

court order to produce records that it determines have been withheld improperly.

§ 518.79 Non-United States Government source information.

A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

§ 518.80 Litigation status sheet.

FOIA managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the OASD(PA), Attn: DFOISR, with an information copy to the General Counsel, Department of Defense, Attn: Office of Legal Counsel. A revised Litigation Status Sheet shall be provided at each stage of the litigation. In the Department of the Army, HQDA TJAG (DAJA-LT), WASH DC 20310-2210 is responsible for preparing this report.

Subpart F—Fee Schedule

GENERAL PROVISIONS

§ 518.81 Authorities.

The Freedom of Information Act (5 U.S.C. 552), as amended; by the Freedom of Information Reform Act of 1986; the Paperwork Reduction Act (44

U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et seq.); the Budget and Accounting Procedures Act (31 U.S.C. 67 et seq.); the Defense Authorization Act for FY 87, Section 954, (Pub. L. 99-661); as amended by the Defense Technical Corrections Act of 1987 (Pub. L. 100-26).

§ 518.82 Application.

(a) The fees described in this subpart apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7 (reference (r)) (AR 37-60), which does not supersede the collection of fees under the FOIA. Nothing in this Chapter shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A “statute specifically providing for setting the level of fees for particular types of records” (5 U.S.C. 552 (a)(4)(A)(vi)) means any statute that enables a Government Agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(b) The term “direct costs” means those expenditures a Component actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to an FOIA request. Direct costs include, or example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits),