Records Service. These records are generally transferred in large blocks defined by years and/or major subject categories. Correspondence regarding access to these records should be addressed to the Chief, Diplomatic Branch, Civil Records Divisions, National Archives and Record Service, Washington, DC 20400.

§ 171.6 Fees-general.

(a) The Department will charge a duplication fee of $.25 per page for copies of documents which are identified and made available to an individual pursuant to a request except, that there will be no charge for requests involving costs of $10.00 or less.

(b) The Department will charge the actual cost of production for copies prepared by computer (such as tapes or printouts), including operator time.

(c) The Department will charge the actual direct costs of producing the document(s) for methods of reproduction or duplication other than those described in paragraphs (a) and (b) of this section.

(d) In those cases when estimated duplication charges are likely to exceed $25, the Department shall notify requesters of the estimated amount of fees, unless they have indicated in advance their willingness to pay fees as high as those anticipated. Such notice shall offer requesters the opportunity to confer with Department personnel with the objective of reformulating requests to meet their needs at lower costs.

(e) Certification under the official seal that a copy or extract made from an official document is a true copy; the fee for certifying each copy of each page is $2.00.

(f) The Department shall charge the actual costs for sending documents by special methods such as express mails, etc. when such is requested.

(g) Remittances shall be in the form of either a personal check or bank draft drawn on a bank in the United States, a postal money order, or cash. Remittance shall be made payable to the order of the Treasurer of the United States and delivered or mailed to the Information and Privacy Coordinator, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street, NW., Washington, DC, 20520. The Department will assume no responsibility for cash sent by mail.

(h) Fees must be paid in full prior to release of requested documents and/or provision of service described above.

(i) A receipt for fees paid will be given only upon request.

(j) See § 171.13 for additional fees chargeable for Freedom of Information requests.

[52 FR 32123, Aug. 26, 1987]

Subpart B—Freedom of Information Provisions

§ 171.10 Definitions.

As used in this subpart, the following definitions shall apply:

(a) The term *identifiable* means, in the context of a request for a record, a description which enables a professional employee of the Department who is familiar with the subject area of the request to locate the record with a reasonable amount of effort. Such a description, if possible, should include date, format, subject matter, country concerned, office of mission originating or receiving the record, and the name of any person to whom the record is known to relate.

(b) The term *record* includes all books, papers, maps, photographs, or other documentary material, or copies thereof, regardless of physical form or characteristics, made in or receiving by the Department of State (including Foreign Service posts abroad) and preserved as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Department or the Foreign Service. It does not include copies of the records of other Government agencies (except those which have been expressly placed under the control of the Department of State upon termination of another agency), foreign government, international organizations, or non-governmental entities unless they evidence organization, functions, policies, decisions, procedures, operations, or activities of the Department of State. It does not include records not already in existence which would need

to be created specifically to meet a request. It does not include records in the Berlin Document Center.

(c) The term *agency* includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

(d) The term *direct costs* means those expenditures which the Department actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(e) The term *search* includes all time spent looking for identifying and retrieving material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The Department will attempt to ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the Department and the requester. For example, the Department will not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. ''Search'' should be distinguished, moreover, from ''review'' of material in order to determine whether the material is exempt from disclosure (see paragraph (g) of this section) Searches may be done manually or by computer using existing programming.

(f) The term *duplication* refers to the process of making a copy of a document necessary to respond to a FOIA requst. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(g) The term *review* refers to the process of examining documents located to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necesssary to excise them and otherwise prepare them for release. Review does not include time spent resolving general, legal or policy issues regarding the application of exemptions.

(h) The term *commercial use request* refers to a request from or on behalf of one who requests for information for a use or purpose that furthers the commercial, trade or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester belongs within this category, the Department will look at the use to which the requester will make of the documents requested.

(i) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(j) The term *non-commerical scientific institution* refers to an institution that is not operated on a ''commerical'' basis as that term is referenced in paragraph (h) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(k) The term *representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they 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. Moreover, as traditional methods of news delivery evolve (*e.g.*, electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of ''freelance'' journalists, they may be regarded as working for a news organization if they can demonstrate a likelihood of publication through that organization, even though not actually employed by it. Likelihood of publication can be demonstrated through, for example, a publication contract or past publication record. Similarly, the absence of a publication record, especially where the requester has previously received records from the Department as a ''representative of the news media'' will be taken into account in determining the likelihood of publication.

[45 FR 58108, Sept. 2, 1980, as amended at 52 FR 32124, Aug. 26, 1987]

§ 171.11 Exemptions.

(a) The following categories of records maintained by the Department of State may be exempted from disclosure:

(1) Records specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and 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. Included in this category are records relating to the officers and employees of the Foreign Service, including efficiency records (sec. 612 of the Foreign Service Act of 1946, as amended, 22 U.S.C. 986), the records of the Department of State or of diplomatic and consular officers of the United States pertaining to the issuance or refusal of visas or permits to enter the United States (sec. 222(f), of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1202(f)), ''Restricted Data'' under section 224 of the Atomic Energy Act (42 U.S.C. 2274), records of expenditures certified under 22 U.S.C. 2671 and 31 U.S.C. 107, records subject to section 102(d) of the National Security Act of 1947 (61 Stat. 498) and records subject to section 501 of the U.S. Information and Educational Exchange Act of 1948 (22 U.S.C. 1461, as amended).

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

(5) Records which are inter-agency or intra-agency memorandums, letters, telegrams, or airgrams which would not be available by law to a party other than an agency in litigation with the agency.

(6) Records such as personnel and medical files and similar files the public 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;

(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 or information 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.