§ 706.21 Requester categories.

Requester category means one of five categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication. This is separate from a fee waiver, which waives any fees charged. Fee waivers are covered in §706.24.

(a) A Commercial Use request is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation.

(b) An Educational Use request is one made on behalf of an educational institution, defined as any school that operates a program of scholarly research. A requester in this category 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 rather are sought to further scholarly research. Records requested for the intention of fulfilling credit requirements are not considered to be sought for an educational institution’s use.

(c) A Noncommercial Scientific Institution Use request is a request made on behalf of a noncommercial scientific institution, defined as an institution that is not operated on a “commercial” basis, as defined in paragraph (a) 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. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(d) A News Media Request is a request made by a representative of the news media in that capacity. A representative of the news media is defined as any person or entity that actively 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 that broadcast news to the public at large and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. “Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as working for that entity. A publishing contract would provide the clearest evidence that publication is expected; however, OPIC shall also consider a requester’s past publication record in making this determination. OPIC’s decision to grant a requester media status will be made on a case-by-case basis upon the requester’s intended use.

(e) All Other Requesters is any request made for a use not covered by paragraphs (a) through (d) of this section.

§ 706.22 Fees charged.

(a) In responding to FOIA requests, OPIC will charge the following fees unless a waiver or reduction of fees has been granted under §706.24.

(1) Search. (i) Search fees shall be charged for all requests subject to the restrictions of paragraph (b) 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. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(ii) For each hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be as follows: Professional—$41.50; and administrative—$33.50.

(iii) Requesters will be charged the direct costs associated with conducting any search that requires the creation of a new program to locate the requested records.

(iv) For requests that require the retrieval of records stored at a Federal records center operated by the National Archives and Records Administration (NARA), additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.
(2) **Duplication.** Duplication fees will be charged to all requesters, subject to the restrictions of paragraph (b) of this section. OPIC will honor a requester’s preference for receiving a record in a particular form or format where it is readily reproducible in the form or format requested. Where photocopies are supplied, OPIC will provide one copy per request at a cost of $0.15 per page. For copies of records produced on tapes, disks, or other electronic media, OPIC will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester’s preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication OPIC will charge the direct costs.

(3) **Review.** Review fees will be charged to requesters who make commercial-use requests. Review fees will be assessed in connection with the initial review of the record, i.e., the review conducted by OPIC to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if the appellate authority determines that a particular exemption no longer applies, any costs associated with re-review of the records in order to consider the use of other exemptions may be assessed as review fees. OPIC will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(3) When the total fee calculated under this section is $25.00 or less for any request, no fee will be charged.

(c) **Notice of anticipated fees in excess of authorization.** When OPIC determines or estimates that the fees to be assessed in accordance with this section will exceed the amount authorized, OPIC will notify the requester of the actual or estimated amount of the fees, including a breakdown of fees for search, review, and duplication. Processing will be halted until the requester commits in writing to pay the actual or estimated total fee. This time will not count against OPIC’s twenty day processing time or any extension of that time. Such a commitment must be made by the requester in writing, must indicate a given dollar amount, and must be received by OPIC within thirty calendar days from the date of notification of the fee estimate. If a commitment is not received within this period, the request shall be closed. A FOIA Officer or FOIA Public Liaison is available to assist any requester in reformulating a request in an effort to reduce fees.

(d) **Charges for other services.** Although not required to provide special services, if OPIC chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(e) **Charging interest.** OPIC may charge interest on any unpaid bill starting on the thirty-first day following the billing date. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by OPIC. OPIC will follow the provisions of the Debt Collection Act of 1982 (Public Law 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the
use of consumer reporting agencies, collection agencies, and offset.

(f) Aggregating requests. If OPIC reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, OPIC may aggregate those requests and charge accordingly. OPIC will not aggregate multiple requests that involve unrelated matters.

(g) Other statutes specifically providing for fees. The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, OPIC will inform the requester of the contact information for that source.

(h) Remittances. All payments under this part must be in the form of a check or a bank draft denominated in U.S. currency. Checks should be made payable to the order of United States Treasury and mailed to the OPIC FOIA Office.

§ 706.23 Advance payments.

(a) For requests other than those described in paragraphs (i)(2) and (i)(3) of §706.22, OPIC will not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (i.e., payment before copies are sent to a requester) is not an advance payment.

(b) When OPIC determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. OPIC may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(c) Where a requester has previously failed to pay a properly charged FOIA fee to any agency within thirty calendar days of the billing date, OPIC may require that the requester pay the full amount due, plus any applicable interest on that prior request. OPIC may also require that the requester make an advance payment of the full amount of any anticipated fee before OPIC begins to process a new request or continues to process a pending request or any pending appeal. Where OPIC has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(d) In cases in which OPIC requires advance payment, OPIC’s response time will be tolled and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within thirty calendar days after the date of OPIC’s fee letter, OPIC may administratively close the request.

§ 706.24 Requirements for waiver or reduction of fees.

(a) Records responsive to a request shall be furnished without charge or at a reduced rate below that established under §706.22, where OPIC determines, based on all available information, that the requester has demonstrated that:

(1) 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

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

(b) In deciding whether 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, OPIC will consider the following factors:

(1) The subject of the request must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or attenuated.

(2) 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