

§ 701.44 Fee waivers.

(a) When the naval activity determines that waiver or reduction of fees is in the public interest, documents will be furnished without charge or at a reduced charge. It is in the public interest when furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of the Navy, and is not primarily in the commercial interest of the requester.

(b) Fees shall be waived automatically for all requesters when direct costs for a FOIA request total \$15 or less.

(c) Decisions to waive or reduce fees that exceed the automatic fee waiver threshold shall be made on a case-by-case basis when:

(1) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."

(i) *Subject of the request.* Naval activities should analyze whether the subject matter of the request involves issues which will significantly contribute to the public understanding of the operations or activities of the Department of the Navy. Requests for records in the possession of the Department of the Navy originated by non-government organizations and sought for their intrinsic content rather than informative value will not likely contribute to public understanding of the operations or activities of the Department of the Navy. Examples of such records are press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a naval activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the Department of the Navy; however, the age of a particular record shall not be the sole criteria for determining the value of a document. These requests must be closely reviewed while considering the requester's stated purpose for the records and the potential for public understanding of the operations and activities of the Department of the Navy.

(ii) *Informative value of the information to be disclosed.* Naval activities

should analyze the substantive contents of a record or portion of the record to determine whether disclosure is meaningful and will inform the public on Department of the Navy's operations or activities. While the subject of a request may contain information on operations or activities of the Department of the Navy, it may not have great potential for contributing to a meaningful understanding of these operations or activities. An example would be a heavily redacted record, with only random words, fragmented sentences, or paragraph headings. A determination as to whether that type of record will contribute to the public understanding of the operations or activities of the Department of the Navy must be weighed against the requester's intended use. Another example is disclosure of information already in the public domain or nearly identical information may add no meaningful new information on Department of the Navy operations and activities.

(iii) *Contribution to the public's understanding from disclosure.* Disclosure contributes to the public's understanding when disclosure will inform or have the potential to inform the public, rather than the individual requester or small segment of interested persons. The requester's identity determines whether the requester has the capability and intention to disseminate the information to the public. Assertions of plans to write a book, research a particular subject, doctoral dissertation work, or indigency are insufficient. Requester must demonstrate the capacity to disclose the information in a manner informative to the general public. Requesters should describe their qualifications, nature of their research, purpose of the requested information, and intended means of dissemination to the public.

(iv) *The significance of the contribution to public understanding.* Naval activities must assess the significance or impact of disclosure against the current level of public knowledge or understanding prior to the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previous unknown facts, thereby enhancing public knowledge,

or will it basically duplicate what is already known by the general public. Naval activities shall not make value judgments whether the information is important enough to be made public.

(2) Disclosure of the information "is not primarily in the commercial interest of the requester."

(i) *Existence and magnitude of a commercial interest.* If the request is a commercial interest, naval activities should address the magnitude of that interest to see if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether this is a commercial requester, naval activities may infer it from the requester's identity and circumstances of the request. The requester's commercial benefit must clearly override any personal or non-profit interest to apply FOIA commercial standards.

(ii) *The primary interest in disclosure.* Once a requester's commercial interest has been determined, naval activities should then determine if disclosure would be primarily in that interest. That requires balancing the commercial interest of the request against any public benefit derived as a result of that disclosure. Where the public interest served is beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists and the relative commercial interest of the requester is greater than the public interest, then a waiver or reduction of fees would be inappropriate. For example, while news media organizations have a commercial interest as business organizations, their role of disseminating news to the public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest is secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research may recognize a commercial benefit, either directly or indirectly (through the institution they represent); however, normally such

pursuits are primarily undertaken for educational purposes, and charging a fee would be inappropriate. Conversely, data brokers or others who compile government information for marketing can normally be presumed to primarily have a commercial interest.

(iii) *The above factors and examples are not all inclusive.* Each fee decision must be considered on a case-by-case basis the merits of the information provided in each request. When the decision to charge, reduce, or waive the fee cannot be clearly resolved, naval activities should rule in favor of the requester.

(d) The following additional circumstances describe situations where waiver or reduction of fees are most likely warranted:

(1) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(2) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g., \$15 - \$30).

§ 701.45 Fee assessment.

(a) Fees may not be used to discourage requesters. FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters), and duplication.

(b) To be responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, naval activities shall:

(1) Analyze each request to determine the category of the requester. If the naval activity's determination of the category of the requester is different than that claimed by the requester, the naval activity will:

(i) Notify the requester that additional justification should be provided to support the category claimed, and that a search for responsive records will not be initiated until agreement on the category of the requester. Absent further category justification from the requester and a reasonable period of time (i.e., 30 calendar days), the naval activity shall render a final category determination and notify the requester of the determination, including administrative appeal rights.