

Public Handbook for Gaining Access to OMB Information

I. The Freedom of Information Act

As the President stated on December 14, 2005, in his Executive Order 13,392, *Improving Agency Disclosure of Information*,

“The effective functioning of our constitutional democracy depends upon the participation in public life of a citizenry that is well informed. For nearly four decades, the Freedom of Information Act (FOIA) has provided an important means through which the public can obtain information regarding the activities of Federal agencies. Under the FOIA, the public can obtain records from any Federal agency, subject to the exemptions enacted by the Congress to protect information that must be held in confidence for the Government to function effectively or for other purposes.”

The Freedom of Information Act (5 U.S.C. § 552, see Appendix A), provides a right of access to the public of government records. The Act also allows the government to withhold certain information in responding to those requests in 9 exemptions, including for national security, deliberative process and attorney client, and confidential business information, to name a few.

II. Frequently Asked Questions

- **About OMB:**

1. **What does OMB do?**

The Office of Management and Budget (OMB) is an agency within the Executive Office of the President. OMB assists the President in the discharge of his budgetary, management, and other executive responsibilities. More specifically, OMB assists the President in the preparation of the Federal budget and in managing its execution by the agencies. OMB works to assure that proposed legislation (as well as testimony, reports and policies) is consistent with Administration policies, including the President’s Budget. OMB also has a central role in providing leadership in the development, oversight and coordination of the Federal government’s policies in procurement, financial management and the information, statistical, and regulatory arenas as well as in the implementation of those policies. OMB promotes better program management, strengthens administrative management, develops agency-performance measures and improves coordination of the Executive Branch’s various operations.

2. What offices does OMB have?

OMB has offices in the Eisenhower and New Executive Office Buildings in Washington, D.C. (OMB does not have regional or field offices.) OMB staff are divided into the following offices:

- the OMB Director's office;
- several small staff offices (General Counsel, Legislative Affairs, Communications, Administration, and Economic Policy);
- the Budget Review Division (which provides support in the development and execution of the Federal budget);
- the Legislative Reference Division (which develops and supports the President's management and budget agenda by carrying out OMB's interagency legislative review function);
- four Resource Management Offices (which develop and support the President's budget); and
- four statutory offices:
 - a. the Office of Information and Regulatory Affairs,
 - b. the Office of Federal Financial Management,
 - c. the Office of Federal Procurement Policy, and
 - d. the Office of Electronic Government and Information Technology.

3. What types of records does OMB have?

You can find out about the type of records OMB has in our reading room, which is organized by subject matter, such as Grants, or the President's Budget.

- **About FOIA and how to submit a request:**

4. What does FOIA do?

As noted above, FOIA provides a right of access to the public of government records. The Act also allows the government to withhold certain information in responding to those requests in 9 exemptions, including for national security, deliberative process and attorney client, and confidential business information, to name a few.

5. Can I ask a question under the FOIA?

Please be aware that FOIA does not require agencies to do research, analyze data, answer written questions, or to create records in order to respond to a request.

It is also important to understand that there is no central office in the government which processes FOIA requests for all agencies; each Federal agency responds to FOIA requests for records in its own files. Thus, the public may submit FOIA requests to OMB to obtain records that are in OMB's files.

6. How do I submit a FOIA request to OMB?

Individuals wishing to file a FOIA request must write a letter to submit a FOIA request. Address your letter to:

Dionne Hardy, FOIA Officer
Office of Management and Budget
725 17th Street NW, Room 9026
Washington, DC 20503

Please note that for security reasons, OMB's receipt and processing of mail may be delayed. Therefore, you may also fax your letter to: 202.395.3504.

You should be as specific as possible in your request for records (see below for records you can receive without submitting a FOIA request). Please describe the specific records you are requesting in sufficient detail so that the records can be located with a reasonable amount of effort. You should also consult OMB's FOIA regulations, which outline the procedures governing the FOIA request process.

Upon receipt of a FOIA request, the FOIA Officer will determine within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of such request whether it is appropriate to grant the request. (Please be aware that the time period for providing a response may be extended under the FOIA.) OMB will provide a written response to the FOIA request; if the request is denied in whole or in part, OMB will notify the requester of the denial, and of the requester's right to file an appeal within OMB. If OMB denies an appeal in whole or in part, the requester may seek judicial review of that denial.

