

Federal Housing Finance Board

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(2) If it is determined that a request does not reasonably describe the records sought, the Executive Secretary shall advise the requester that additional information is needed.

(3) The Executive Secretary shall forward any request for records made under this section to the appropriate Finance Board administrative unit that has custody of the requested record. Such unit will recommend whether to grant or deny the request for records promptly after receipt from the Executive Secretary of a written request for records that complies with paragraphs (a) and (b) of this section.

(4) All approvals or denials of requests for records under this part shall be in writing and signed by the Executive Secretary, or the Executive Secretary's designee, within ten days (except Saturdays, Sundays or Federal Government holidays) after receipt of the request by the Executive Secretary. Records will be disclosed after a party either pays the fees specified in § 904.6(1) or agrees to do so.

(5) All denials sent by the Executive Secretary to the requester shall:

(i) State whether the denial is in part or in whole;

(ii) State, briefly the reasons therefor; and

(iii) Inform the requester that the denial is not a final agency action and may be appealed under paragraph (c) of this section.

(c) *Appeal.* (1) A requester may appeal a denial of a request for records under paragraph (b) of this section by mailing an appeal to the Executive Secretary at the address set forth in paragraph (b)(1) of this section, within 30 days (except Saturdays, Sundays or Federal Government holidays) of the date of written notification of the denial.

(2) The appeal shall be by written application addressed to the Finance Board and shall state the grounds therefor.

(3) The Finance Board, or designee, shall determine whether to grant the appeal or uphold the initial determination within 20 days (excluding Saturdays, Sundays or Federal Government holidays) after receipt of the application by the Executive Secretary. If the initial determination is upheld in whole or in part, the Executive Sec-

retary, on behalf of the Finance Board, will notify the requester in writing of the decision, the name of the official responsible for the decision, and of the provisions for judicial review of the final action under 5 U.S.C. 552(a)(4).

(d) *Appeal during pendency of judicial review.* If a suit is brought in a United States district court under 5 U.S.C. 552(a)(4) after the Executive Secretary has denied a request for Finance Board records but before the Finance Board, or its designee, has ruled on the appeal, the Finance Board, or its designee, may at its option:

(1) If an appeal has been made, continue to process the appeal; or

(2) If an appeal has not been made, decide on its own to initiate an appeal.

(e) *Time computation*—(1) *Agency.* For the Finance Board, the time limits in §§ 904.5 (b)(4) and (c)(3) with respect to initial determinations or appeals shall begin as of the date on which a reasonably described, written request for records, or a written application on appeal, is actually received by the Executive Secretary.

(2) *Requester.* For a requester making an appeal, the time limits in § 904.5(c)(1) with respect to an appeal shall begin three working days after the date of the initial determination.

(f) *Extension of time.* (1) The Executive Secretary may extend the time limits prescribed in §§ 904.5 (b)(4) and (c)(3) for not more than ten working days by written notice to the requester, giving the reasons for the extension and a new date for the determination or appeal decision.

(2) Extensions may be granted for:

(i) The need to search for and collect the requested records from establishments other than the Finance Board;

(ii) The need to search, collect and examine a large amount of separate and distinct records demanded by a single request;

(iii) The need to consult with another executive department or agency having substantial interest in the outcome of the request or appeal.

§ 904.6 Fees for records disclosed.

(a) *General statement.* In accordance with this section, the Finance Board shall recover the full allowable direct

costs of providing copies of records pursuant to 5 U.S.C. 552. Accordingly, except as provided herein, the Finance Board shall assess fees for searching, reviewing and duplicating any record in accordance with the fee schedule herein. The fee schedule is based upon the category of requester and upon the services requested.

(b) *Categories of requesting parties*—(1) *Designation.* The Finance Board shall categorize requesters based on the following five categories:

- (i) Commercial use requesters;
- (ii) Educational institution requesters;
- (iii) Non-Commercial scientific institution requesters;
- (iv) Representatives of the news media; and
- (v) All other requesters.

