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which clearly identifies the harm that would occur with disclosure.

(b) *Large requests.* If a request involves a voluminous amount of material or searches in multiple locations, MCRMC will provide the requester with interim responses, releasing the information on a rolling basis.

(c) *Copies.* MCRMC will maintain copies of records that have been the subject of any pending or closed request, appeal, or lawsuit under the FOIA, to include all correspondence pertaining to the subject request, until disposition is authorized under the National Archives and Records Administration's General Records Schedule 14.

(d) *Multi-Track processing.* (1) MCRMC uses a multi-track system to process FOIA requests. This means that a FOIA request is processed based on its complexity. When MCRMC receives a request it will be assigned to the *Standard* or *Complex* track.

(i) *Standard Track.* Requests that are routine and require little search time, review, or analysis are assigned to the Standard Track. MCRMC will respond to these requests in the order in which they are received and make every effort to respond no later than 20 working days after receipt of the request.

(ii) *Complex Track.* Requests that are non-routine are assigned to the Complex Track if the response may:

(A) Be voluminous;

(B) Require an unusually high level of effort for search, review, or duplication; or

(C) Cause an undue disruption to the day-to-day activities of MCRMC in carrying out its statutory responsibilities.

(2) The requester will be notified if the request is assigned to the Complex Track and will be given an estimate of the time for response. MCRMC will respond to Complex Track requests as soon as practicable. MCRMC may discuss with the requester the possibility of reformulating the request to reduce processing time.

§ 9901.7 Appeals.

(a) *Initiating appeals.* Requesters not satisfied with the FOIA Officer's decision may request review of the decision by the MCRMC FOIA Appellate Authority. The appeal must be received within 60 days of the date of the FOIA

Officer's decision. Appeals may be made through the MCRMC Web site at the FOIA tab or in writing, addressed to: FOIA Appellate Authority, Military Compensation and Retirement Modernization Commission, Post Office Box 13170, Arlington, VA 22209. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 697-8330 or email to foia@mcrmc.gov. The requester may wish to explain why the Appellate Authority should grant the appeal, to the extent that an explanation could assist the Appellate Authority in making a decision on the appeal.

(b) *Appeal decisions.* MCRMC's Chief FOIA Officer will decide the appeal within 20 days (except Saturdays, Sundays, and legal public holidays) from the date it receives the appeal. If the appeal is denied, MCRMC will notify the requester in writing of the decision and the provisions for judicial review. If the appeal is granted, the Chief FOIA Officer will notify the requester in writing.

(c) *Mediation.* A response to an appeal will advise the requester of the 2007 FOIA amendments, which created the Office of Government Information Services (OGIS), which offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. A requester may contact OGIS at: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740; email: ogis@nara.gov; telephone: (202) 741-5770; facsimile: (202) 741-5769; toll free telephone: (877) 684-6448.

§ 9901.8 Fees.

(a) *Generally.* MCRMC may charge reasonable fees that recoup the allowable direct costs incurred in responding to FOIA requests. MCRMC may assess charges for time spent searching for records even if MCRMC is unable to locate the records or if the records are located and determined to be exempt from disclosure.

(1) *Timing.* MCRMC may toll the response time limit while awaiting information from the requester regarding fee assessment. Time limits resume

upon MCRMC's receipt of a response from the requester.

(b) *Definitions.* For purposes of this subpart:

(1) *All other request* means a request from or on behalf of a person who does not qualify as a *commercial use requester*, an *educational institution requester*, a *non-commercial scientific institution requester*, or a *representative of the news media requester*.

(2) *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.

(3) *Direct costs* means those costs incurred searching for and duplicating (and, in the case of commercial use requests, reviewing) documents in response to a FOIA request. Direct costs include, for example, salaries of employees who perform the work and costs of conducting large-scale computer searches. Direct costs do not include, for example, overhead expenses such as the costs of space, and of heating or lighting a facility.

(4) *Duplication* means to copy records in response to a FOIA request. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

(5) *Educational institution* is any school that operates a program of scholarly research. Records requested with the intention of fulfilling credit requirements or completion of individual research goals do not qualify as a request by an educational institution.

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

(7) *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 raw materials into a distinct work, and distributes that work to an audience.

(8) *Review* means to examine a record to determine whether any portion of

the record may be withheld, and to process a record for disclosure.

(9) *Search* means to look for and retrieve records for a FOIA request, to include looking page-by-page or line-by-line to identify responsive material within individual records. Search includes time spent looking for records even if responsive records are not found.

(c) *Reduction of fees.* (1) MCRMC will not charge fees for any request where the fees would total less than \$50.

(2) MCRMC will provide, except for *commercial use requesters*, without charge, the first 100 pages of duplication (or the cost equivalent for other media) and the first two hours of a search.

(3) MCRMC shall not assess search fees if the agency fails to comply with time limits set forth in subpart 9901.4 if no unusual circumstances, as defined in subpart 9901.4, apply to the processing of the request.

(d) *Waiver of fees.* MCRMC shall waive all or part of any fee provided for in this subpart where the FOIA Officer determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and the records sought are not primarily in the commercial interest of the requester. Requests for a fee waiver must explain how the information requested contributes to the public interest. In determining whether a fee should be waived, the FOIA Officer shall consider whether the requester has demonstrated that:

(1) The subject matter of the request specifically concerns identifiable operations or activities of the Government;

(2) The information is already in the public domain;

(3) Disclosure is primarily in the commercial interest of the requester; and

(4) Disclosure of the information would significantly enhance the public's understanding of the subject matter.

(e) *Categories of requesters.* Subject to the limitations of this subpart, MCRMC will assess fees for categories of requesters as follows:

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(1) *Commercial use requesters* pay for search, review, and duplication.

(2) *Educational institutions, non-commercial scientific institutions and representatives of the news media* pay only for duplication (excluding charges for the first 100 pages or its cost equivalent).

(3) *All other requesters* pay for search (excluding the first two hours) and duplication (excluding charges for the first 100 pages or its cost equivalent).

(f) *Charges.* In responding to FOIA requests, MCRMC will charge the following fees unless a waiver or reduction of fees has been requested and granted under this subpart. The fee amounts provided below account for direct costs.

(1) *Search and review.* For each quarter hour spent by MCRMC searching for requested records, including electronic searches, or reviewing records, the fee will be \$10.77.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the restrictions of this subpart. MCRMC will honor a requester's preference for receiving a record in a particular format where it is readily reproducible in that form or format. Where photocopies are supplied, MCRMC will provide one copy per request at a cost of five cents per page. For copies of records produced on tapes, disks, or other electronic media, MCRMC will charge the direct costs of producing the copy, including operator time. Where paper documents must be

scanned to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication, MCRMC will charge the direct costs.

(3) *Special charges.* MCRMC shall recover the full cost of providing special services, such as sending records by an overnight delivery service, to the extent that MCRMC elects to provide them, as special services are not required by FOIA.

(4) *Aggregating requests.* When the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is/are attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer may aggregate those requests and charge fees accordingly.

(5) *Advance payment.* When a requester has previously failed to pay fees in a timely fashion or MCRMC has determined that the fee will exceed \$250, MCRMC may require advance payment of fees.

(6) *Remittances.* Payment shall be made in the form of check or money order made payable to the Treasury of the United States. At the time the FOIA Officer notifies a requester of the applicable fees, the FOIA Officer shall inform the requester of where to send the payment.

PARTS 9902–9999 [RESERVED]