7. What are the reasons for not releasing a record requested under the FOIA?

The FOIA statute provided reasons why an agency may not release a requested record. Such records are considered to be legally exempt from release. Among the reasons for withholding a document are the following exemptions from disclosure:

Exemption (b)(1) National Security

Exemption (b)(2) Internal Documents

Exemption (b)(3) Statutory withholding

Exemption (b)(4) Commercial or proprietary data

Exemption (b)(5) Predecisional, deliberative communications

Exemption (b)(6) Privacy

Exemption (b)(7) Law enforcement

Exemption (b)(8) Financial institutions

Exemption (b)(9) Geological information

8. Do I need to submit a particular form to request documents under FOIA?

No. However, in order to process your request, you need to reasonably describe the records you are looking for, providing as much information as possible (in order for OMB to search for them). OMB may also contact you to request that you provide more detail.

9. Is there a fee to submit a FOIA request?

OMB, like other agencies, may charge a fee for responding to your FOIA request. The amount of fee depends on who you are and why you are making a FOIA request. The FOIA Act divides requesters into four categories for fees, as described below. In addition, in certain circumstances, OMB may request advance payment of fees. You may also indicate, in your letter, how much in fees you are willing to pay, before OMB needs to contact you.

- *Commercial use requesters.*

When OMB receives a request for documents for commercial use, it will assess charges that recover the full direct cost of searching for, reviewing for release, and duplicating the records sought.

- *Educational and non-commercial scientific institution requests.*

OMB shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages.

- *Representatives of the news media.*

OMB shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages.

- *All other requesters.*

OMB shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

OMB may waive fees, in whole or in part, if "disclosure of the 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 is not primarily in the commercial interest of the requester." If you wish to request a waiver of fees, please provide as much information as possible about how you will be using the information in order for OMB to make its determination.

Please note that in certain circumstances, such as when fees exceed \$250 OMB may contact a requester for the advance payment of fees by check or money order payable to the U.S. Treasury.

10. How long will it take to receive an answer to my FOIA request?

The FOIA Act gives OMB a minimum of 20 working days (that's excluding Saturdays, Sundays and legal public holidays) to respond to your request. OMB can also extend that time period an additional 10 working days (OMB will send you a letter when that occurs). As noted above, due to security reasons, OMB's receipt and processing of mail could be delayed; the 20-day time period only begins when OMB has received your letter.

11. What will I receive in response to my FOIA request?

OMB will send you a letter responding to your FOIA request. If we have located records in response to your request, our letter will tell you that. If we have located records, but have withheld any part of them, our letter will tell you of your right to file an appeal within OMB (see below for how to file an appeal). If OMB denies an appeal in whole or in part, the requester may seek judicial review of that denial.

12. What if I have concerns about the processing of my FOIA request?

OMB has a FOIA Requester Service Center. You can call the FOIA Requester Service Center at: 202.395.3642 (202.395.FOIA). The FOIA Requester Service Center is available to assist you in answering questions that you have about your request. If you are not satisfied with the assistance you receive from the FOIA Requester Service Center or they cannot assist you, you may also leave a message for OMB's Public Liaison: 202.395.3642 (202.395.FOIA).

13. Can I ask for my request to be expedited?

OMB's regulations (see Appendix B) provide for how someone can request expedited processing. Generally, you can request expedited processing if you demonstrate in your request letter to OMB one of the following:

- i. Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- ii. An urgency to inform the public about an actual or alleged Federal government activity, if made by a person primarily engaged in disseminating information;
- iii. The loss of substantial due process rights; or
- iv. A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which effect public confidence.

OMB will respond to your request for expedited processing within 10 working days. At the present time, OMB does not have multi-track processing (which means that OMB staff works on requests as they come in; there is not a first-in-first-out queue that your request comes in).

- **About the response I receive from OMB:**

14. What if I have concerns about the response I receive to my FOIA request?

As noted above, OMB has a FOIA Requester Service Center. You can call the FOIA Requester Service Center at: 202.395.3642 (202.395.FOIA). The FOIA Requester Service Center is also available to assist you in answering questions that you have about OMB's response to your request. If you are not satisfied with the assistance you receive from the FOIA Requester Service Center or they cannot assist you, you may also leave a message for OMB's Public Liaison: 202.395.3642 (202.395.FOIA).

