

§ 1515.11

CEQ will notify the requester in writing, inform the requester in the notice of any fee charged under §1515.11 and will disclose records to the requester promptly on payment of any applicable fees. The requested material may be made available on CEQ's Online FOIA Center, <http://www.whitehouse.gov/administration/eop/ceq/foia>, and also in the form or format requested if the record is readily reproducible in that form or format with reasonable effort. When a form or format of the response is not requested, CEQ will respond in the form or format in which the document is most accessible to CEQ. "Readily reproducible" means, with respect to electronic format, that the requested record or records can be downloaded or transferred intact to a computer disk or other electronic medium using equipment currently in use by CEQ.

(b) Records disclosed in part will be marked or annotated to show information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted will also be indicated in the record, if technically feasible.

(c) The legislative history of the establishment of CEQ states that the Congress intended CEQ to be a confidential advisor to the President on matters of environmental policy. Therefore, members of the public should be aware that communications between CEQ and the President (including communications between their staff) may be confidential; they will usually fall, at a minimum, within Exemption 5 of the Act. The Freedom of Information Officer shall review each request to determine whether the record is exclusively factual or may have factual portions which may be reasonably segregated and made available to the requester. Furthermore, on the recommendation of the CEQ FOIA Officer or Appeals Officer, CEQ will consider the release of an entire record, even if it comes within an exemption or contains policy advice, if its disclosure would not impair Executive policymaking processes or CEQ's participation in decisionmaking.

40 CFR Ch. V (7-1-12 Edition)

COSTS

§ 1515.11 Definitions.

For purposes of these regulations:

Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's or other person's commercial, trade, or profit interests.

Direct costs means those costs incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) documents to respond to a FOIA request. Direct costs include, for example, salaries of employees who perform the work and costs of conducting large-scale computer searches.

Duplicate means to copy records to be released to the FOIA requester. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

Educational institution means a school that operates a program of scholarly research.

Non-commercial scientific institution means an institution that is not operated on a commercial basis and that operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

Representative of the news media 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.

Review means to examine a record to determine whether any portion of the record may be withheld and to process a record for disclosure, including by redacting it.

Search means to look for and retrieve records covered by a FOIA request, including by looking page-by-page or line-by-line to identify responsive material within individual records.

§ 1515.12 Fees in general.

CEQ shall charge fees that recoup the full allowable direct costs it incurs in responding to FOIA requests. CEQ may assess charges for time spent searching for records even if CEQ fails to locate the records or if the records are located

and determined to be exempt from disclosure. In general, CEQ shall apply the following fee schedule, subject to §§ 1515.13 through 1515.15:

(a) *Manual searches.* Time devoted to manual searches shall be charged on the basis of the salary of the employee(s) conducting the search (basic hourly rate(s) of pay for the employee(s), plus 16 percent).

(b) *Electronic searches.* Fees shall reflect the direct cost of conducting the search. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for and printing records responsive to the FOIA request and operator/programmer salary attributable to the search.

(c) *Record reviews.* Time devoted to reviewing records shall be charged on the same basis as under paragraph (a) of this section, but shall only be applicable to the review of records located in response to commercial use requests.

(d) *Duplication.* Fees for copying paper records or for printing electronic records shall be assessed at a rate of \$.15 per page. For other types of copies such as disks or audio visual tapes, CEQ shall charge the direct cost of producing the document(s). If total costs are expected to exceed \$25, the FOIA Officer shall provide the requester with an estimate in writing and, in return, obtain from the requester a commitment to pay the estimated fee. This does not apply if the requester has indicated in advance a willingness to pay fees as high as those anticipated. If a requester wishes to limit costs, the FOIA Officer shall provide the requester an opportunity to reformulate the request in order to reduce costs. If the requester reformulates a request, it shall be considered a new request and the 20-day period described in § 1515.6(a) shall be deemed to begin when the FOIA Officer receives the request.

(e)(1) *Advance payments required.* The FOIA Officer may require a requester to make an advance deposit of up to the amount of the entire anticipated fee before the FOIA Officer begins to process the request if:

(i) The FOIA Officer estimates that the fee will exceed \$250; or

(ii) The requester has previously failed to pay a fee in a timely fashion.

(2) When the FOIA Officer requires a requester to make an advance payment, the 20-day period described in § 1515.6(a) shall begin when the FOIA Officer receives the payment.

(f) *No assessment of fee.* CEQ shall not charge a fee to any requester if:

(1) The cost of collecting the fee would be equal to or greater than the fee itself; or

(2) After the effective date of these regulations CEQ fails to comply with a time limit under the Freedom of Information Act for responding to the request for records where no unusual or exceptional circumstances apply.

§ 1515.13 Fees for categories of requesters.

CEQ shall assess fees for certain categories of requesters as follows:

(a) *Commercial use requesters.* In responding to commercial use requests, CEQ shall assess fees that recover the full direct costs of searching for, reviewing, and duplicating records.

(b) *Educational and non-commercial scientific institutions.* CEQ shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To qualify for inclusion in this fee category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scholarly research, not an individual goal.

(c) *Representatives of the news media.* CEQ shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(d) *All other requesters.* CEQ shall charge requesters who do not fall within paragraphs (a) through (c) of this section fees that recover the full direct cost of searching for and duplicating records, excluding charges for the first 100 pages of reproduction and the first two hours of search time.

§ 1515.14 Other charges.

CEQ may apply other charges, including the following: