

which the periodicals can qualify as disseminators of “news”) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve, *e.g.*, electronic dissemination of newspapers through telecommunication services, such alternative media, would be included in this category. “Freelance” journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by the organization. A publication contract would be the clearest proof that a journalist is working for a news organization, but OFHEO may look to the requester’s past publication record to determine whether a journalist is working for a news organization.

(f) *Reproduce and reproduction* means the process of making a copy of a record necessary to respond to a request for information. Such copies take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation, *e.g.*, magnetic tape or disk. The copy provided shall be in a form that is reasonably usable by requesters.

(g) *Review* means the process of examining records located in response to a request for information to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure, *e.g.*, doing all that is necessary to prepare the records for release. The term “review” does not include the time spent resolving general legal or policy issues regarding the application of exemptions. OFHEO shall only charge fees for reviewing records in response to a commercial use request.

(h) The term *search* includes all time spent looking for material that is responsive to a request for information, including page-by-page or line-by-line identification of material within records. The term “search” includes the extraction of information from a computer using existing programming. Searching for materials shall be done in the most efficient and least expensive manner so as to minimize the

costs of OFHEO and the requester. For example, a line-by-line search for responsive material should not be performed when merely reproducing an entire document would be less expensive and the faster method of complying with the request for information. A “search” for material that is responsive to a request should be distinguished from a “review” of material to determine whether the material is exempt from disclosure.

§ 1710.22 Fees to be charged—general.

(a) *Policy.* Generally, the fees charged for requests for records pursuant to 5 U.S.C. 552 shall cover the full allowable direct costs of searching for, reproducing, and reviewing records that are responsive to a request for information. Fees shall be assessed according to the schedule contained in paragraph (b) of this section and the category of requesters described in § 1710.23 of this subpart for services rendered by OFHEO staff in responding to, and processing requests for, records under this part. Fees assessed will be paid by check or money order payable to the Office of Federal Housing Enterprise Oversight.

(b) *Types of charges.* The types of charges that may be assessed in connection with the production of records in response to an FOIA request are as follows:

(1) *Searches.* (i) *Manual searches for records.* Whenever feasible, OFHEO will charge at the salary rate(s), *i.e.*, basic pay plus 16 percent, of the employee(s) making the search. Charges for search time will be billed by 15-minute segments.

(ii) *Computer searches for records.* Requesters will be charged at the actual direct costs of conducting a search using existing programming. These direct costs will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records and the operator/programmer salary, *i.e.*, basic pay plus 16 percent, apportionable to the search. A charge shall also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of

costs to OFHEO for the type and amount of such supplies of materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as of right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this subpart. OFHEO will not alter or develop programming to conduct a search.

(iii) *Unproductive searches.* OFHEO will charge search fees even if no records are found which are responsive to the request or if the records found are exempt from disclosure.

(2) *Duplication.* Records will be reproduced at a rate of \$.15 per page. For copies prepared by computer, such as tapes or printouts, the requester shall be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of reproducing the record(s) shall be charged.

(3) *Review.* Only requesters who are seeking records for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for initial review, *i.e.*, the review undertaken the first time OFHEO analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review are properly assessable.

(4) *Other services and materials.* Where OFHEO elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending records by special methods, the actual direct costs of providing the service or materials will be charged.

§ 1710.23 Fees to be charged—categories of requesters.

(a) *Fees for various requester categories.* Paragraphs (b) through (e) of this section state, for each category of re-

quester, the types of fees generally charged by OFHEO. However, for each of these categories, the fees may be limited, waived or reduced in accordance with the provisions set forth in paragraph (c) of § 1710.24. If OFHEO has reasonable cause to doubt the purpose specified in the request for which a requester will use the records sought, or where the purpose is not clear from the request itself, OFHEO will seek clarification before assigning the request a specific category.

(b) *Commercial use requester.* OFHEO shall charge fees for records requested by persons or entities making a commercial use request in an amount that equals the full direct costs for searching for, reviewing for release, and reproducing the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of records. In accordance with § 1710.22, commercial use requesters may be charged the costs of searching for and reviewing records even if there is ultimately no disclosure of records.

(c) *Educational and noncommercial scientific institutions.* OFHEO shall charge fees for records requested by, or on behalf of, educational institutions and noncommercial scientific institutions in an amount which equals the cost of reproducing the records responsive to the request, excluding the cost of reproducing the first 100 pages. No search fee shall be charged with respect to requests by educational and noncommercial scientific institutions. For a request to be included in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution, and that the records are not sought for commercial use but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a noncommercial scientific institution).

(d) *News media.* OFHEO shall charge fees for records requested by representatives of the news media in an amount which equals the cost of reproducing the records responsive to the request, excluding the costs of reproducing the first 100 pages. No search fee shall be charged with respect to requests by