

by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of freelance journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but ABMC may also look to the past publication record of a requester in making this determination.

§ 404.7 Fees to be charged—general.

ABMC shall charge fees that recoup the full allowable direct costs it incurs. Moreover, it shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see definition in § 404.6(b)), such as the NTIS, ABMC should inform requesters of the steps necessary to obtain records from those sources.

(a) *Manual searches for records.* ABMC will charge at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the search.

(b) *Computer searches for records.* ABMC will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(c) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time ABMC analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full

under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

(d) *Duplication of records.* Records will be duplicated at a rate of \$.15 per page. For copies prepared by computer, such as tapes or printouts, ABMC shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, ABMC will charge the actual direct costs of producing the document(s). If ABMC estimates that duplication charges are likely to exceed \$25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(e) *Other charges.* When it elects to charge them, ABMC will recover the full costs of providing services such as:

- (1) Certifying that records are true copies;
- (2) Sending records by special methods such as express mail.
- (3) Eight by ten inch black and white photographs—\$3.75
- (4) Eight by ten inch color photographs—\$5.00
- (5) \$1.50 per publication
- (6) Video Purchase: The Price of Freedom—\$13.00

(f) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed to the FOIA Officer, American Battle Monuments Commission, Courthouse Plaza II, Suite 500, 2300 Clarendon Blvd., Arlington, Virginia 22201

(g) *A receipt for fees paid will be given upon request.* Refund of fees paid for services actually rendered will not be made.

(h) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use,

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ABMC will provide the first 100 pages of duplication and the first 2 hours of search time without charge. Moreover, ABMC will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) The elements to be considered in determining the cost of collecting a fee are the administrative costs of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account.

(2) For purposes of these restrictions on assessment of fees, the word *pages* refers to paper copies of 8½×11 or 11×14. Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, does meet the terms of the restriction.

(3) Similarly, the term *search time* in this context has as its basis, manual search. To apply this term to searches made by computer, ABMC will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, *i.e.*, the operator, ABMC will begin assessing charges for computer search.

§ 404.8 Fees to be charged—categories of requesters.

There are four categories of FOIA requesters: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. The specific levels of fees for each of these categories:

(a) *Commercial use requesters.* When ABMC receives a request for documents for commercial use, it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free

pages of reproduction of documents. ABMC may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (*see* paragraph (b) of this section).

(b) *Educational and noncommercial scientific institution requesters.* ABMC shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(c) *Requesters who are representatives of the news media.* ABMC shall provide documents to requesters in this category when serving the news dissemination function 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 § 404.4(j), and his or her request must not be made for a commercial use. In reference to this class of requester, 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. Requesters must reasonably describe the records sought.

(d) *All other requesters.* ABMC shall charge requesters who do not fit into any of the categories above fees that 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 2 hours of search time shall be furnished without charge. Moreover, requests for records about the requesters filed in ABMC's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.