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(2) The Secretary shall promptly notify the requester of any suit filed against the Board to enjoin the disclosure of any documents requested by the requester.

§ 261.17 Fee schedules; waiver of fees.

(a) *Fee schedules.* The fees applicable to a request for records pursuant to §§ 261.11 and 261.12 are set forth in Appendix A to this section. These fees cover only the full allowable direct costs of search, duplication, and review. No fees will be charged where the average cost of collecting the fee (calculated at $5.00) exceeds the amount of the fee.

(b) *Payment procedures.* The Secretary may assume that a person requesting records pursuant to § 261.12 will pay the applicable fees, unless the request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (f) of this section.

(1) *Advance notification of fees.* If the estimated charges are likely to exceed $100, the Freedom of Information Office shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer with the Freedom of Information Office to reformulate the request to lower the costs. The time period for responding to requests under § 261.13(e), and the processing of the request will be suspended until the requester agrees to pay the applicable fees.

(2) *Advance payment.* The Secretary may require advance payment of any fee estimated to exceed $250. The Secretary may also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. The time period for responding to requests under § 261.13(e), and the processing of the request will be suspended until the Freedom of Information Office receives the required payment.

(3) *Late charges.* The Secretary may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest is at the rate prescribed in 31 U.S.C. 3717 and accrues from the date of the billing.

(c) *Categories of uses.* The fees assessed depend upon the intended use for the records requested. In determining which category is appropriate, the Secretary shall look to the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Secretary may seek additional clarification before categorizing the request.

(1) *Commercial use.* The fees for search, duplication, and review apply when records are requested for commercial use.

(2) *Educational, research, or media use.* The fees for duplication apply when records are not sought for commercial use, and the requester is a representative of the news media or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. The first 100 pages of duplication, however, will be provided free.

(3) *All other uses.* For all other requests, the fees for document search and duplication apply. The first two hours of search time and the first 100 pages of duplication, however, will be provided free.

(d) *Nonproductive search.* Fees for search and review may be charged even if no responsive documents are located or if the request is denied.

(e) *Aggregated requests.* A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the Secretary reasonably believes that a requester is separating a request into a series of requests for the purpose of evading the assessment of fees, the Secretary may aggregate any such requests and charge accordingly. It is considered reasonable for the Secretary to presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(f) *Waiver or reduction of fees.* A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents,

as set forth in §261.13(e), shall not begin until a waiver has been granted; or if the waiver is denied, until the requester has agreed to pay the applicable fees.

(1) *Standards for determining waiver or reduction.* The Secretary shall grant a waiver or reduction of fees where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. In making this determination, the following factors shall be considered:

(i) Whether the subject of the records concerns the operations or activities of the government;

(ii) Whether disclosure of the information is likely to contribute significantly to public understanding of government operations or activities;

(iii) Whether the requester has the intention and ability to disseminate the information to the public;

(iv) Whether the information is already in the public domain;

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

(vi) Whether the magnitude of 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.

(2) *Contents of request for waiver.* A request for a waiver or reduction of fees shall include:

(i) A clear statement of the requester's interest in the documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit for such use;

(iii) A statement of how the public will benefit from such use and from the Board's release of the documents;

(iv) A description of the method by which the information will be disseminated to the public; and

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

(3) *Burden of proof.* The burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(4) *Determination by Secretary.* The Secretary shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the Board in accordance with §261.13(i).

(g) *Employee requests.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived where the total charges (including charges for information provided under the Privacy Act of 1974 (5 U.S.C. 552a) are $50 or less; but the Secretary may waive fees in excess of that amount.

(h) *Special services.* The Secretary may agree to provide, and set fees to recover the costs of, special services not covered by the Freedom of Information Act, such as certifying records or information and sending records by special methods such as express mail or overnight delivery.

APPENDIX A TO §261.17—FREEDOM OF INFORMATION FEE SCHEDULE

Duplication:	
Photocopy, per standard page	$0.10
Paper copies of microfiche, per frame	.10
Duplicate microfiche, per microfiche	.35
Search and review:	
Clerical/Technical, hourly rate	20.00
Professional/Supervisory, hourly rate	38.00
Manager/Senior Professional, hourly rate	65.00
Computer search and production:	
Computer operator search, hourly rate	32.00
Tapes (cassette) per tape	6.00
Tapes (cartridge), per tape	9.00
Tapes (reel), per tape	18.00
Diskettes (3½″), per diskette	4.00
Diskettes (5¼″), per diskette	5.00
Computer Output (PC), per minute	.10
Computer Output (mainframe)	(1)

[1] Actual cost.

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