

3973 to arrange for an escort to the Reading Room.

(1) *Hours of Operation.* 8 a.m. to 4 p.m., Monday through Friday, except holidays.

(2) *Type of Materials Held.* Microfiche copies of indexes and decisional documents regarding Navy Discharge Review Board and Board for Correction of Naval Records proceedings.

(c) *Law Library of the Judge Advocate General.* The law library is located at the Hoffman Building 2, Room 9S47, 200 Stovall Street, Alexandria, VA 22332-2400.

(1) *Hours of Operation.* 9 a.m. to 4 p.m., Monday through Friday, except holidays.

(2) *Type of Materials Held.* The library has published and unpublished decisions of the Navy-Marine Corps Court of Military Review, Navy and Marine Corps directives, miscellaneous superseded manuals, and courts-martial orders and the Navy Department Bulletin.

Subpart D—Fee Guidelines

SOURCE: 56 FR 66592, Dec. 24, 1991, unless otherwise noted.

§ 701.40 FOIA fees.

(a) *Background.* The FOIA Reform Act of 1986 brought about significant changes on how FOIA fees are assessed. Subpart D of this part highlights in detail the changes made and conforms with the Office of Management and Budget (OMB) Uniform Fee Schedule and Guidelines which were issued as a result of the Reform Act. OMB guidelines for fees reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which are permitted by FOIA.

(b) *DD Forms 2086/2086-1.* Naval activities are encouraged to utilize DD Forms 2086/2086-1 to track costs for each FOIA request processed, unless a standard processing cost can be computed for routine kinds of requests. The form is designed to track all costs and is utilized to compile fee information for the Annual FOIA Report. While not all costs can be charged to the requester for recoupment, they are nonetheless reportable as they provide

Congress with an indepth look at the costs and time the Navy is expending to process FOIA requests.

(c) *Scope.* (1) The guidelines set forth below are not intended to imply that fees must be charged for 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 those in NAVCOMPTRAN, Vol. 3, CH-339, which does not supersede the collection of fees under FOIA.

(2) Subpart D of this part does not supersede fees chargeable under a statute specifically 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” 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. Naval activities 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 GPO or NTIS, inform requesters of the steps necessary to obtain records from those sources.

(c) *Resolution of fees.* The issue of fees should be resolved prior to a naval activity expending resources to process a FOIA request. Specifically, a requester should have an opportunity to decide whether or not to pursue a request if fees are applicable and the requester has failed to agree to pay those fees. There have been instances where naval activities have worked a costly request only to be told by the requester that it is no longer needed, since it will result in a cost. Additionally, if a requester has agreed to pay fees up to a specified amount and the costs of processing the request will exceed those fees, naval activities must resolve the issue of additional fees prior to continuing with the processing of the request.

(d) *Responses.* Naval activities shall ensure that final responses to the requester address FOIA fees.

EDITORIAL NOTE: At 56 FR 66592, Dec. 24, 1991, § 701.40 was revised. Paragraph (c) was inadvertently added twice. The duplicate designations are of differing content. The

Department of the Navy, DoD

§ 701.41

Agency will publish a correction in the FEDERAL REGISTER at a later date.

§ 701.41 Definitions.

The following definitions set forth the parameters for determining FOIA fees:

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

(b) *Search time.* Search time includes all time spent looking for material responsive to a request and a page-by-page or line-by-line identification (if necessary) of material in the document to determine if it, or portions thereof, are responsive to the request. Naval activities should ensure that searches are efficient and completed in the least expensive manner to minimize costs to the naval activity and the requester. For example, naval activities should not do a line-by-line search when duplicating an entire document containing responsive information would be less expensive and quicker to comply with the request. Time spent reviewing documents to determine whether to apply one or more of the statutory exemptions is not search time, but review time.

(c) *Duplication.* Duplication refers to the process of making a copy of a document in response to a FOIA request. Copies can be paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc). Every effort will be made to ensure that the copy provided is in a form reasonably usable by requesters. If copies are not clearly usable, the requester will be notified that their copy is the best available and the agency's master copy will be made available for review upon appointment. For duplicating of computer tapes and audiovisuals, the cost, including the operator's time

shall be charged. If a naval activity estimates that assessable duplication charges may exceed \$25, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such notice shall offer the requester the opportunity to confer with naval personnel to reformulate the request to meet his or her needs at a lower cost.

(d) *Review.* Review time refers to examining documents responsive to a FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include time spent resolving general legal or policy issues on applying the exemptions. Charges may be assessed only for the initial review. Naval activities may not charge for reviews during an administrative appeal of an exemption already applied. Records or portions of records withheld in full under an exemption subsequently determined not to apply, may be reviewed again to determine the applicability of other exemptions not previously considered and the costs for such a subsequent review could be assessed.

(e) *Commercial use request.* A commercial use request is a request from or on behalf of one seeking information for a use or purpose that furthers the commercial, trade, or profit interest of the requester. In determining whether a requester belongs to this category, naval activities must determine the requester's use of the documents requested. Naval activities should seek additional clarification before assigning the request to a specific category when doubting the intended use of the requester, or where the use is not clear from the request itself.

(f) *Educational institution.* An educational institution is a preschool, public or private elementary or secondary school, institution of graduate higher education, institution of undergraduate higher education, institution of professional education, and an institution of vocational education operating a program(s) of scholarly research.