

§ 70.41

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

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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

consider any commercial interest of the requester (with reference to the definition of “commercial use request” in § 70.38(f)), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.” A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The Disclosure Officer ordinarily will presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted only for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraph (a) of this section, insofar as they apply to each request.

(b) *Submission.* Requests for waiver or reduction of fees must be submitted along with the request or before processing of the request has been commenced.

(c) *Appeal rights.* The procedures for appeal under 70.22 and 70.23 will control.

§ 70.42 Consent to Pay Fees.

(a) The filing of a request under this subpart will be deemed to constitute an agreement by the requester to pay all applicable fees charged under this part up to and including \$25.00, unless the requester seeks a waiver of fees. When making a request, the requester may

specify a willingness to pay a greater or lesser amount.

(b) No request will be processed if a disclosure officer reasonably believes that the fees are likely to exceed the amount to which the requester has originally consented, absent supplemental written consent by the requester to proceed after being notified of this determination.

(c) When the estimated costs are likely to exceed the amount of fees to which the requester has consented, the requester must be notified. Such notice may invite the requester to reformulate the request to satisfy his or her needs at a lower cost.

§ 70.43 Payment of fees.

(a) *De minimis costs.* Where the cost of collecting and processing a fee to be assessed to a requester exceeds the amount of the fee which would otherwise be assessed, no fee need be charged. Fees which do not exceed \$15.00 usually need not be collected.

(b) *How payment will be made.* Requesters will pay fees by check or money order made payable to the Treasury of the United States.

(c) *Advance payments and billing.* (1) Prior to beginning to process a request, the disclosure officer will make a preliminary assessment of the amount that can properly be charged to the requester for search and review time and copying costs. Where a disclosure officer determines or estimates that a total fee to be charged under this section will be more than \$250.00, the disclosure officer will require the requester to make an advance payment of an amount up to the entire anticipated fee before beginning to process the request. The disclosure officer may waive the advance payment where the disclosure officer receives a satisfactory assurance of full payment from a requester who has a history of prompt payment of an amount similar to the one anticipated by the request.

(2) Where a requester has previously failed to pay a properly charged FOIA fee to any component of the Department of Labor within 30 days of the date of billing, a disclosure officer will require the requester to pay the full amount due, plus any applicable interest as provided in § 70.40(f) and to make