

§ 70.39

29 CFR Subtitle A (7-1-05 Edition)

(i) The term *representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Factors indicating such representation status include press accreditation, guild membership, a history of continuing publication, business registration, and/or Federal Communication Commission licensing, among others. For purpose of this definition the term *news* contemplates information that is about current events or that would be of current interest to the public. A freelance journalist shall be treated as a representative of the news media if the person can demonstrate a solid basis for expecting publication of matters related to the requested information through a qualifying news media entity. A publication contract with a qualifying news media entity satisfies this requirement. An individual's past publication record with organizations of the foregoing nature is also relevant to this determination. Examples of news media entities include:

- (1) Television or radio stations broadcasting to the public at large, and
- (2) Publishers of periodicals including newsletters (but only in those instances where they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public.

[54 FR 23144, May 30, 1989; 54 FR 25204, June 13, 1989]

§ 70.39 Statutes specifically providing for setting of fees.

Nothing in this subpart shall supersede fees chargeable under a statute other than the Freedom of Information Act which specifically provides for setting the level of fees for particular types of records.

§ 70.40 Charges assessed for the production of records.

(a) There are three types of charges assessed in connection with the production of agency records in response to a Freedom of Information Act request: costs associated with

- (1) Searching for or locating responsive records (search costs),
- (2) Reproducing such records (reproduction costs), and

(3) Reviewing records to determine whether any materials are exempt (review costs).

(b) There are four types of FOIA requesters:

- (1) Commercial use requesters,
- (2) Educational and non-commercial scientific institutions,
- (3) Representatives of the news media, and
- (4) All other requesters.

Depending upon the nature of the requester, one or all of the foregoing costs may be assessed. Paragraph (c) of this section sets forth the extent to which the foregoing costs may be assessed against each type of requester. Paragraph (d) of this section establishes the actual rate to be charged in connection with each of the foregoing types of costs. Paragraph (e) delineates the manner in which costs are to be assessed against an individual seeking access to records about himself or herself which are covered by the Privacy Act.

(c) (1) *Commercial use requester.* When a commercial use requester as defined in § 70.38(f) makes a request for documents, search costs, reproduction costs and review costs may be assessed in their entirety.

(2) *Educational or non-commercial, scientific institution requester.* When an educational or non-commercial scientific institution requester, as defined in §§ 70.38 (g) and (h), makes a request, only reproduction costs may be assessed, excluding charges for the first 100 pages.

(3) *Request by representative of news media.* When a representative of the news media as defined in § 70.38(i) makes a request, only reproduction costs may be assessed, excluding charges for the first 100 pages.

(4) *All other requesters.* Requesters who do not fall within paragraphs (c)(1), (2), and (3) of this section may be charged search costs and reproduction costs, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Where computer searches are involved, i.e., executing an existing program, however, the monetary equivalent of two hours of search time by a

professional employee shall be deducted from the total costs of computer processing time.

(d)(1) *Search costs.* When a search for records is performed by a clerical employee, a rate of \$2.50 per quarter hour will be applicable. When a search is performed by professional or supervisory personnel, a rate of \$5.00 per quarter hour will be applicable. If the search for requested records requires transportation of the searcher to the location of the records or transportation of the records to the searcher, all transportation costs in excess of \$5.00 may be added to the search cost. When an existing computer program is employed to locate records responsive to a request, the disclosure officer may charge the actual cost of providing the service.

(2) *Reproduction costs.* The standard copying charge for documents in paper copy is \$.15 per page. When responsive information is provided in a format other than paper copy, such as in the form of computer tapes and discs, the requester may be charged the direct costs of the tape, disc or whatever medium is used to produce the information, as well as any related reproduction costs.

(3) *Review costs.* Costs associated with the review of documents, as defined in § 70.38(c), will be applicable at a rate of \$5.00 per quarter hour. Except as noted below, charges may only be assessed for review at the initial level, i.e. the review undertaken the first time the documents are analyzed to determine the applicability of specific exemptions to the particular record or portion of the record. Thus a requester would not be charged for review at the administrative appeal level with regard to the applicability of an exemption already applied at the initial level. When, however, a record has been withheld pursuant to an exemption which is subsequently determined not to apply and is reviewed again at the appellate level to determine the potential applicability of other exemptions, the costs attendant to such additional review may be assessed.

(4) *Mailing cost.* Where requests for copies are made by mail, no postage charge will be made for transmitting by regular mail a single copy of the re-

quested record to the requester, or for mailing additional copies where the total postage cost does not exceed \$1. However, where the volume of page copy or method of transmittal requested is such that transmittal charges to the Department are in excess of \$1, the transmittal costs will be added, unless appropriate stamps or stamped envelopes are furnished with the request, or authorization is given for collection of shipping charges on delivery.

(e) *Privacy Act requesters.* Requests from individuals for records about themselves which are contained within agency systems of records shall be treated under the fee provisions of the Privacy Act of 1974 which permit the assessment of reproduction costs only, after providing the first copy of a file at no cost.

[54 FR 23144, May 30, 1989; 54 FR 30503, July 20, 1989]

§ 70.41 Reduction or waiver of fees.

This section sets forth conditions under which the applicable charges for records responsive to a request under 5 U.S.C. 552, as set forth in § 70.40, are subject to reduction or waiver by the disclosure officer.

(a) *Statutorily required waiver or reduction in fees.* Documents shall be furnished without charge or at a charge below the fees set forth in § 70.40 if all of the following conditions are satisfied:

(1) The subject of the requested records concerns the operations or activities of the United States Government;

(2) The disclosure of the requested records is likely to contribute to an understanding of Government operations or activities;

(3) The disclosure is likely to contribute to a public understanding of such operations or activities;

(4) The contribution to public understanding of government operations and activities will be significant; and

(5) The public's interest in disclosure exceeds the requester's commercial interest in disclosure.

(b) *De minimis costs.* Where the cost of collecting a fee to be assessed to a requester exceeds the amount of the fee which would otherwise be assessed, no