

representatives of the news media. For a request to be included in this category, the requester must qualify as a representative of the news media and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use.

(e) *All other requesters.* OFHEO shall charge fees for records requested by persons or entities that are not classified in any of the categories listed in paragraphs (b), (c), or (d) of this section in an amount that equals the full reasonable direct cost of searching for and reproducing records that are responsive to the request, excluding the first 2 hours of search time and the cost of reproducing the first 100 pages of records. In accordance with § 1710.22, requesters in this category may be charged the cost of searching for records even if there is ultimately no disclosure of records, excluding the first 2 hours of search time.

(f) For purposes of the exceptions contained in this section on assessment of fees, the word “pages” refers to paper copies of $8\frac{1}{2} \times 11$ or 11×14 . Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or a computer disk containing the equivalent of 100 pages of computer printout meets the terms of the exception.

(g) For purposes of paragraph (e) of this section, the term “search time” has as its basis, manual search. To apply this term to searches made by computer, OFHEO will determine the hourly cost of operating the central processing unit and the operator’s hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of 2 hours of the salary plus 16 percent of the person performing the search, *i.e.*, the operator, OFHEO will begin assessing charges for the computer.

§ 1710.24 Limitations on charging fees.

(a) *In general.* Except for requesters seeking records for a commercial use as described in paragraph (b) of

§ 1710.23, OFHEO will provide, without charge, the first 100 pages of duplication and the first 2 hours of search time, or their cost equivalent.

(b) *No fee charged.* OFHEO will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. The elements to be considered in determining the “cost of collecting a fee” are the administrative costs of receiving and recording a requester’s remittance and of processing the fee.

(c) *Waiver or reduction of fees.* OFHEO may grant a waiver or reduction of fees if OFHEO determines that the 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 Federal Government, and the disclosure of the information is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees will be considered on a case-by-case basis.

(1) The following factors will be considered by OFHEO in determining whether a waiver or reduction of fees is in the public interest:

(i) *The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the Government.”* The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those Government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of Government operations or activities.* The disclosable portions of the requested records must be meaningfully informative on specific Government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The

disclosure of information that is already in the public domain, in either a duplicative or substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution to an understanding of the subject by the general public: Whether disclosure of the requested information will contribute to the "public understanding."* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications, e.g., expertise in the subject area and ability and intention to convey information to the general public, will be considered.

(iv) *The significance of the contribution in public understanding: Whether the disclosure is likely to "significantly enhance" the public understanding of Government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. The FOIA Officer shall not make a separate value judgment as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the Government, is "important" enough to be made public.

(2) In order to determine whether the second fee waiver requirement is met, i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester, OFHEO shall consider the following two factors in sequence:

(i) *The existence and magnitude of a commercial interest: Whether the requester, or any person on whose behalf the requester may be acting, has a commercial interest that would be furthered by the requested disclosure.* In assessing the magnitude of identified commercial interests, consideration will be given to the effect that the information disclosed would have on those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity

in the administrative process to provide information bearing upon this consideration.

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."* A fee waiver or reduction is warranted only where, once the "public interest" standard set out in paragraph (c)(1) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requester's commercial interest in disclosure. OFHEO will ordinarily presume that, where a news media requester has satisfied the public interest standard, the public interest will be serviced primarily by disclosure to that requester. Disclosure to requesters who compile and market Federal Government information for direct economic return will not be presumed to primarily serve the "public interest."

(3) Where only a portion of the requested record satisfies the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(4) A request for a waiver or reduction of fees must accompany the request for disclosure of records and should include—

(i) A clear statement of the requester's interest in the records;

(ii) The proposed use of the records and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from release of the requested records; and

(iv) If specialized use of the documents is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(5) A requester may appeal the denial of a request for a waiver or reduction of fees in accordance with the provisions of § 1710.16.

§ 1710.25 Miscellaneous fee provisions.

(a) *Notice of anticipated fees in excess of \$25.00.* Where OFHEO determines or estimates that the fees chargeable will amount to more than \$25.00, OFHEO