15. How do I appeal OMB's response to my FOIA request?

Send your appeal, in another letter, to the same address as before:

Dionne Hardy, FOIA Officer
Office of Management and Budget,
725 17th Street NW, Room 9026
Washington, DC 20503

Please note that for security reasons, OMB's receipt and processing of mail may be delayed. Therefore, you may also fax your letter to: 202.395.3504.

Although it is not required, it is helpful to OMB in processing your appeal request if you include a copy of your original request letter as well as OMB's response.

16. When will I hear back on my appeal?

The FOIA Act gives OMB a minimum of 20 working days (excluding Saturdays, Sundays and legal public holidays) to respond to your appeal request. OMB can also extend that time period an additional 10 working days (OMB will send you a letter when that occurs). As noted above, due to security reasons, OMB's receipt and processing of mail could be delayed; the 20-day time period only begins when OMB has received your letter.

- **About documents OMB has:**

17. Are there records that OMB has that I can look at (inspect), without filing a FOIA request?

OMB makes available in its Public Reading Room and in the Regulatory/Paperwork Records Management Center information pertaining to matters issued, adopted, or promulgated by OMB; these are commonly known as "reading room materials." These materials include the Federal Budget, OMB Circulars, selected OMB Bulletins, regulations and information collections reviewed by OMB, other policies and management documents, and OMB's Annual FOIA Report. Many of these documents are also available through OMB's Internet Home Page (see the "reading room" section for information on these documents).

OMB has a public reading room and Office of Information and Regulatory Affairs (OIRA) Records Management Center. Visitors to the public reading area or OIRA Records Management Center must write or telephone ahead (see below for details) to make an appointment. Security in the New Executive Office Building prevents visitors from entering the building without an appointment.

- **OMB's Public Reading Room:** OMB's public reading area is located in the Executive Office of the President Library, Room G-102, New Executive Office Building, 725 17th Street NW, Washington, DC 20503, 202.395.5715.
- **OIRA Records Management Center:** The OIRA Records Management Center is located in Room 10102, New Executive Office Building, 725 17th Street NW, Washington, DC 20503, phone 202.395.6880. The Records Management Center contains records related to information collections sponsored by the Federal government and reviewed by OIRA under the Paperwork Reduction Act of 1995. The Records Management Center also maintains records related to proposed Federal agency regulatory actions reviewed by OIRA under Executive Order 12866, "Regulatory Planning and Review." Telephone logs and materials from meetings with the public attended by the OIRA Administrator are also available in the Records Management Center. Information regarding regulations is also available on OMB's Website in its new automated system, ROCIS (see the "reading room" section for information on these documents).

III. Reading Room

OMB's website contains links to the following types of documents:

- I. **The President's Budget**
- II. **E-Government or IT** (most of these records would be created by the Office of Electronic Government and Information Technology or the Office of Information and Regulatory Affairs)
- III. **Financial Management** Issues for the Federal Government (most of these records would be created by the Office of Federal Financial Management)
- IV. **FOIA Documents** (including OMB's FOIA Improvement Plan (103k) under Executive Order 13,392 of December 14, 2005, OMB's Annual FOIA Reports, OMB's FOIA Regulations and OMB's Public FOIA Handbook)
- V. **Guidance to Agencies** (these include OMB Circulars, Memoranda, and Bulletins)
- VI. **Grants**, Grants Management and additional information including Hurricane Katrina related information (most of these records would be created by the Office of Federal Financial Management)
- VII. **Information Collections** (most of these records would be created by the Office of Information and Regulatory Affairs)
- VIII. **Legislation** and what the Administration thinks about legislation (also called "Statements of Administration Policy" or "Press Releases")
- IX. **Management activities** like the PART and the President's Management Agenda
- X. **OMB Press Releases**
- XI. **Other Frequently Requested Documents**
 - i. *Federal Register* Submissions
 - ii. Government Information Locator Service (GILS)
 - iii. IMPAC Card Information
 - iv. Mid-Session Review of the Fiscal Year 2007 Budget
 - v. OMB Locator Service
 - vi. Paperwork Reduction Act Approval of IRS Individual Income Tax Return (OMB Control Number: 1545-0074) (20mb)
 - vii. Transfer of former GAO Authorities

