

(h) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(i) *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.

(1) 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.

(2) For purposes of this definition, news contemplates information that is about current events or that would be of current interest to the public.

(3) A freelance journalist will 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 such organizations is also relevant in making this determination. Examples of news media entities include television or radio stations broadcasting to the public at large, and 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.

**§ 70.39 Statutes specifically providing for setting of fees.**

This subpart will not apply to fees charged under any statute, other than the FOIA, that specifically requires an agency to set and collect fees for particular types of records.

**§ 70.40 Charges assessed for the production of records.**

(a) *General.* There are three types of charges assessed in connection with the production of records in response to a request, charges for 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)(1) There are four types of requesters:

(i) Commercial use requesters,

(ii) Educational and non-commercial scientific institutions,

(iii) Representatives of the news media, and

(iv) All other requesters.

(2) Depending upon the type of requester, as set forth in paragraph (b)(1) of this section, the charges outlined in paragraph (c) of this section may be assessed.

(c) *Types of charges that will be assessed for each type of request—*(1) *Commercial use request.* When a requester makes a commercial use request, search costs, reproduction costs and review costs will be assessed in their entirety.

(2) *Educational or non-commercial scientific institution request.* When an educational or non-commercial scientific institution makes a request, only reproduction costs will be assessed, excluding charges for the first 100 pages.

(3) *Request by representative of news media.* When a representative of the news media makes a request, only reproduction costs will be assessed, excluding charges for the first 100 pages.

(4) *All other requests.* Requesters making a request which does not fall within paragraphs (c)(1), (2), or (3) of this section will be charged search costs and reproduction costs, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without charge. Where computer searches are involved, the monetary equivalent of two hours of search time by a professional employee will be deducted from the total cost of computer processing time.

(d) *Charges for each type of activity—*

(1) *Search costs.* (i) When a search for records is performed by a clerical employee, a rate of \$5.00 per quarter hour will be applicable. When a search is performed by professional or supervisory personnel, a rate of \$10.00 per

## § 70.40

quarter hour will be applicable. Components will charge for time spent searching even if they do not locate any responsive records or they withhold the records located as exempt from disclosure.

(ii) For computer searches of records, requesters will be charged the direct costs of conducting the search, except as provided in paragraph (c)(4) of this section.

(iii) 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.

(2) *Reproduction costs.* The standard copying charge for records in black and white paper copy is \$0.15 per page. This charge includes the operator's time to duplicate the record. When responsive information is provided in a format other than 8½ x 11 or 11 x 14 inch black and white paper copy, such as computer tapes, disks and color copies, the requester may be charged the direct costs of the tape, disk, audio-visual or whatever medium is used to produce the information, as well as the direct cost of reproduction, including operator time. The disclosure officer may request that if a medium is requested other than paper, the medium will be provided by the requester.

(3) *Review costs.* Costs associated with the review of records, as defined in "70.38(e), will be charged for work performed by a clerical employee at a rate of \$5.00 per quarter hour when applicable. When professional or supervisory personnel perform work, a rate of \$10.00 per quarter hour will be charged, when applicable. Except as noted in this paragraph, charges may only be assessed for review the first time the records 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

## 29 CFR Subtitle A (7-1-09 Edition)

determine the potential applicability of other exemptions, the costs attendant to such additional review will be assessed.

(4) *Mailing cost.* Where requests for copies are sent by mail, no postage charge will be made for transmitting by regular mail a single copy of the requested record to the requester, or for mailing additional copies where the total postage cost does not exceed \$5.00. However, where the volume of paper copy or method of transmittal requested is such that transmittal charges to the Department are in excess of \$5.00, the transmittal costs will be added.

(e) *Aggregating requests for purposes of assessing costs.* (1) Where a disclosure officer reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the disclosure officer may aggregate those requests and charge accordingly.

(2) Disclosure officers may presume that multiple requests of this type made within a 30-day period have been submitted in order to avoid fees. Where requests are separated by a longer period, disclosure officers will aggregate them only where a solid basis exists for determining that aggregation is warranted under all of the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(f) *Interest charges.* Disclosure officers will assess interest on an unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982, (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(g) *Authentication of copies—(1) Fees.* The FOIA does not require certification or attestation under seal of copies of records provided in accordance

with its provisions. Pursuant to provisions of the general user-charger statute, 31 U.S.C. 9701 and Subchapter II of title 29 U.S.C., the following charges will be made when, upon request, such services are nevertheless rendered by the agency in its discretion:

(i) For certification of true copies, \$10.00 each certification.

(ii) For attestation under the seal of the Department, \$10.00 each attestation under seal.

(2) *Authority and form for attestation under seal.* Authority is hereby given to any officer or officers of the Department of Labor designated as authentication officer or officers of the Department to sign and issue attestations under the seal of the Department of Labor.

(h) *Transcripts.* Fees for transcripts of an agency proceeding will be assessed in accordance with the provisions of this Subpart.

(i) *Privacy Act requesters.* A request from an individual or on behalf of an individual for a record maintained by that individual's name or other unique identifier which is contained within a component's system of records will be treated under the fee provisions at 29 CFR 71.6.

#### § 70.41 Reduction or waiver of fees.

(a) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (d) of § 70.40 where a Disclosure Officer determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

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

(2) To determine whether the requirement of paragraph (a)(1)(i) of this section is met, components will consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities

of the government." The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media will satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent.

(3) To determine whether the requirement of paragraph (a)(1)(ii) of this section is met, components will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. The Disclosure Officer will