

§ 2502.14

5 CFR Ch. XV (1–12 Edition)

describe the records sought. Commercial use requestors are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. OA may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see § 2502.14).

(b) *Educational and non-commercial scientific institution requestors.* OA shall provide documents to requestors in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requestors must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an education institution) or scientific (if the request is from a non-commercial scientific institution) research. Requestors must reasonably describe the records sought.

(c) *Requestors who are representatives of the news media.* OA shall provide documents to requestors in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requestor must meet the criteria in § 2502.11(j), and his or her request must not be made for commercial use. In reference to this class of requestors a request for records supporting the news dissemination function of the requestor shall not be considered to be a request that is for a commercial use. Requestors must reasonably describe the records sought.

(d) *All other requestors.* OA shall charge requestors who do not fit into any of the categories above fees that recover the full, reasonable, direct cost of searching for and reproducing the records that are responsive to the request, except that the first 100 pages and the first two hours of search time shall be furnished without charge. Moreover, requests for records about the requestors filed in OA's system of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requestors must reasonably describe the records sought.

[56 FR 5742, Feb. 13, 1991]

§ 2502.14 Miscellaneous fee provisions.

(a) *Charging interest—notice and rate.* OA may begin assessing interest on an unpaid bill starting on the 31st day of the month following the date on which billing was sent. The fact that the fee has been received by OA within the thirty day grace period, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of billing.

(b) *Charges for an unsuccessful search.* OA may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure. If OA estimates that search charges are likely to exceed \$25.00, it shall notify the requestor of the estimated amount of fees, unless the requestor has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requestor the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Aggregation results.* A requestor may not file multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When OA reasonably believes that a requestor, or on rare occasions, a group of requestors acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, OA may aggregate any such request and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(d) *Advance payments.* OA may not require a requestor to make an advance payment, *i.e.*, payment before work is commenced or continued on a request unless:

(1) OA estimates or determines that allowable charges that a requestor may be required to pay are likely to exceed \$250.00. Then, OA will notify the requestor of the likely cost and obtain satisfactory assurance of full payment where the requestor has a history of prompt payment of FOIA fees, or require an advance payment of an

amount up to the full estimated charges in the case of requestors with no history of payment; or

(2) A requestor has previously failed to pay a fee charged in a timely fashion (*i.e.*, within thirty days of the date of the billing). OA may require the requestor to pay the full amount owed plus any applicable interest as provided above or demonstrate that he or she has in fact paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request, or a pending request from that requestor.

When OA acts under paragraph (d) (1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (*i.e.*, ten working days from receipt of initial request and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after OA has received fee payments described above.

(e) *Effect of the Debt Collection Act of 1982 (Pub. L. 97-365)*. OA should comply with the provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

[56 FR 5744, Feb. 13, 1991]

§ 2502.15 Waiver or reduction of charges.

Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where it is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requestor.

[56 FR 5744, Feb. 13, 1991]

§ 2502.16 Information to be disclosed.

(a) In general, all records of the Office of Administration are available to the public, as required by the Freedom of Information Act. However, the Office claims the right, where it is applicable, to withhold material under the provisions specified in the Freedom of Information Act as amended (5 U.S.C. 552(b)).

(b) *Records from Non-U.S. Government Source.* (1) Upon receipt of a request for a record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, including a contract proposal or contract material, the Office will contact the source of the requested record or information requesting advice as to whether release of the record would adversely affect the source's competitive position or invade anyone's privacy. Subsequent to receipt of such advice, the Office will independently examine the requested document and will notify the requester of the final decision.

(2) OA personnel will generally consider two exemptions in the FOIA in deciding whether to withhold from disclosure material from a non-U.S. Government source. Exemption 4 permits withholding of "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Exemption 6 permits withholding certain information, the disclosure of which "would constitute a clearly unwarranted invasion of personal privacy." The source whose material has been requested will be asked to supply convincing justification for any material it wishes withheld under the Act, in accordance with the following general guidelines.

(i) For consideration under *exemption 4*, the supplier of the record or information should identify material that would be likely to cause substantial harm to its present or future competitive position if it were released. If a contractor, the provider should assume that the material will be released to a competitor, even if that is not always the case. A contractor must provide detailed information on why release would be harmful, *e.g.*, the general custom or usage in the business; the number and situation of the persons who have access to the information; the type and degree of risk of financial injury that release would cause; and the length of time the information will need to be kept confidential.

(A) In this respect, the Office of Administration will—as a general rule—look favorably upon recommendations for withholding information about