

## Merit Systems Protection Board

## § 1204.13

(e) *Fee schedule.* (1) Fees for document searches for records will be charged at a rate of \$5 per quarter hour spent by each Board employee performing the search.

(2) Fees for computer searches for records will be \$5 per quarter hour spent by each employee operating the computer equipment and/or developing a new inquiry or report.

(3) Fees for review at the initial administrative level to determine whether records or portions of records are exempt from disclosure, and for review after an appeal to determine whether the records are exempt on other legal grounds, will be charged, for commercial use requests, at a rate of \$5 per quarter hour spent by each reviewing employee.

(4) Fees for photocopying records is 20 cents a page, the fee for copying audio tapes is the direct cost up to \$15 per cassette tape; the fee for copying video tapes is the direct cost up to \$20 per tape; and the fee for computer printouts is 10 cents a page. The fee for duplication of electronically maintained information in the requester's preferred format will be \$21 for copying computer tapes and \$4 for copying records on computer diskettes, if it is feasible for the Board to reproduce records in the format requested. Fees for certified copies of the Board's records will include a \$4 per page charge for each page displaying the Board's seal and certification. When the Board estimates that copying costs will exceed \$100, it will notify the requester of the estimated amount unless the requester has indicated in advance a willingness to pay an equal or higher amount.

(f) *Fee waivers.* (1) Upon request, the Clerk of the Board, Regional Director, or Chief Administrative Judge, as appropriate, will furnish information without charge or at reduced rates if it is established 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." This decision will be based on:

(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) Whether disclosure of the requested information is likely to contribute to public understanding of the subject of the disclosure; and

(iv) The significance of the contribution the disclosure would make to public understanding of government operations or activities.

(2) If information is to be furnished without charge or at reduced rates, the requester must also establish that disclosure of the information is not primarily in the commercial interest of the requester. This decision will be based on:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) Whether 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.

(3) The requester must establish eligibility for a waiver of fees or for reduced fees. The denial of a request for waiver of fees may be appealed under subpart C of this part.

### § 1204.13 Denials

(a) The Board may deny: A request for reduced fees or waiver of fees; a request for a record, either in whole or in part; a request for expeditious processing based on the requester's compelling need; or a request that records be released in a specific electronic format. The denial will be in writing, will state the reasons, and will notify the requester of the right to appeal.

(b) If the Board applies one or more of the exemptions provided under the FOIA to deny access to some or all of the information requested, it will respond in writing, identifying for the requester the specific exemption(s), providing an explanation as to why the exemption(s) to withhold the requested information must be applied, and providing an estimate of the amount of material that has been denied to the

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requester, unless providing such an estimate would harm an interest protected by the exemptions.

(c) The amount of information deleted will be indicated on the released portion of the record at the place in the record where the deletion is made, if technically feasible and unless the indication would harm an interest protected by the exemption under which the deletion is made.

### § 1204.14 Requests for access to confidential commercial information.

(a) *General.* Confidential commercial information provided to the Board by a business submitter will not be disclosed in response to a FOIA request except as required by this section.

(b) *Definitions.* (1) The term *confidential commercial information* means records provided to the government by a submitter that are believed to 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) The term *submitter* means any person or organization that provides confidential commercial information to the government. The term *submitter* includes, but is not limited to, corporations, state governments, and foreign governments.

(c) *Notice to business submitters.* The Board will provide a business submitter with prompt written notice of a request for its confidential commercial information whenever such written notice is required under paragraph (d) of this section. Exceptions to such written notice are at paragraph (h) of this section. This written notice will either describe the exact nature of the confidential information requested or provide copies of the records or parts of records containing the commercial information.

(d) *When initial notice is required.* (1) With respect to confidential commercial information received by the Board before January 1, 1988, the Board will give the business submitter notice of a request whenever:

(i) The information is less than 10 years old; or

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

(2) With respect to confidential commercial information received by the Board on or after January 1, 1988, the Board will give notice to the business submitter whenever:

(i) The business submitter has designated the information in good faith as commercially or financially sensitive information; or

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

(3) Notice of a request for commercially confidential information that was received by January 1, 1988, is required for a period of not more than 10 years after the date on which the information is submitted unless the business submitter requests, and provides justification for, a longer specific notice period. Whenever possible, the submitter's claim of confidentiality must be supported by a statement or certification, by an officer or authorized representative of the company, that the information in question is confidential commercial information and has not been disclosed to the public.

(e) *Opportunity to object to disclosure.* Through the notice described in paragraph (c) of this section, the Board will give a business submitter a reasonable period to provide a detailed statement of any objection to disclosure. The statement must specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act. In addition, in the case of Exemption 4, the statement must state why the information is considered to be a trade secret, or to be commercial or financial information that is privileged or confidential. Information a business submitter provides under this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(f) *Notice of intent to release information.* The Board will consider carefully a business submitter's objections and specific grounds for claiming that the information should not be released before determining whether to release confidential commercial information.