(2) *Limitations on fees charged.* The Finance Board shall assess fees pursuant to this section as follows:

(i) *Commercial use requesters.* Requesters making a commercial use request for a record shall be assessed the full direct costs for searching for, reviewing, and duplicating records, in accordance with the fee schedule at § 904.6(1). They are not entitled to the free search time or free pages of duplication provided to other categories of requesters.

(ii) *Educational institution requesters.* Educational institution requesters may be assessed fees only for duplication of records in excess of the first 100 pages. They may not be assessed fees for search or review.

(iii) *Non-commercial scientific institution requesters.* Non-commercial scientific institution requesters will be assessed in the same manner as educational institution requesters.

(iv) *Representatives of the news media.* Representatives of the news media will be assessed in the same manner as educational institution requesters.

(v) *All other requesters.* Requesters for Finance Board records who do not fit into any of the categories above shall be assessed fees only for searching and duplicating records except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. Requesters in this category may not be assessed fees for review.

(c) *Review of records.* Charges will be assessed only for the initial review of the located documents and not for time spent at the administrative appeal level on an exemption applied at the initial determination level. However, where records or portions thereof are withheld in full under an exemption that is subsequently determined not to apply, and these records are reviewed again to determine the applicability of other exemptions not previously considered, charges for review are properly assessable.

(d) *Additional copies.* The Finance Board will furnish one copy of any record. The allowance of 100 free pages of duplication under paragraphs (b)(2) (ii), (iii), (iv), and (v) of this section shall not apply to additional copies furnished at the request of the record requester. Full duplication fees shall be assessed for each page of each additional copy.

(e) *Requests under other statutes*—(1) *Privacy Act.* Requests from individuals for records about themselves filed in a system of records maintained by the Finance Board will be treated under the fee provisions of the Privacy Act of 1974 (5 U.S.C. 552a).

(2) *Sunshine Act.* Requests for copies of transcripts or minutes, or for transcription of electronic recordings of Finance Board meetings, or portions thereof, will be treated under the fee provisions of the Government in the Sunshine Act (5 U.S.C. 552b).

(f) *Charges for unsuccessful search.* Where applicable under this section, fees may be assessed for time spent searching, even if the Finance Board fails to locate the records or if located records are determined to be exempt from disclosure. By making an application for a request for Finance Board records, a requester agrees to pay such charges for unsuccessful searches by Finance Board staff.

(g) *Procedure for fee collection.* The Finance Board will collect fees for the direct costs of searching, reviewing, duplicating and related costs under the following procedures:

(1) *Agreement.* If after receiving a request for Finance Board records, the Executive Secretary estimates that the search, duplication or review costs of

such request will exceed \$25 but not exceed \$250, the Executive Secretary will notify the requester to execute an agreement with the Finance Board to pay the final actual costs of the request. Notwithstanding any provision of this part, the Finance Board will not disclose any record prior to receiving the executed agreement.

(2) *Advance payment.* If the Executive Secretary estimates that the search, review or duplication costs of a request will exceed \$250.00 and the Executive Secretary determines that the requester either has no prior history of payment of FOIA fees to the Finance Board or has previously failed to pay a FOIA fee in a timely fashion, the Executive Secretary will notify the requester to make an advance payment of the estimated amount prior to the disclosure of the requested records. For the purposes of this paragraph, "timely fashion" means a payment received by the Finance Board within 30 days following transmittal of disclosed records to the requester. The Finance Board shall promptly remit any amount of an advance payment that exceeds the actual final cost of disclosing the requested records, and the requester shall be liable for any actual cost exceeding the estimate.

(3) *Interest.* Where the requesting party has executed an agreement to pay the fee for the FOIA request, the Finance Board will assess interest charges on any unpaid fees starting on the 31st day following the day on which the billing for fees was sent to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing. Interest is not chargeable for unpaid advance payments requested under this section.

