

16 percent of that rate, plus the direct cost of the operation of the computer for that portion of time attributable to the search.

(2) *Review of records.* Only requesters who are seeking documents for commercial use will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges will be assessed only for the initial review; i.e., the review undertaken the first time ONDCP analyzes the applicability of a specific exemption to a particular record or portion of a record. Charges will not be assessed for review at the administrative appeal level of the exemption(s) already applied. The cost for review will be calculated based on the salary of the category of the employee who actually performed the review plus 16 percent of that rate.

(3) *Duplication of records.* Copies made by routine photostatic copying shall be charged at the rate of \$0.15 per page. If copies need to be made by other methods, the direct costs of such copies will be charged to the requester, as determined by the General Counsel.

(4) *Unsuccessful searches.* Requesters may be charged for unsuccessful or unproductive searches or for searches when records located are determined to be exempt from disclosure.

(5) *Other charges.* ONDCP will recover the direct costs of providing special services such as certifying that records are true copies, and sending records by special methods such as express mail.

(c) No fee will be charged by ONDCP when the routine costs of collecting and processing the fee equal to or exceed the amount of the fee. For purposes of this section, the routine costs of collecting and processing a fee chargeable under FOIA are estimated to be \$15.00 for each FOIA request.

§ 1401.11 Payment of fees.

(a) The requester must agree to pay all fees that are chargeable under this section prior to issuance of the requested copies.

(b) Payment of fees shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasurer of the United

States and mailed to the General Counsel, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500.

(c) If it is anticipated that the fees chargeable under this section will amount to more than \$25.00, and the requester has not indicated in advance his willingness to pay such fees, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will exceed \$250.00, an advance deposit may be required. The notice or request for an advance deposit shall extend to the requester an offer to consult with ONDCP personnel in order to reformulate the request in a manner which will reduce the fees. A reformulated request shall be considered a new request, thus beginning a new 10 workday period for responding to the request.

(d) When a requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing), ONDCP may require the requester to demonstrate that he or she has, in fact, paid any outstanding fees from past requests, and to make an advance payment of the full amount of the estimated fee for the present request before ONDCP responds to that request.

(e) Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest shall be assessed at the rate prescribed in 31 U.S.C. 3717, and shall accrue from the date of the billing. The fact that a fee has been received by ONDCP, even if not processed, will suffice to stay the accrual of interest.

(f) To encourage the repayment of delinquent fees, ONDCP shall use the procedures described in the Debt Collection Act of 1982, 31 U.S.C. 3716-3719, including the use of collection agencies and disclosure to consumer reporting agencies.

§ 1401.12 Waiver of fees.

(a) Records shall be furnished without charge, or at a reduced charge, upon a determination by the General Counsel of ONDCP that:

(1) Waiver or reduction of the fees is in the public interest because release of the requested information is likely to contribute significantly to public understanding of the operations or activities of ONDCP and is not primarily in the commercial interest of the requester; or

(2) Assessment of fees is not feasible.

(b) Upon written request, a written explanation will be provided as to why a request for waiver or reduction of FOIA fees was not granted.

(c) There is no right to an administrative appeal from a decision not to waive or reduce fees.

§ 1401.13 Aggregation of requests.

(a) When the General Counsel reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, such requests may be aggregated and fees may be charged accordingly.

(b) In determining whether a series of requests shall be aggregated, the General Counsel will consider two factors: whether the requests concern a single subject or two or more closely related subjects; and whether the requests were all made within a 30-day period. If a series of requests is made by multiple requesters, the General Counsel will also consider whether there is substantial evidence to support the conclusion that the requesters are acting in concert.

§ 1401.14 Records that are exempt from disclosure.

(a) Records described in 5 U.S.C. 552(b) are exempt from disclosure under FOIA. These include the following categories of records:

(1) Records that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of an agency;

(3) Records specifically exempted from disclosure by statute (other than

5 U.S.C. 552b), provided that such statute:

(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Records of trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than in litigation with the agency;

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

(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,

(iv) Could reasonably be expected to disclose the identity of a confidential source including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.