

Department of the Air Force, DoD

§ 806.25

(3) Executive (07 and GS-16/ES1 and above)—\$45 an hour.

(c) Computer search fees are based on direct costs of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. Also include the salary scale (equal to hourly rates above) for the computer operator or programmer who planned and carried out the search.

(d) Duplication:

(1) Preprinted material—\$.02 per page.

(2) Office copies—\$.15 per page.

(3) Microfiche—\$.25 per page.

(4) Computer copies (tapes or print-outs)—actual cost of duplicating the tape or printout, including operator's time and tape cost.

(e) Copying cost for audiovisual documents is the actual cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials given to a requester need not be reproducible.

(f) Special Services. Includes certifying that records are true copies and sending records by express mail. You may recover their costs if the requester clearly asks for and agrees to pay for them.

§ 806.23 Technical data.

Technical data does not include computer software or data used for contract administration, such as financial and management information. If the FOIA requires, release technical data (not including critical technology with military or space application) after the requester pays all reasonable costs for search, duplication, and review.

§ 806.24 Technical data fee rates.

(a) Clerical search and review—\$13.25 an hour. Minimum charge—\$8.30. Professionals and executives—set rate before beginning at actual hourly rate. Minimum charge is ½ of hourly rate.

(b) Copying rates depend on the type of record. If this list does include the product, use the fair market value.

(1) Aerial photographs, specifications, permits, charts, blueprints, and other technical documents—\$2.50 each.

(2) Microfilmed engineering data aperture cards (silver duplicate negatives)—\$.75 per card.

(3) Silver duplicate negatives, key-punched and verified—\$.85 per card.

(4) Diazo duplicate negatives—\$.65 per card.

(5) Diazo duplicate negatives key-punched and verified—\$.75 per card.

(6) Engineering data on 35mm roll film—\$.50 per frame.

(7) Engineering data 16mm roll film—\$.45 per frame.

(8) Engineering paper prints and drawings—\$1.50 each.

(9) Reprints of microfilm indices—\$.10 each.

(10) Office copies—\$3.50 for up to six images. Each additional image—\$.10.

(11) Typewritten pages—\$3.50 each.

(12) Certification and validation with seal—\$5.20.

(13) Hand-drawn plots and sketches—\$12 an hour or less.

(14) Fee Waivers for Technical Data. Waive the fees if they are more than regular FOIA fee rates if a citizen or a US corporation asks and certifies the need for technical data to submit (or assess its ability to submit) an offer to supply the United States or its contractor with a product related to the technical data. You may ask the citizen or corporation for a deposit of not more than what fulfilling the request costs. When the citizen or corporation submits the offer, refund the deposit. Also waive charges:

(15) If a requester needs technical data to meet the terms of an international agreement.

(16) If you decide, using regular FOIA fee waiver guidance, that a waiver is in the interest of the United States.

§ 806.25 Appeals.

Requesters may appeal denials of records, category determinations, fee waiver requests, and "no records" determinations by writing to the Office of the Secretary of the Air Force, within 60 calendar days after the date of the denial letter. A requester who sends the appeal after 60 calendar days, should explain the reason for the delay.

(a) Requesters who appeal have exhausted all administrative remedies within the Department of the Air Force and The Office of the General Counsel to the Secretary of the Air Force (SAF/GC) makes a final decision. Requesters must address all appeals to

the Office of the Secretary of the Air Force, through the MAJCOM or FOA FOIA office that denied the request. Requesters should attach a copy of the denial letter to their appeal and give their reasons for appealing.

(b) After coordinating with the local SJA (and the OPR, if appropriate), MAJCOM and FOA FOIA offices send all appeals, including late submissions, to Air Force Legal Services Agency (AFLSA/JACL) for determination, unless they have reconsidered and approved the request. MAJCOM and FOA FOIA offices give appeals priority. They do not have 20 workdays to process an appeal.

(c) Requesters must appeal denials involving Office of Personnel Management's controlled civilian personnel records to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW, Washington DC 20415.

(d) When sending appeals to AFLSA/JACL, attach:

(1) The original appeal letter and envelope.

(2) The initial request and any attachments.

(3) The denial letter, with an index of the denied material, if applicable.

(4) Copies of all records you have already provided; or if the records are massive (Several cubic feet) and AFLSA/JACL agrees, an index or description of released records.

(5) Copies of all administrative processing documents, including extension letters and opinions and recommendations about the request.

(6) Copy of the denied record or denied portions of it marked to show what you withheld. If the records are massive and AFLSA/JACL agrees, you may substitute a detailed description of the documents.

(7) A point-by-point discussion of factual and legal arguments the requester's appeal contains and, proof that the denial authority considered and rejected these arguments and why.

(8) An explanation of the decision-making process for intraagency documents denied under the deliberative process privilege and how the denied material fits into that process.

(e) Assemble appeal packages:

(1) Arrange attachments in the order listed in paragraph (d) of this section. Use tabbed dividers to separate attachments.

(2) List all attachments in your cover letter.

(3) Include the name of the person to contact and a phone number.

(f) AFLSA/JACL sends the appeal of the Office of the General Counsel, who makes a final determination. The law requires a final decision within 20 workdays after receipt of the appeal letter. The 20 days begins when the denial authority's FOIA office receives the appeal. The time limit includes processing actions by all levels. If a final determination cannot be made within 20 days, AFLSA/JACL writes to the requester to acknowledge the appeals' receipt and to explain the delay. If SAF/GC upholds the denial, in whole or in part, SAF/GC tells the requester, explains reasons for the denial, and tells the requester about judicial review rights. If SAF/GC grants the appeal, that office tells the requester in writing and releases, or directs the release of, the record.

(g) For "no records" determinations, search again, if warranted, or verify the first search. Include in the package you send to AFLSAS/JACL any letters that show you systematically tried to find records. Tell, for example, what areas or offices you search for how you conducted the search—manually, by computer, by telephone, etc.

(h) For appeals to denials of fee waiver requests, fully account for actual and estimated costs with a copy of the DD 2086 or DD Form 2086-1.

§ 806.26 For Official Use Only (FOUO).

FOUO is not a classification. Information marked FOUO must meet the criteria for exemptions 2 through 9, or you cannot withhold it. Do not consider or mark any other records FOUO.

(a) Originators mark records when they create them to call attention to FOUO content. An FOUO marking does not mean you must withhold a record under the FOIA. You still need to review a requested record. Examine records with and without markings to identify information that needs protection and is exempt from public release