- **Paperwork Reduction Act Compliance** (most would be created by the Office of Information and Regulatory Affairs)
- **Privacy Act Guidance** (most records related to the Privacy Act would be created by the Office of Information and Regulatory Affairs)
- **Procurement issues** (most of these records would be created by the Office of Federal Procurement Policy)
- **Regulations** (most of these records would be created by the Office of Information and Regulatory Affairs)
- **Reports to Congress**
- **Statistical Issues** (most of these records would be created by the Office of Information and Regulatory Affairs)
- **Testimony of OMB Officials**

II. **Additional Helpful Links**

OMB's website contains links to the following websites:

- I. Agency Forms: Firstgov.gov and Forms.gov
- II. Agency Performance: Results.gov and Expectmore.gov
- III. Agency Regulations: Reginfo.gov and Regulations.gov (to provide comments on proposed agency regulations)
- IV. Information Collections: Reginfo.gov
- V. Department of Justice FOIA Homepage
- VI. Financial Management Links
 - FinanceNet
 - Chief Financial Officers (CFO) Council
 - Federal Accounting Standards Advisory Board (FASAB)
 - Financial Management Service (FMS), U.S. Department of Treasury
 - Joint Financial Management Improvement Program (JFMIP)
 - Internet...for the Federal Inspector General Community (IGnet)
- Other Government Sites
 - Home Pages for Other Agencies
 - Freedom of Information Act (FOIA) Home Pages for Other Federal Agencies

- Procurement
 - General Services Administration's Acquisition Network (AcqNet)
- Regulatory/Statistical and Information Policy & Technology Links
 - Chief Information Officers (CIO) Council
 - Regulatory Information Service Center (RISC)
 - Federal Interagency Council on Statistical Policy (Fedstats)
- Office of Information and Regulatory Affairs: Regulations Pending and Reviews Completed Last 30 Days

Appendix A

THE FREEDOM OF INFORMATION ACT

5 U.S.C. § 552

As Amended in 2002

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of an index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if--

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any

request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to--

(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

(ii) a representative of a government entity described in clause (i).

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that--

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the 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 is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section--

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo, provided that the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's

determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause is shown.

(D) Repealed by Pub. L. 98-620, Title IV, 402(2), Nov. 8, 1984, 98 Stat. 3335, 3357.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

(i) determine within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall

notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests--

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)(i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the

records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing the request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records--

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure--

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny

or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term "compelling need" means--

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

(b) This section does not apply to matters that are--

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and--

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize the withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include--

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests;

(F) the total amount of fees collected by the agency for processing requests; and

(G) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(2) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

(3) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(4) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(5) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term--

(1) "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

(2) "record" and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.

(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including--

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.

TITLE 5--ADMINISTRATIVE PERSONNEL

CHAPTER III--OFFICE OF MANAGEMENT AND BUDGET

**PART 1303--PUBLIC INFORMATION PROVISIONS OF THE
ADMINISTRATIVE PROCEDURES ACT**

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Organization

Sec. 1303.1 General

This information is furnished for the guidance of the public and in compliance with the requirements of section 552 of title 5, United States Code, as amended.

Sec. 1303.2 Authority and functions.

The general functions of the Office of Management and Budget, as provided by statute and executive order, are to develop and execute the budget, oversee implementation of

Administration policies and programs, advise and assist the President, and develop and implement management policies for the government.

Sec. 1303.3 Organization.

(a) The brief description of the central organization of the Office of Management and Budget follows:

(1) The Director's Office includes the Director, the Deputy Director, the Deputy Director for Management, and the Executive Associate Director.

(2) Staff Offices include General Counsel, Legislative Affairs, Communications, Administration, and Economic Policy.

(3) Offices that provide OMB-wide support include the Legislative Reference and Budget Review Divisions.

(4) Resource Management Offices. These offices develop and support the President's management and budget agenda in the areas of Natural Resources, Energy and Science, National Security and International Affairs, Health and Personnel, Human Resources, and General Government and Finance.

(5) Statutory offices include the Office of Federal Financial Management, Office of Federal Procurement Policy, and the Office of Information and Regulatory Affairs.

(b) The Office of Management and Budget is located in Washington, DC, and has no field offices. Staff are housed in either the Old Executive Office Building, 17th Street and Pennsylvania Ave, NW, or the New Executive Office Building, 725 17th Street NW, Washington, DC 20503. Persons desiring to visit offices or employees of the Office of Management and Budget, in either building, must write or telephone ahead to make an appointment. Security in both buildings prevents visitors from entering the building without an appointment.

