

§ 5.31

The Department retains full discretion to limit or adjust fees.

(Authority: 5 U.S.C. 552(a), 5 U.S.C. 552(a)(4)(A), 20 U.S.C. 3474)

§ 5.31 Fee definitions.

(a) *Commercial use request* means a request from or on behalf of a FOIA requester seeking information for a use or purpose that furthers the requester's commercial, trade, or profit interests, which can include furthering those interests through litigation. For the purpose of assessing fees under the Act, the Department determines, whenever reasonably possible, the use to which a requester will put the requested agency records.

(b) *Direct costs* mean those expenses that an agency actually incurs in searching for and duplicating (and, in the case of commercial use FOIA requests, reviewing) agency records to respond to a FOIA request. Direct costs include, for example, the pro rata salary of the employee(s) performing the work (*i.e.*, basic rate of pay plus 16 percent) and the cost of operating duplication machinery. The Department's other overhead expenses are not included in direct costs.

(c) *Duplication* means making a copy of the agency record, or of the information in it, as necessary to respond to a FOIA request. Copies can be made in several forms and formats, including paper and electronic records. The Department honors a requester's specified preference as to form or format of disclosure, provided that the agency record is readily reproducible with reasonable effort in the requested form or format.

(d) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To qualify as an educational institution under this part, a requester must demonstrate that an educational institution authorized the request and that the agency records are not sought for individual or commercial use, but are instead sought to further scholarly re-

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search. A request for agency records for the purpose of affecting a requester's application for, or prospect of obtaining, new or additional grants, contracts, or similar funding is presumptively a commercial use request.

(e) *Noncommercial scientific institution* means an institution that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A noncommercial scientific institution does not operate for a "commercial use", as the term is defined in paragraph (a) of this section. To qualify as a noncommercial scientific institution under this part, a requester must demonstrate that a noncommercial scientific institution authorized the request and that the agency records are sought to further scientific research and not for a commercial use. A request for agency records for the purpose of affecting a requester's application for, or prospect of obtaining, new or additional grants, contracts, or similar funding is presumptively a commercial use request.

(f) *Representative of the news media, or news media requester*, means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. For the purposes of this section, the term "news" means information about current events or information that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals that qualify as disseminators of news and make their products available for purchase by, subscription by, or free distribution to the general public. To be regarded as a representative of the news media, a "freelance" journalist must demonstrate a solid basis for expecting publication, such as a publication contract or a past publication record. For inclusion in this category, a requester must not be seeking the requested agency records for a commercial use.

(g) *Review* means the examination of an agency record located in response to a FOIA request to determine whether

any portion of the record is exempt from disclosure under the Act. Reviewing the record includes processing the agency record for disclosure and making redactions and other preparations for disclosure. Review costs are recoverable even if an agency record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure but does not include time spent resolving general legal or policy issues regarding the application of exemptions under the Act.

(h) *Search* means the process of looking for and retrieving agency records or information responsive to a FOIA request. Searching includes page-by-page or line-by-line identification of information within agency records and reasonable efforts to locate and retrieve information from agency records maintained in electronic form or format, provided that such efforts do not significantly interfere with the operation of the Department's automated information systems.

(Authority: 5 U.S.C. 552(a), 5 U.S.C. 552(a)(4)(A), 20 U.S.C. 3474)

§ 5.32 Assessment of fees.

(a) *Fees*. In responding to FOIA requests, the Department charges the following fees (in accordance with the Office of Management and Budget's "Uniform FOIA Fee Schedule and Guidelines," 52 FR 10012 (March 27, 1987)), unless it has granted a waiver or reduction of fees under § 5.33 and subject to the limitations set forth in paragraph (b) of this section:

(1) *Search*. The Department charges search fees, subject to the limitations of paragraph (b) of this section. Search time includes time spent searching, regardless of whether the search results in the location of responsive agency records and, if so, whether such agency records are released to the requester under the Act. The requester will be charged the direct costs, as defined in § 5.31(b), of the search. In the case of computer searches for agency records, the Department charges the requester for the direct cost of conducting the search, subject to the limitations set forth in paragraph (b) of this section.

(2) *Review*. (i) The Department charges fees for initial agency record

review at the same rate as for searches, subject to the limitations set forth in paragraph (b) of this section.

(ii) No fees are charged for review at the administrative appeal level except in connection with—

(A) The review of agency records other than agency records identified as responsive to the FOIA request in the initial decision; and

(B) The Department's decision regarding whether to assert that an exemption exists under the Act that was not cited in the decision on the initial FOIA request.

(iii) Review fees are not assessed for FOIA requests other than those made for a "commercial use," as the term is defined in § 5.31(a).

(3) *Duplication*. The Department charges duplication fees at the rate of \$0.20 per page for paper photocopies of agency records, \$3.00 per CD for documents recorded on CD, and at the direct cost for duplication for electronic copies and other forms of duplication, subject to the limitations of paragraph (b) of this section.

(b) *Limitations on fees*.

(1) Fees are limited to charges for document duplication when agency records are not sought for commercial use and the request is made by—

(i) An educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or

(ii) A representative of the news media.

(2) For FOIA requests other than commercial use FOIA requests, the Department provides the first 100 pages of agency records released (or the cost equivalent) and the first two hours of search (or the cost equivalent) without charge, pursuant to 5 U.S.C. 552(a)(4)(A)(iv)(II).

(3) Whenever the Department calculates that the fees assessable for a FOIA request under paragraph (a) of this section total \$25.00 or less, the Department processes the FOIA request without charge to the requester.

(c) *Notice of anticipated fees in excess of \$25*. When the Department estimates or determines that the fees for processing a FOIA request will total more than \$25 and the requester has not stated a willingness to pay such fees, the Department notifies the requester of