

§ 1304.2

(MCC) follows in implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552) as amended. These regulations provide procedures by which you may obtain access to records compiled, created, and maintained by MCC, along with the procedures that MCC must follow in response to such requests for records. These regulations should be read together with the FOIA, which provides additional information about access to records maintained by MCC.

§ 1304.2 Definitions.

Agency has the meaning set forth in 5 U.S.C. 552(f)(1).

Commercial use requester means a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of himself or the person on whose behalf the request is made, which can include furthering those interests through litigation. In determining whether a request properly belongs in this category, the FOIA Officer shall determine the use to which the requester will put the documents requested. Where the FOIA Officer has reasonable cause to doubt the use to which the requester will put the records sought, or where that use is not clear from the request itself, the FOIA Officer shall contact the requester for additional clarification before assigning the request to a specific category.

Confidential commercial information means records provided to the government by a submitter that arguably contains material exempt from disclosure under Exemption 4 of the FOIA, because disclosure could reasonably be expected to cause substantial competitive harm.

Direct costs mean those expenditures by MCC actually incurred in searching for and duplicating records in response to the FOIA request. These costs include the salary of the employee(s) performing the work (basic rate of pay plus a percentage of that rate to cover benefits) and the cost of operating duplicating machinery. Direct costs do not include overhead expenses, such as the cost of space, heating, or lighting of the facility in which the records are stored.

Duplication means the process of making a copy of a record in order to respond to a FOIA request, including

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paper copies, microfilm, audio-video materials, and computer diskettes or other electronic copies.

Educational institution refers to a preschool, a public or private elementary or secondary school, an institute of undergraduate higher education, an institute of graduate higher education, an institute of professional education, or an institute of vocational education which operates a program of scholarly research. To qualify for this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

FOIA Officer means the MCC employee who is authorized to make determinations as provided in this part. The mailing address for the FOIA Officer is: Millennium Challenge Corporation, Attn: FOIA Officer, 875 Fifteenth Street, NW., Washington, DC 20005.

Non-commercial scientific institution refers to an institution that is not operated on a "commercial" basis as that term is used in paragraph (a) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To qualify for this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

Record means information or documentary material MCC maintains in any form or format, including an electronic form or format, which MCC:

(1) Made or received under federal law or in connection with the transaction of public business;

(2) Preserved or determined is appropriate for preservation as evidence of MCC operations or activities or because of the value of the information it contains; and

(3) Controls at the time it receives a request.

Representative of the news media means any person actively gathering news for an entity that is organized

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and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. For a "freelance journalist" to be regarded as working for a news organization, the requester must demonstrate a solid basis for expecting publication through that organization, such as a publication contract. Absent such showing, the requester may provide documentation establishing the requester's past publication record. To qualify for this category, the requester must not be seeking the requested records for a commercial use. However, a request for records supporting a news-dissemination function shall not be considered to be for a commercial use.

Requester means any person, including an individual, corporation, firm, organization, or other entity, who makes a request to MCC under FOIA for records.

Review means the process of examining a record to determine whether all or part of the record may be withheld, and includes redacting or otherwise processing the record for disclosure to a requester. It does not include time spent:

(1) Resolving legal or policy issues regarding the application of exemptions to a record; or

(2) At the administrative appeal level, unless MCC determines that the exemption under which it withheld records does not apply and the records are reviewed again to determine whether a different exemption may apply.

Search means the time spent locating records responsive to a request, manually or by electronic means, including page-by-page or line-by-line identification of responsive material within a record.

Submitter means any person or entity which provides information directly or indirectly to MCC. The term includes, but is not limited to, corporations, state governments and foreign governments.

Working day means a Federal workday that does not include Saturdays, Sundays, or Federal holidays.

§ 1304.3 Records available to the public.

(a) *General.* (1) It is the policy of MCC to respond promptly to all FOIA requests.

(2) MCC may disclose records that were previously published or disclosed or are customarily furnished to the public in the course of the performance of official duties without complying with this part. These records include, but are not limited to, the annual report that MCC submits to Congress pursuant to section 613(a) of the Millennium Challenge Act of 2003 (22 U.S.C. 7701), press releases, MCC forms, and materials published in the FEDERAL REGISTER. MCC should first determine whether the information requested is already available on its Web site, which contains information readily accessible to the public. In such an event, MCC will contact the requesting party, either orally or in writing, to advise the individual of the availability of the information on the public Web site. MCC should document this request and the manner in which it handled the file. Where MCC makes the determination that the information requested is not already publicly accessible, MCC should adhere to the procedures outlined in this part for processing a FOIA request and any administrative appeals received.

(b) *Public Reading room.* (1) Records that are required to be maintained by MCC shall be available for public inspection and copying at 875 Fifteenth Street, NW., Washington, DC 20005. Reading room records created on or after November 1, 1996 shall be made available electronically via the Web site at <http://www.mcc.gov>.

(2) MCC shall assess fees for searching, reviewing, or duplicating reading room records in accordance with § 1304.9.

§ 1304.4 Requests for records.

(a) *Request requirements.* Requests for access to, or copies of, MCC records shall be in writing and addressed to the FOIA Officer. Each request shall include the following:

(1) A description of the requested record that provides sufficient detail to enable MCC to locate the record with a reasonable amount of effort;