

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.

(ii) Advise the requester that a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs for the category determined by the naval activity.

(2) Requesters must submit a fee declaration appropriate for these categories:

(i) Commercial requesters must indicate a willingness to pay all search, review, and duplication costs.

(ii) *Educational or non-commercial scientific institution or news media representatives.* Requesters must indicate a willingness to pay duplication charges in excess of 100 pages, if more than 100 pages of records are desired.

(iii) *All others.* Requesters must indicate a willingness to pay assessable search and duplication costs if more than 2 hours of search effort or 100 pages of records are desired and the resultant fees will exceed the \$15 fee waiver threshold.

(3) If the above conditions are not met, then the request need not be processed and the requester shall be so informed within 10 working days.

(4) As described above, naval activities must be prepared to provide an estimate of assessable fees to the requester. While searches vary among naval activities and an estimate is often difficult prior to an actual search, requesters desiring estimates are entitled to them before committing to a willingness to pay. Should naval activity costs exceed the amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the amount agreed to shall not be charged without the requester's agreement.

(5) A naval activity may not require advance payment of any fee (i.e., payment before work is commenced or continued on a request) unless the requester previously failed to timely pay fees or the agency determined that the fee exceeds \$250. A timely fashion is 30 calendar days from the date of billing by the naval activity.

(6) Where a naval activity estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250, the naval activity should notify the requester of the likely cost and obtain satisfactory

assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges for requesters without a history of payment.

(7) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the naval activity may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that the fee had been paid, and to make an advance payment of the full amount of the estimated fee before the naval activity begins to process a new or pending request. Interest will be at the rate prescribed in 31 U.S.C. 3717 and confirmed with respective accounting and finance offices.

(8) After all work is completed on a request and the documents are ready for release, naval activities may request payment prior to forwarding the documents if there is no payment history on the requester or if the requester has previously failed to pay a fee in a timely fashion (i.e., within 30 calendar days of the billing). If the requester fails to pay in a timely fashion, paragraph (b)(7) of §701.45 applies. Naval activities may not hold documents ready for release pending payment from requesters with a history of prompt payment.

(9) When naval activities act under §701.45 number (b)(1) through (7), FOIA time limits (10 working days from receipt of initial requests and 20 working days from receipt of appeals, plus permissible extensions of time) begin after the naval activity has received a willingness to pay fees or fee payments, if appropriate.

(10) Naval activities may charge for time spent in searching for records, even if that search fails to locate records responsive to the request. Naval activities may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure. In practice, if the naval activity estimates that search charges are likely to exceed \$25, it

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shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance a willingness to pay fees up to the estimated amount. Such notice shall offer the requester the opportunity to confer with the naval activity with the object of reformulating the request to meet his or her needs at a lower cost.

§ 701.46 Aggregating requests.

Except for commercial requesters, a naval activity may not charge for the first 2 hours of search time or for the first 100 pages of reproduction. A requester may not file multiple requests at the same time each seeking portions of a document or documents to avoid payment of fees. When a naval activity reasonably believes that a requester or, a group of requesters acting in concert is attempting to break a request into a series of requests to evade fees, the naval activity may aggregate the requests and charge accordingly. In determining whether it is reasonable to aggregate the requests, consider the time period of the requests. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. It is harder to make that presumption for requests over a longer time period. Before aggregating requests from more than one requester, naval activities must have a concrete basis to conclude that the requesters are acting in concert to avoid payment of fees. Naval activities may not aggregate multiple requests from one requester on unrelated subjects.

§ 701.47 Effect of the Debt Collection Act of 1982 (Pub. L. 97-365).

The Debt Collection Act of 1982 (Pub. L. 97-365) provides for a minimum annual rate of interest on overdue debts to the Federal Government. Naval activities may charge an interest penalty for fees outstanding 30 days from the date of billing (the first demand notice). The interest rate shall be as prescribed in 31 U.S.C. 3717. Naval activities should verify the current interest rate with respective accounting and finance offices. After one demand letter has been sent and 30 calendar days have lapsed with no payment, naval activities may submit the debt to the re-

spective accounting and finance offices for collection under the Debt Collection Act of 1982.

§ 701.48 Computation of fees.

The fee schedule in Subpart D of this part shall be used to compute search, review (in the case of commercial requesters), and duplication costs for processing FOIA requests. Costs shall be computed on time actually spent. Time-based and dollar-based minimum charges for search, review (in the case of commercial requesters), and duplication are not authorized.

§ 701.49 Collection of fees.

Collect FOIA fees when providing the documents to the requester when the requester specifically states that costs are acceptable or acceptable up to a specified amount. Collection may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the naval activity, or the naval activity determines the fee will be in excess of \$250.

§ 701.50 Search time costs.

The following schedules outline authorized fees:

(a) *Manual search.*

Type	Grade	Hourly Rate
Clerical	E9/GS8 and below	\$12
Professional	01-06/GS9-GS/GM15	25
Executive	07/GS/GM16/ES1 and above	45

(b) *Computer search.* Computer search is based on the direct cost of the central processing unit, input-output devices, and memory capacity of the computer configuration. The cost of computer search is based on the computer operator/programmer's time in determining how to conduct and subsequently executing the search and is charged at the rate of a manual search.

(c) *Duplication costs.*

Type	Cost per Page
Pre-printed material (i.e., unaltered directives, publications)	\$.02
Office copy (i.e., xeroxed copies)15
Microfiche25