(h) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of the document or documents, solely in order to avoid payment of fees. When the Finance Board reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, it may aggregate any such requests and charge accordingly.

(i) *Waiver or reduction of fee—(1) Collection and processing costs.* In its sole discretion, the Finance Board may opt to forego a fee for any costs of a request for records from any category of requester if it determines that the routine costs of collection and processing of the fees are likely to equal or exceed the fee amount.

(2) *Public policy.* (i) The Finance Board will furnish documents without charge or at a reduced charge when it is determined that disclosure of the record 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 requester.

(ii) In determining whether disclosure is in the public interest, the following factors may be considered:

(A) The relationship of the records to Finance Board operations or activities;

(B) The informative value of the record to be disclosed;

(C) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(D) The significance of that contribution to the public understanding of the subject;

(E) The nature of the requester's commercial interest, if any, in disclosure; and

(F) Whether the disclosure would be primarily in the requester's commercial interest.

(iii) In making a request for a waiver or reduction of fees, a requester should include:

(A) A clear statement of the requester's interest in the requested documents;

(B) The proposed use for the documents and whether the requester will derive income or other benefit from such use;

(C) A statement of how the public will benefit from such use or the release of the requested records; and

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

(iv) The burden shall be on the requester to provide evidence or information in support of a waiver or reduction of fees.

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(v) Determinations concerning waiver or reduction of fees shall be made by the Executive Secretary.

(vi) Appeals from such determinations shall be decided by the Finance Board, or its designee.

(j) *Fee payment method.* Fees assessed under this part will be delivered to the Executive Secretary by check or money order, payable to the "Federal Housing Finance Board."

(k) *FAX transmission.* The Executive Secretary and the requester may agree that any Finance Board records made available pursuant to a request under this part may be made by facsimile transmission ("FAX"). The charge for FAX transmission shall be the long distance charge on the telephone call, or \$.25 for a call within the metropolitan Washington area in addition to a \$.25 per page charge for use of the FAX apparatus.

(l) *Fee schedule.* Fees for searching, reviewing, duplicating, and providing Finance Board records under this section will be assessed in accordance with the following schedule:

Search (Manual):	
Supervisory/Professional	
Staff	\$16.00 per hour.
Clerical Staff	\$8.00 per hour.
Search (Computer):	
Operator	\$16.00 per hour.
Computer output (PC).	\$6.00 per hour.
Computer output (Mainframe).	[Actual cost].
Review	\$16.00 per hour.
Duplication:	
Photocopy	\$0.10 per page.
Computer generated.	\$0.76 per 1000 lines.
Copy of microfiche	\$0.30 per page.
Transcription of audio tape.	\$4.50 per page.
Certification with seal and attestation by:	
Executive Secretary.	\$5.00 per document.
Address labels	\$8.00 per 1000 labels.

(m) *Other charges.* Complying with requests for special services associated with providing records (e.g., supplying special computer tabulations, or sending copies by express mail or messenger) is entirely at the Finance Board's discretion, and fees will be as-

essed to recover the actual cost of such services.

§ 904.7 Records not disclosed.

(a) *General.* Except as otherwise provided in this part, or as may be specifically authorized by the Finance Board, Finance Board records not otherwise publicly available will not be disclosed to a requester if such records are:

(1) *Authorized.* (i) Under criteria established by an Executive order to be kept secret because of national defense or foreign policy, and

(ii) In fact so classified pursuant to such order.

(2) Related solely to Finance Board internal personnel rules and practices.

(3) Specifically exempted from disclosure by:

(i) A statute other than the FOIA if:

(A) It requires that the record be withheld from the public in such a manner as to leave no discretion to the Finance Board; or

(B) It establishes particular criteria for withholding or refers to particular types of records to be withheld; or

(ii) Section 22 of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1442).

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Inter-agency or intra-agency memoranda or letters that would not be available by law to a requester other than an agency in litigation with the Finance Board, including records of deliberation between Finance Board members and staff.

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;