

#### § 1208.4

#### 29 CFR Ch. X (7–1–21 Edition)

likely to become the subject of subsequent requests; and a general index of records available under this section.

##### **§ 1208.4 Material relating to representation function.**

(a) The documents constituting the record of a case, such as the notices of hearing, motions, rulings, findings upon investigation, determinations of craft or class, dismissals, withdrawals, and certifications, are matters of official record and shall be made available on the NMB's Web site.

(b) This part notwithstanding, the NMB will treat as confidential evidence submitted in connection with the showing of interest in a representation dispute, including authorization cards and signature samples, and other personally identifying information received during an investigation.

##### **§ 1208.5 Material relating to mediation function.**

All files, reports, letters, memoranda, and documents relating to the mediation function of the NMB, with the exception of procedural or administrative materials, such as applications, docket letters, or public meeting notices, in the custody of the NMB or its employees relating to or acquired in their mediatory capacity under the Railway Labor Act are hereby declared to be confidential. No such confidential documents or the material contained therein shall be disclosed to any unauthorized person, or be taken or withdrawn, copied or removed from the custody of the NMB or its employees by any person or by any agent of such person or their representative without the explicit consent of the NMB.

##### **§ 1208.6 Fees under the Freedom of Information Act.**

(a) *In general.* The NMB will charge for processing requests under the FOIA in accordance with the provisions of this section and with Office of Management and Budget Guidelines. For purposes of assessing fees, the FOIA establishes three categories of requesters: Commercial use requesters, non-commercial scientific or educational institutions or news media requesters, and all other requesters. Different fees are assessed depending on the category.

Requesters may seek a fee waiver. The NMB will consider requests for fee waivers in accordance with the requirements in paragraph (k) of this section. To resolve any fee issues that arise under this section, the NMB may contact a requester for additional information. The NMB ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the United States Treasury.

(b) *Definitions.* For purposes of this section:

*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. An agency's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information. The NMB will notify requesters of their placement in this category.

*Direct costs* are those expenses that an agency incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.*, the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

*Duplication* is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

*Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role