Procedures

Sec. 1303.10 Access to information.

(a) The Office of Management and Budget makes available information pertaining to matters issued, adopted, or promulgated by OMB, that are within the scope of 5 U.S.C. 552(a)(2). A public reading area is located in the Executive Office of the President Library, Room G-102, New Executive Office Building, 725 17th Street NW, Washington, DC 20503. For access, contact the FOIA Officer at (202) 395-7250. OMB issuances are also available electronically from the OMB homepage at www.whitehouse.gov/omb. In addition, OMB maintains the Office of Information and Regulatory Affairs (OIRA) Records Management Center, Room 10102, New Executive

Office Building, 725 17th Street NW, Washington, DC 20503, phone (202) 395-6880. The Records Management Center contains records related to information collections sponsored by the Federal government and reviewed by OIRA under the Paperwork Reduction Act of 1995. The Records Management Center also maintains records related to proposed Federal agency regulatory actions reviewed by OIRA under Executive Order 12866 "Regulatory Planning and Review." Telephone logs and materials from meetings with the public attended by the OIRA Administrator are also available in the Records Management Center.

(b) The FOIA Officer is responsible for acting on all initial requests. Individuals wishing to file a request under the Freedom of Information Act (FOIA) should address their request in writing to Donald Hawkins, FOIA Officer, Office of Management and Budget, 725 17th Street NW, Room 9026, Washington, DC 20503, phone (202) 395-7250. Requests can also be faxed to Mr. Hawkins at (202) 395-3504. Requests for information shall be as specific as possible.

(c) Upon receipt of any request for information or records, the FOIA Officer will determine within 20 days (excepting Saturdays, Sundays and legal public holidays) after the receipt of such request whether it is appropriate to grant the request and will immediately provide written notification to the person making the request. If the request is denied, the written notification to the person making the request shall include the names of the individuals who participated in the determination, the reasons for the denial, and a notice that an appeal may be lodged within the Office of Management and Budget. (Receipt of a request as used herein means the date the request is received in the office of the FOIA Officer.)

(d) Expedited processing.

(1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which effect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category (d)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten days of its receipt of a request for expedited processing, OMB will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

(e) Appeals shall be set forth in writing within 30 days of receipt of a denial and addressed to the FOIA Officer at the address specified in paragraph (b) of this section. The appeal shall include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the Deputy Director, or his designee, within 20 days (excepting Saturdays, Sundays, and legal public holidays). If, on appeal, the denial is in whole or in part upheld, the written determination will also contain a notification of the provisions for judicial review and the names of the persons who participated in the determination.

(f) In unusual circumstances, the time limits prescribed in paragraphs (c) and (e) of this section may be extended for not more than 10 days (excepting Saturdays, Sundays, or legal public holidays).

Extensions may be granted by the FOIA Officer. The extension period may be split between the initial request and the appeal but in no instance may the total period exceed 10 working days. Extensions will be by written notice to the persons making the request and will set forth the reasons for the extension and the date the determination is expected.

(g) With respect to a request for which a written notice under paragraph (f) of this section extends the time limits prescribed under paragraph (c) of this section, the agency shall notify the person making the request if the request cannot be processed within the time limit specified in paragraph (f) of this section and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or

arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of 5 U.S.C. 552 (a)(6)(C). When OMB reasonably believes that a requester, or a group of requestors acting in concert, has submitted requests that constitute a single request, involving clearly related matters, OMB may aggregate those requests for purposes of this paragraph. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(h) As used herein, but only to the extent reasonably necessary to the proper processing of the particular request, the term "unusual circumstances" means:

- (1) The need to search for and collect the requested records from establishments that are separated from the office processing the request;
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency which have a substantial subject matter interest therein.

Availability of Information

Sec. 1303.20 Inspection and copying.

When a request for information has been approved pursuant to Sec. 1303.10, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the FOIA Officer at the address or telephone number listed in Sec. 1303.10(b). Such materials may be copied and reasonable facilities will be made available for that purpose. Copies of individual pages of such materials will be made available at the price per page specified in Sec. 1303.40(d); however, the right is reserved to limit to a reasonable quantity the copies of such materials which may be made available in this manner when copies also are offered for sale by the Superintendent of Documents.

