

Costs**§ 2004.7 Definitions.**

For purposes of these regulations:

(a) "Commercial use request" means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's or other person's commercial, trade, or profit interests.

(b) "Direct costs" means those costs incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) documents to respond to a FOIA request. Direct costs include, for example, salaries of employees who perform the work and costs of conducting large-scale computer searches.

(c) "Duplicate" means to copy records to respond to a FOIA request. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

(d) "Educational institution" means 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, and an institution of vocational education, that operates a program or programs of scholarly research.

(e) "Non-commercial scientific institution" means an institution that is not operated on a commercial basis and that

operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(f) "Representative of the news media" means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

(g) "Review" means to examine a record to determine whether any portion of the record may be withheld and to process a record for disclosure, including by redacting it.

(h) "Search for" means look for and retrieve records covered by a FOIA request, including by looking page-by-page or line-by-line to identify responsive material within individual records.

§ 2004.8 Fees in general.

USTR shall charge fees that recoup the full allowable direct costs it incurs in responding to FOIA requests. USTR may assess charges for time spent searching for records even if USTR fails to locate the records or if the records are located and determined to be exempt from disclosure. In general, USTR shall apply the following fee schedule, subject to §§ 2004.9-.11:

(a) *Manual searches.* Time devoted to manual searches shall be charged on the basis of the salary of the employee(s) conducting the search (basic hourly rate(s) of pay for the employee(s), plus 16 percent).

(b) *Electronic searches.* Fees shall reflect the direct cost of conducting the search. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for and printing records responsive to the FOIA request and operator/programmer salary attributable to the search.

(c) *Record reviews.* Time devoted to reviewing records shall be charged on the same basis as under paragraph (a) of this section, but shall only be applicable to the initial review of records located in response to commercial use requests.

(d) *Duplication.* Fees for copying paper records or for printing electronic records shall be assessed at a rate of \$.15 per page. For other types of copies such as disks or audio visual tapes, USTR shall charge the direct cost of producing the document(s). If duplication charges are expected to exceed \$25, the FOIA Officer shall notify the requester, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. If a requester wishes to limit costs, the FOIA Officer shall provide the requester an opportunity to reformulate the request in order to reduce costs.

If the requester reformulates a request, it shall be considered a new request and the 20-day period described in § 2004.6(c)(1) shall be deemed to begin when the FOIA Officer receives the request.

(e) *Advance payments required.* The FOIA Officer may require a requester to make an advance deposit of up to the amount of the entire anticipated fee before the FOIA Officer begins to process the request if:

(1) the FOIA Officer estimates that the fee will exceed \$250; or

(2) the requester has previously failed to pay a fee in a timely fashion.

When the FOIA Officer requires a requester to make an advance payment, the 20-day period described in § 2004.6(c)(1) shall begin when the FOIA Officer receives the payment.

(f) *No assessment of fee.* USTR shall not charge a fee to any requester if:

(1) the cost of collecting the fee would be equal to or greater than the fee itself; or

(2) after December 31, 2008, USTR fails to comply with any time limit under the Freedom of Information Act for responding to a request for records where no unusual or exceptional circumstances apply.

§ 2004.9 Fees for categories of requesters.

USTR shall assess fees for certain categories of requesters as follows:

(a) *Commercial use requesters.* In responding to commercial use requests, USTR shall assess fees that recover the full direct costs of searching for, reviewing, and duplicating records.

(b) *Educational institutions.* USTR shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To qualify for inclusion in this fee category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scholarly research, not an individual goal.

(c) *Representatives of the news media.* USTR shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(d) *All other requesters.* USTR shall charge requesters who do not fall within paragraphs (a) through (c) of this section fees that recover the full direct cost of searching for and duplicating records, excluding charges for the first 100 pages of reproduction and the first two hours of search time.

§ 2004.10 Other charges.

USTR may apply other charges, including the following:

(a) *Special charges.* USTR shall recover the full cost of providing special services, such as sending records by express mail, to the extent that USTR elects to provide them.

(b) *Interest charges.* USTR may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the FOIA Officer sent the billing. Interest shall be charged at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(c) *Aggregating requests.* When the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer shall aggregate those requests and charge accordingly.

§ 2004.11 Payment and waiver.

(a) *Remittances.* Payment shall be made in the form of check or money order made payable to the Treasury of the United States. At the time the FOIA Officer notifies a requestor of the applicable fees, the Officer shall inform the requestor of where to send the payment.

(b) *Waiver.* USTR may waive all or part of any fee provided for in §§ 2004.8 through 2004.9 when the FOIA Officer deems that disclosure of the information is in the general public's 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. In determining whether a fee should be waived, the FOIA Officer may consider whether:

- (1) the subject matter specifically concerns identifiable operations or activities of the government;
- (2) the information is already in the public domain;
- (3) disclosure of the information would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population;
- (4) disclosure of the information would significantly enhance the public's understanding of the subject matter;
- (5) disclosure of the information would further a commercial interest of the requester; and
- (6) the public's interest is greater than any commercial interest of the requester.

Ambassador Susan C. Schwab
United States Trade Representative