

§ 1631.15

shall charge the actual cost, including operator time, of producing the tape or printout. If the Board estimates that the allowable 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/her 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 objective of reformulating the request to meet his/her needs at a lower cost.

(4) For other methods of reproduction or duplication, the Board shall charge the actual direct costs of producing the document(s). If the Board estimates that the allowable 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/her 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 objective of reformulating the request to meet his/her needs at a lower cost.

(d) Interest may be charged to those requesters who fail to pay fees charged. The Board may begin assessing interest charges on the amount billed starting on the 31st calendar day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code, and it will accrue from the date of the billing.

(e) The Board shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. The Board may choose to contract with private sector services to locate, reproduce, and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, the Board will inform requesters of the steps necessary to obtain records from those sources.

[55 FR 41052, Oct. 9, 1990, as amended at 63 FR 41709, Aug. 5, 1998]

5 CFR Ch. VI (1-1-10 Edition)

§ 1631.15 Information to be disclosed.

(a) In general, all records of the Board are available to the public, as required by the Freedom of Information Act. However, the Board claims the right, where it is applicable, to withhold material under the provisions specified in the Freedom of Information Act as amended (5 U.S.C. 552(b)).

(b) *Records from non-U.S. Government source.* (1) Board personnel will generally consider two exemptions in the FOIA in deciding whether to withhold from disclosure material from a non-U.S. Government source.

Exemption 4 permits withholding of “trade secrets and commercial or financial information obtained from a person as privileged or confidential.” Exemption 6 permits withholding certain information, the disclosure of which “would constitute a clearly unwarranted invasion of personal privacy.”

(2)(i) *Exemption 4.* Commencing January 1, 1988, the submitter of confidential commercial information must, at the time the information is submitted to the Board or within 30 calendar days of such submission, designate any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. The submitter as part of its submission, must explain the rationale for the designation of the information as commercial and confidential.

(ii) Confidential commercial information means records provided to the Board by a submitter that arguably contains material exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(iii) After January 1, 1988, a submitter who does not designate portions of a submission as confidential commercial information waives that basis for nondisclosure unless the Board determines that it has substantial reason to believe that disclosure of the requested records would result in substantial harm to the competitive position of the submitter.

(3) When the Board determines that it has substantial reason to believe that disclosure of the requested records would result in substantial competitive

harm to the submitter, and has no designation from the submitter, it shall notify the submitter of the following:

(i) That a FOIA request has been received seeking the record,

(ii) That disclosure of the record may be required,

(iii) That disclosure of the record could result in competitive harm to the submitter,

(iv) That the submitter has a period of seven workdays from date of notice within which it or a designee may object to the disclosure its records, and

(v) That a detailed explanation should be submitted setting forth all grounds as to why the disclosure would result in substantial competitive harm, such as, the general custom or usage in the business of the information in the record, the number and situation of the persons who have access to the record, the type and degree of risk of financial injury that release would cause, and the length of time the record needs to be kept confidential.

(4) In exceptional circumstances, the Board may extend by seven workdays the time for a submitter's response for good cause.

(5) The Board shall give careful consideration to all specified grounds for nondisclosure prior to making an administrative determination on the issue of competitive harm.

(6) Should the Board determine to disclose the requested records, it shall provide written notice to the submitter, explaining briefly why the submitter's objections were not sustained and setting forth the date for disclosure, which date may be less than 10 calendar days after the date of the letter to the submitter.

(7) A submitter who provided records to the Board prior to January 1, 1988, and did not designate which records contain confidential commercial information, shall be notified as provided in §1631.15(b)(3). After making such notification, the Board will follow the procedures set forth in §1631.15(b)(4)-(6).

(8) The Board will, as a general rule, look favorably upon recommendations for withholding information about ideas, methods, and processes that are unique; about equipment, materials, or systems that are potentially patent-

able; or about a unique use of equipment which is specifically outlined.

(9) The Board will not withhold information that is known through custom or usage in the relevant trade, business, or profession, or information that is generally known to any reasonably educated person. Self-evident statements or reviews of the general state of the art will not ordinarily be withheld.

(10) The Board will withhold all cost data submitted, except the total estimated costs from each year of a contract. It will release these total estimated costs and ordinarily release explanatory material and headings associated with the cost data, withholding only the figures themselves. If a contractor believes that some of the explanatory material should be withheld, that material must be identified and a justification be presented as to why it should not be released.

(11) *Exemption 6.* This exemption is not a blanket exemption for all personal information submitted by a non-U.S. Government source. The Board will balance the need to keep a person's private affairs from unnecessary public scrutiny with the public's right to information on Board records. As a general practice, the Board will release information about any person named in a contract itself or about any person who signed a contract as well as information given in a proposal about any officer of a corporation submitting that proposal. Depending upon the circumstances, the Board may release most information in resumes concerning employees, including education and experience. Efforts will be made to identify information that should be deleted and offerors are urged to point out such material for guidance. Any information in the proposal, such as the names of staff persons, which might, if released, constitute an unwarranted invasion of personal privacy if released should be identified and a justification for non-release provided in order to receive proper consideration.

#### § 1631.16 Exemptions.

The Freedom of Information Act exempts from all of its publication and disclosure requirements nine categories of records which are described