

§ 1600.10 Fees.

(a) *In general.* The Foundation will charge you for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (i) of this section. The Foundation ordinarily will collect all applicable fees before sending copies of requested records to you. You must pay fees by check or money order made payable to the United States Treasury.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person seeking information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. If the Foundation determines that you will put the records to a commercial use, either because of the nature of your request itself or because the Foundation has reasonable cause to doubt your stated use, the Foundation will provide you a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses that the Foundation actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work and the cost of operating duplication machinery.

(3) *Duplication* means the process of making a copy of a record, or the information contained in it, available in response to a FOIA request. Copies can take the form of paper, microfilm, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. The Foundation will honor your specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution

of vocational education, which operates a program or programs of scholarly research.

(5) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (b)(1) 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. To be in this 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 not sought for a commercial use but are sought to further scientific research.

(6) *Representative of the news media, or news media requester,* means 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 where they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. For *freelance* journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but the Foundation shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure—for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review

time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *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.

(c) *Fees*. In responding to FOIA requests, the Foundation will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (i) of this section:

(1) *Search*. Search fees will be charged for all requests, except for those by educational institutions, noncommercial scientific institutions, or representatives of the news media (subject to the limitations of paragraph (d) of this section). Charges may be made for time spent searching even if no responsive record is located or if the record(s) are withheld as entirely exempt from disclosure.

(2) *Duplication*. Duplication fees will be charged for all requests, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record, the fee will be ten cents per page. For other forms of duplication (including copies produced by computer, such as tapes or printouts), the Foundation will charge the direct costs, including operator time, of producing the copy.

(3) *Review*. Review fees will be charged only for commercial use requests. Review fees will be charged only for the initial record review—in other words, the review done when the Foundation determines whether an exemption applies to a particular record or record portion at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable where it is made

necessary by such a change of circumstances.

(4) *Searches and reviews—amounts of fees*. (i) For each quarter hour spent in searching for and/or reviewing a requested record, the fees will be: \$4.00 for clerical personnel; \$7.00 for professional personnel; and \$10.25 for managerial personnel.

(ii) For computer searches of records, you will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(4) of this section) will be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs will include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for responsive records, as well as the costs of operator/programmer salary apportionable to the search.

(d) *Limitations on charging fees*. (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) Review fees will be charged only for commercial use requests.

(3) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for commercial use requests, the Foundation will provide the first 100 pages of duplication and the first two hours of search time to requesters without charge. These provisions work together, so that the Foundation will not begin to assess fees until after providing the free search and reproduction. For example, if a request involves three hours of search time and duplication of 105 pages of documents, the Foundation will charge only for the cost of one hour of search time and five pages of reproduction.

(5) Whenever a total fee calculated under paragraph (d) of this section is \$14.00 or less for any request, no fee will be charged.

(e) *Notice of anticipated fees in excess of \$25.00*. When the Foundation determines or estimates that the fees will be more than \$25.00, it will notify you of

the actual or estimated amount of the fees, unless you have indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the Foundation will advise you that the estimated fee may be only a portion of the total fee. In cases in which you have been notified that actual or estimated fees amount to more than \$25.00, the request will not be considered received and further work will not be done on it until you agree in writing to pay the anticipated total fee. A notice under this paragraph will offer you an opportunity to discuss the matter with Foundation personnel in order to reformulate the request to meet your needs at a lower cost.

(f) *Charging interest.* The Foundation may charge interest on any unpaid bill starting on the 31st day following the date of billing. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the Foundation.

(g) *Aggregating requests.* Where the Foundation reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, it may aggregate those requests and charge accordingly. The Foundation may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, they will be aggregated only if there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(h) *Advance payments.* (1) No advance payment (that is, payment before work is begun on a request) will ordinarily be required, except as described in paragraphs (h)(2) and (3) of this section. Payment owed for work already completed (that is, a prepayment before copies are sent to you) is not considered an advance payment.

(2) Where the Foundation determines or estimates that a total fee to be charged under this section will be more than \$250.00, it may require you to make an advance payment of an

amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives satisfactory assurance of full payment from you and you have a history of prompt payment.

(3) If you have previously failed to pay a properly charged FOIA fee within 30 days of the date of billing, the Foundation may require you to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before it begins to process a new request or continues to process a pending request from you.

(4) In cases in which the Foundation requires advance payment or payment due under paragraph (h)(2) or (3) of this section, the request shall not be considered received and further work will not be done on it until the required payment is received.

(i) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section where the Foundation determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested 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

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted for those records.

(3) If you request a waiver or reduction of fees, your request should address the factors listed in paragraph (i)(1) of this section.

Subpart B—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

§ 1600.21 General provisions.

(a) *Purpose and scope.* This subpart contains the rules that the Morris K. Udall Scholarship and Excellence in