Charges for Search and Reproduction

Sec. 1303.30 Definitions.

For the purpose of these regulations:

- (a) All the terms defined in the Freedom of Information Act apply.

(b) A statute specifically providing for setting the level of fees for particular types of records (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of records, in order to:

- (1) Serve both the general public and private sector organizations by conveniently making available government information;
- (2) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;
- (3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or
- (4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

Statutes, such as the User Fee Statute, which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents do not supersede the Freedom of Information Act under section (a)(4)(A)(vi) of that statute.

(c) The term direct costs means those expenditures that OMB actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(d) The term search means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. OMB employees should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, employees should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. Search should be distinguished, moreover, from review of material in order to determine whether the material is exempt from disclosure (see paragraph (f) of this section).

(e) The term duplication means the making of a copy of a document, or of the information contained in it, necessary to respond to a FOIA request. Such copies can take

the form of paper, microform, audio-visual materials, or electronic records (e.g., magnetic tape or disk), among others. The requester's specified preference of form or format of disclosure will be honored if the record is readily reproducible in that format.

(f) The term review refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (g) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(g) The term 'commercial use' request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, OMB must determine the use to which a requester will put the documents requested. Moreover, where an OMB employee has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the employee should seek additional clarification before assigning the request to a specific category.

(h) The term educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, that operates a program or programs of scholarly research.

(i) The term non-commercial scientific institution refers to an institution that is not operated on a commercial basis (as that term is referenced in paragraph (g) of this section), 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.

(j) The term representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of freelance journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but OMB may also look to the past publication record of a requester in making this determination.

Sec. 1303.40 Fees to be charged--general.

OMB should charge fees that recoup the full allowable direct costs it incurs. Moreover, it shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see definition in Sections 1303.30(b)), such as the NTIS, OMB should inform requesters of the steps necessary to obtain records from those sources.

(a) Manual searches for records. OMB will charge at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the search.

(b) Computer searches for records. OMB will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(c) Review of records. Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time OMB analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

(d) Duplication of records. Records will be duplicated at a rate of \$.15 per page. For copies prepared by computer, such as tapes or printouts, OMB shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, OMB will charge the actual direct costs of producing the document(s). If OMB estimates that duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(e) Other charges. OMB will recover the full costs of providing services such as those enumerated below when it elects to provide them:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail.

(f) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to

the order of the Treasury of the United States and mailed to the FOIA Officer, Office of Management and Budget, Washington, DC 20503.

(g) A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

(h) Restrictions on assessing fees. With the exception of requesters seeking documents for a commercial use, OMB will provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, OMB will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account.

(2) For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of "8 1/2 x 11" or "11 x 14." Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, does meet the terms of the restriction.

(3) Similarly, the term "search time" in this context has as its basis, manual search. To apply this term to searches made by computer, OMB will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, OMB will begin assessing charges for computer search.

Sec. 1303.50 Fees to be charged--categories of requesters.

There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The specific levels of fees for each of these categories are:

(a) Commercial use requesters. When OMB receive a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. OMB may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see Sec. 1303.60(b)).

(b) Educational and non-commercial scientific institution requesters. OMB shall provide documents to requesters in this category for the cost of reproduction alone, excluding

charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(c) Requesters who are representatives of the news media. OMB shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in Sec. 1303.10(j), and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(d) All other requesters. OMB shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests for records about the requesters filed in OMB's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

Sec. 1303.60 Miscellaneous fee provisions.

(a) Charging interest--notice and rate. OMB may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. The fact that the fee has been received by OMB within the thirty day grace period, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the billing.

(b) Charges for unsuccessful search. OMB may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure. If OMB estimates that search charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) Aggregating requests. A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When OMB reasonably believes that a requester, or a group of requesters acting in concert, has submitted requests that constitute a single request, involving clearly related matters, OMB may aggregate those requests and charge accordingly. One element to be

considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

(d) Advance payments. OMB may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) OMB estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then, OMB will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing). Then, OMB may require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(3) When OMB acts under paragraph (d)(1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (i.e., 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits), will begin only after OMB has received fee payments described in paragraphs (d)(1) and (2) of this section.

(e) Effect of the Debt Collection Act of 1982 (Pub. L. 97-365). OMB should comply with provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

Sec. 1303.70 Waiver or reduction of charges.

Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where it is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.