfiche .....	.25
(3) Printed Material .....	.02

### § 299.7 Exempt records.

(a) Records meeting the exemption criteria of 5 U.S.C. 552 need not be published in the FEDERAL REGISTER, made available in a reading room, or provided in response to requests made under 5 U.S.C. 552.