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of that determination under 5 U.S.C. 552(a)(4). Even though no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the Chairman of the Authority, the General Counsel or the Chairman of the Panel, as appropriate, may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of a denial under this appeal procedure by written notification to the person making the request. In such event the time limit for making the determination shall commence with the issuance of such notification.

§ 2411.11 Modification of time limits.

(a) In unusual circumstances as specified in this section, the time limits prescribed with respect to initial determinations or determinations on appeal may be extended by written notice from the agency component handling the request (either initial or on appeal) to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. As appropriate, the notice shall provide the requester with an opportunity to limit the scope of the request so that it may be processed within the time limit or an opportunity to arrange with the agency component an alternative time frame for processing the request or a modified request. To aid the requester, the FOIA Public Liaison shall assist in the resolution of any disputes between the requester and the processing agency component. No such notice shall specify a date that would result in a total extension of more than ten (10) working days.

(b) As used in this section, “unusual or exceptional circumstances” means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(c) Expedited processing of a request for records, or an appeal of a denial of a request for expedited processing, shall be provided when the requester demonstrates a compelling need for the information and in other cases as determined by the officer processing the request. A requester seeking expedited processing can demonstrate a compelling need by submitting a statement certified by the requester to be true and correct to the best of such person’s knowledge and belief and that satisfies the statutory and regulatory definitions of compelling need. Requesters shall be notified within ten (10) calendar days after receipt of such a request whether expedited processing, or an appeal of a denial of a request for expedited processing, was granted. As used in this section, “compelling need” means:

(1) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

§ 2411.12 Effect of failure to meet time limits.

Failure by the Authority, the General Counsel, the Panel, or the IG either to deny or grant any request under this part within the time limits prescribed by the Freedom of Information Act, as amended, 5 U.S.C. 552, and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making this request.

§ 2411.13 Fees.

(a) *Definitions.* For the purpose of this section:

(1) The term *direct costs* means those expenditures which the Authority, the

General Counsel, the Panel, or the IG actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of the rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents as well as all reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Searches may be done manually or by computer using existing programming. The Authority, the General Counsel, the Panel or the IG shall ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, if duplicating an entire document would be quicker and less expensive, a line-by-line search should not be done.

(3) The term *duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) The term *review* refers to the process of examining documents located in response to a commercial use request (see paragraph (a)(5) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term “*commercial use*” request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the re-

quester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Authority, the General Counsel, the Panel, or the IG will look first to the use to which a requester will put the document requested. Where the Authority, the General Counsel, the Panel, or the IG has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Authority, the General Counsel, the Panel, or the IG may seek additional clarification before assigning the request to a specific category.

(6) The term *educational institution* refers to 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, which operates a program or programs of scholarly research.

(7) The term *non-commercial scientific institution* refers to an institution that is not operated on a commercial basis as that term is referenced in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) The term *representative of the news media* refers to 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. 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 if such entities qualify as disseminators of ‘news’) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not intended to be all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of

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newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(b) *Exceptions to fee charges.* (1) With the exception of requesters seeking documents for a commercial use, the Authority, the General Counsel, the Panel or the IG will provide the first 100 pages of duplication and the first two hours of search time without charge. The word “pages” in this paragraph refers to paper copies of standard size, usually 8½ by 11, or their equivalent in microfiche or computer disks. The term “search time” in this paragraph is based on a manual search for records. In applying this term to searches made by computer, when the cost of the search as set forth in paragraph (d)(2) of this section equals the equivalent dollar amount of two hours of the salary of the person performing the search, the Authority, the General Counsel, the Panel or the IG will begin assessing charges for computer search.

(2) The Authority, the General Counsel, the Panel or the IG will not charge fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself.

(3) As provided in § 2411.8(c)(5), the Authority, the General Counsel, the Panel or the IG will not charge search fees (or duplication fees if the requester is an educational or non-commercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media, as described in this section), when the time limits are not met.

(4)(i) The Authority, the General Counsel, the Panel or the IG will provide documents without charge or at reduced charges if disclosure of the information is in the public interest be-

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cause 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.

(ii) In determining whether disclosure is in the “public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government” under paragraph (b)(4)(i) of this section, the Authority, the General Counsel, the Panel, and the IG will consider the following factors:

(A) *The subject of the request.* Whether the subject of the requested records concerns “the operations or activities of the government.” The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated;

(B) *The informative value of the information to be disclosed.* Whether the disclosure is “likely to contribute” to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public’s understanding;

(C) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to “public understanding.” The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration; and

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(D) *The significance of the contribution to the public understanding.* Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. The public’s understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. The Authority, the General Counsel, the Panel and the IG shall not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is “important” enough to be made public.

(iii) In determining whether disclosure “is not primarily in the commercial interest of the requester” under paragraph (b)(4)(i) of this section, the Authority, the General Counsel, the Panel and the IG will consider the following factors:

(A) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure. Commercial interest of the requester (with reference to the definition of “commercial use” in paragraph (a)(5) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration; and

(B) *The primary interest in disclosure.* 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.” A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The Authority, the General Counsel, the Panel, and the IG ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester.

Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(iv) A request for a fee waiver based on the public interest under paragraph (b)(4)(i) of this section must address these factors as they apply to the request for records in order to be considered by the Authority, the General Counsel, the Panel, or the IG.

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

(c) *Level of fees to be charged.* The level of fees to be charged by the Authority, the General Counsel, the Panel, or the IG, in accordance with the schedule set forth in paragraph (d) of this section, depends on the category of the requester. The fee levels to be charged are as follows:

(1) A request for documents appearing to be for commercial use will be charged to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(2) A request for documents from an educational or non-commercial scientific institution will be charged 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 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.

(3) The Authority, the General Counsel, the Panel or the IG shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages.

(4) The Authority, the General Counsel, the Panel or the IG shall charge requesters who do not fit into any of the categories of this section fees which recover the full 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 two hours of search time shall be furnished without charge. Requests from record subjects for records about themselves filed in Authority, General Counsel, Panel, or IG systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974, which permits fees only for reproduction.

(d) The following fees shall be charged in accordance with paragraph (c) of this section:

(1) *Manual searches for records.* The salary rate (*i.e.*, basic pay plus 16 percent) of the employee(s) making the search. Search time under this paragraph and paragraph (d)(2) of this section may be charged for even if the Authority, the General Counsel, the Panel or the IG fails to locate records or if records located are determined to be exempt from disclosure.

(2) *Computer searches for records.* The actual direct cost of providing the service, including computer search time directly attributable to searching for records responsive to a FOIA request, runs, and operator salary apportionable to the search.

(3) *Review of records.* The salary rate (*i.e.*, basic pay plus 16 percent) of the employee(s) conducting the review. This charge applies only to requesters who are seeking documents for commercial use, and only to the review necessary at the initial administrative level to determine the applicability of any relevant FOIA exemptions, and not at the administrative appeal level of an exemption already applied.

(4) *Duplication of records.* Twenty-five cents per page for paper copy reproduction of documents, which the Authority, the General Counsel, the Panel and the IG determined is the reasonable direct cost of making such copies, taking into account the average salary of the operator and the cost of the reproduction machinery. For copies of records prepared by computer, such as tapes or printouts, the Authority, the General Counsel, the Panel or the IG shall charge the actual cost, including operator time, of production of the tape or printout.

(5) *Forwarding material to destination.* Postage, insurance and special fees will be charged on an actual cost basis.

(e) *Aggregating requests.* When the Authority, the General Counsel, the Panel or the IG reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Authority, the General Counsel, the Panel or the IG will aggregate any such requests and charge accordingly.

(f) *Charging interest.* Interest at the rate prescribed in 31 U.S.C. 3717 may be charged those requesters who fail to pay fees charged, beginning on the 30th day following the billing date. Receipt of a fee by the Authority, the General Counsel, the Panel or the IG, whether processed or not, will stay the accrual of interest.

(g) *Advanced payments.* The Authority, the General Counsel, the Panel or the IG will not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) The Authority, the General Counsel, the Panel or the IG estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then the Authority, the General Counsel, the Panel or the IG will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), in which case the Authority, the General Counsel, the Panel or the IG requires the requester to pay the full amount owed plus any applicable interest as provided in this section or demonstrate that the requester has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. When the Authority, the General Counsel, the Panel or the IG acts under paragraph (g)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (*i.e.*, 20

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working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extension of these time limits) will begin only after the Authority, the General Counsel, the Panel or the IG has received fee payments described in this section.

(h) When a person other than a party to a proceeding before the agency makes a request for a copy of a transcript, diskette, or other recordation of the proceeding, the Authority, the General Counsel, the Panel or the IG, as appropriate, will handle the request under this part.

(i) Payment of fees shall be made by check or money order payable to the U.S. Treasury.

§ 2411.14 Record retention and preservation.

The Authority, the General Counsel, the Panel, and the IG shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until such time as disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 2411.15 Annual report.

On or before February 1 annually, the Chief FOIA Officer of the Authority shall submit a report of the activities of the Authority, the General Counsel, the Panel, and the IG with regard to public information requests during the preceding fiscal year to the Attorney General of the United States. The report shall include those matters required by 5 U.S.C. 552(e), and shall be made available electronically.

PART 2412—PRIVACY

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AUTHORITY: 5 U.S.C. 552a.

SOURCE: 45 FR 3491, Jan. 17, 1980, unless otherwise noted.

§ 2412.1 Purpose and scope.

This part contains the regulations of the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel implementing the Privacy Act of 1974, as amended, 5 U.S.C. 552a. The regulations apply to all records maintained by the Authority, the General Counsel and the Panel that are contained in a system of records, as defined herein, and that contain information about an individual. The regulations in this part set forth procedures that: (a) Authorize an individual's access to records maintained about the individual; (b) limit the access of other persons to those records; and (c) permit an individual to request the amendment or correction of records about the individual.

§ 2412.2 Definitions.

For the purposes of this part—

(a) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) *Maintain* includes maintain, collect, use or disseminate.

(c) *Record* means any item, collection or grouping of information about an individual that is maintained by the Authority, the General Counsel and the Panel including, but not limited to, the individual's education, financial transactions, medical history and criminal or employment history and that contains the individual's name, or the identifying number, symbol or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.