

## Department of State

## § 171.15

scientific (if the request is from a non-commercial scientific institution) research.

(c) The Department will provide documents to representatives of the news media 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 §171.10(k), and the request must not be made for a commercial use. In reference to this class of requesters, 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.

(d) The Department will charge requesters who do not fit into any of the categories above fees which 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 from record subjects for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(e) In making determinations under this section, the Department may take into account whether requesters who previously were granted (b), (c), or (d) status did in fact use the requested records for purposes compatible with the status accorded them.

[52 FR 32125, Aug. 26, 1987]

### § 171.15 Fee waivers and appeals.

(a) Waiver or reduction of any fee provided for in §§171.6 and 171.13 may be made upon a determination by the Chief of the Request Processing Section, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520. The Department shall furnish documents without charge or at a reduced charge provided that: 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. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(1) In order to determine whether 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, the Department will consider the following four factors:

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

(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;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding; and

(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.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Department will consider the following two 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; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the 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.

(b) The Department will not consider waiver or reduction of fees for requesters (persons or organizations) from whom unpaid fees remain due to the Department for another information access request.

(c) (1) The Department's decision to refuse to waive or reduce fees as requested under paragraph (a) of this section may be appealed to the Chief of the Information Access Branch, Room 1239, Department of State, 2201 C

Street NW., Washington, DC 20520. Appeals should contain as much information and documentation as possible to support the request for a waiver or reduction of fees.

(2) Appeals will be reviewed by the Information Access Branch Chief who may consult with other officials of the Department as appropriate. The requester will be notified within thirty working days from the date on which the Department received the appeal.

[52 FR 32126, Aug. 26, 1987]

**§ 171.16 Predisclosure notification procedures for confidential commercial information.**

(a) *In general.* Confidential commercial information provided to the Department shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) *Confidential Commercial Information* means records provided to the Department by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides confidential commercial information to the Department. The term *submitter* includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitters.* Whenever the Department receives a Freedom of Information Act request for confidential commercial information and, pursuant to paragraph (c) of this section, the submitter is entitled to receive notice of that request, the Department shall promptly notify the submitter that it has received the request, unless such notice is excused under paragraph (g) of this section. The notice shall be in writing and either describe the exact nature of the confidential commercial information requested or provide a copy of the records or portion of the records containing the confidential commercial information. The notice shall be addressed to the submitter and mailed, postage prepaid, first class mail, to the submitter's last known ad-

dress. Where notice is required to be given to a voluminous number of submitters, in lieu of mailing the notice may be posted or published in a manner and place reasonably calculated to provide notice to the submitters.

(c) *When notice required.* (1) For confidential commercial information submitted prior to January 1, 1988, the Department shall provide a submitter with notice of a receipt of a Freedom of Information Act request whenever:

(i) The records are less than ten (10) years old and the information has been designated by the submitter as confidential commercial information; or

(ii) The Department has reason to believe that the disclosure of the information could reasonably be expected to cause substantial competitive harm.

(2) For confidential commercial information submitted to the Department on or after January 1, 1988, the Department shall provide a submitter with notice of receipt of a Freedom of Information Act request whenever:

(i) The submitter has designated the information as confidential commercial information pursuant to the requirements of this section; or

(ii) The Department has reason to believe that the disclosure of the information could reasonably be expected to cause substantial competitive harm.

(3) Notice of a request for confidential commercial information falling within paragraph (c)(2)(i) of this section shall be required for a period of not more than ten (10) years after the date of submission unless the submitter provides reasonable justification for a designated period of greater duration.

(4) A submitter shall use good-faith efforts to designate by appropriate markings, either at the time a record is submitted to the Department or within a reasonable period of time thereafter, those portions of the record which it deems to contain confidential commercial information. The designation shall be accompanied by a certification made by the submitter, its agent or designee, that to the best of the submitter's knowledge, information and belief, the record does, in fact, contain confidential commercial information that theretofore has not been disclosed to the public.