

## Export-Import Bank of the U.S.

## § 404.9

what has been requested is not a record subject to the FOIA. Whenever Ex-Im Bank withholds information, such notice shall include:

(i) The name, title, and signature of the person responsible for the determination;

(ii) The statutory basis for non-disclosure; and

(iii) A statement that any denial may be appealed under § 404.11 and a brief description of the requirements of that section.

(d) *Material withheld.* Ex-Im Bank shall make reasonable efforts to inform the requester of the volume of material withheld pursuant to a full or partial denial and the extent of any redaction. Ex-Im Bank shall not, however, indicate the extent of any denial when doing so could harm an interest protected by an applicable exemption.

### § 404.9 Schedule of fees.

(a) *General.* Ex-Im Bank shall charge fees to recover the full allowable direct costs it incurs in processing requests. Ex-Im Bank shall attempt to conduct searches in the most efficient manner to minimize costs for both Ex-Im Bank and the requester.

(b) *Categories of requesters.* Fees shall be assessed according to the status of the requester. The specific schedule of fees for each requester category (each as defined in § 404.2) is prescribed as follows:

(1) *Commercial use requesters.* Ex-Im Bank shall charge the full costs for search, review, and duplication.

(2) *Educational and non-commercial scientific institution requesters.* Ex-Im Bank shall charge only for the cost of duplication in excess of 100 pages. No fee will be charged for search or review.

(3) *Representatives of the news media.* Ex-Im Bank shall charge only for the cost of duplication in excess of 100 pages. No fee will be charged for search or review.

(4) *All other requesters.* Ex-Im Bank shall charge for the cost of search, review, and duplication, except that 100 pages of duplication and two hours of professional search time shall be furnished without charge.

(c) *Search and review fees.* Ex-Im Bank shall charge the following fees for search and review:

(1) *Clerical.* Hourly rate—\$16.00.

(2) *Professional.* Hourly rate—\$32.00.

(3) *Computer Searches.* Hourly rate—based upon the salary of the employee performing the work and the cost of operating any equipment.

(d) *Administrative appeals.* Ex-Im Bank shall not charge for administrative review of an exemption applied in an initial determination. Ex-Im Bank shall charge, however, for search and review pursuant to an administrative appeal if the appeal is based on a claim other than the application of an exemption in the initial determination.

(e) *Duplication.* Ex-Im Bank shall charge \$.10 per page for paper copy duplication. Ex-Im Bank shall charge the actual or estimated cost of copies prepared by computer, such as tape or printouts, or for other methods of duplication. When duplication charges are expected to exceed \$50.00, Ex-Im Bank shall seek the requester's consent to be responsible for the estimated charges unless a requester has already expressed a willingness to pay duplication fees in excess of \$50.00. Ex-Im Bank shall also offer the requester the opportunity to alter the request in order to reduce duplication costs.

(f) *Fees for searches that produce no records.* Fees shall be payable as provided in this section even though searches and review do not generate any disclosable records.

(g) *Aggregating requests.* A requester, or a group of requesters acting in concert, shall not file multiple requests, seeking portions of a record or similar or related records, in order to avoid payment of fees. Ex-Im Bank shall aggregate any such requests and charge as if the requests were a single request.

(h) *Special services charges.* Complying with requests for special services such as those listed in this paragraph is entirely at the discretion of Ex-Im Bank. Ex-Im Bank shall recover the full costs of providing such services to the extent that it elects to provide them.

(1) *Certifications.* Ex-Im Bank shall charge \$25.00 to certify the authenticity of any Ex-Im Bank record or any copy of such record.

(2) *Special shipping.* Ex-Im Bank may ship by special means (e.g., express mail) if the requester so desires, provided that the requester has paid or

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has expressly undertaken to pay all costs of such special services. Ex-Im Bank shall not charge for ordinary packaging and mailing.

(i) *Minimum fee.* Ex-Im Bank shall waive a final fee of \$5.00 or less.

(j) *Advance payment.* Whenever Ex-Im Bank estimates that the fees are likely to exceed \$250.00, Ex-Im Bank shall notify the requester of the likely cost and shall require an advance payment of an amount up to the full estimated charges.

(k) *Failure to pay fee.* Ex-Im Bank shall not process a request by a requester who has failed to pay a fee for a previous request unless and until such a requester had paid the full amount owed and also has paid, in advance, the total estimated charges for the new request. The administrative time limits for the new request—set forth in §404.5—shall begin to run only after Ex-Im Bank has received the payments described in this section.

#### § 404.10 Fee waivers or reductions.

(a) *General.* Upon request, Ex-Im Bank shall consider a discretionary fee waiver or reduction of the fees chargeable under §404.9.

(b) *Form of request for fee waiver.* Ex-Im Bank shall deny a request for a waiver or reduction of fees that does not clearly address each of the following:

(1) The proposed use of the records and whether the requester will derive income or other benefit from such use;

(2) An explanation of the reasons why the public will benefit from such use; and

(3) If specialized use of the records is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(d) *Burden of proof.* In all cases, the requester has the burden of presenting sufficient evidence or information to justify the fee waiver or reduction. The requester may use the procedures set forth in §404.11 to appeal a denial of a fee waiver request.

(e) *Employee requests.* Fees of less than \$50.00 shall be waived in connection with any request by an employee, former employee, or applicant for employment, related to a grievance or

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complaint of discrimination against Ex-Im Bank.

#### § 404.11 Administrative appeal.

(a) *General.* Whenever a request for records, a fee waiver or expedited processing has been denied, the requester may appeal the denial within thirty days of the date of Ex-Im Bank's issuance of notice of such action. Any denial under this subpart must be appealed according to this section before a requester is eligible to seek judicial review.

(b) *Form.* Appeals must be made in writing and must be signed by the appellant. Appeals should be addressed to the Assistant General Counsel for Administration at the address at §404.1(f). Both the envelope and the appeal letter should be clearly marked in capital letters: "FREEDOM OF INFORMATION ACT APPEAL." Failure to properly mark or address the appeal may slow its processing. The letter should include:

(1) A copy of the denied request or a description of the records requested;

(2) The name and title of the Ex-Im Bank employee who denied the request;

(3) The date on which the request was denied;

(4) The Ex-Im Bank identification number assigned to the request; and

(5) The return address and telephone number of the appellant.

(c) *Processing schedule.* Appeals shall not be deemed to have been received until the Assistant General Counsel for Administration receives the appeal. Ex-Im Bank shall notify the requester of the date on which an appeal was officially received. The disposition of an appeal shall be made in writing within twenty working days after the date of receipt of an appeal. The Assistant General Counsel for Administration may extend the time for response an additional ten working days if unusual circumstances exist, provided that the Assistant General Counsel for Administration notifies the requester in writing.

(d) *Ex-Im Bank decision.* A final determination which affirms an adverse initial determination shall set forth the reasons for affirming the denial and shall advise the requester of the right to seek judicial review. If the initial