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§ 2105.29 What must a submitter include in a detailed Exemption 4 objection statement?

If a submitter has any objections to disclosure, it should provide the Agency a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is confidential.

§ 2105.30 How will the Agency consider the submitter's objections?

(a) The Agency must carefully consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(b) The Agency, not the submitter, is responsible for deciding whether the information will be released or withheld.

§ 2105.31 What if the Agency determines it will disclose information over the submitter's objections?

If the Agency decides to disclose information over the objection of a submitter, the Agency must notify the submitter by certified mail or other traceable mail, return receipt requested. The notification must be sent to the submitter's last known address and must include:

(a) The specific reasons why the Agency determined that the submitter's disclosure objections do not support withholding the information;

(b) Copies of the records or information the Agency intends to release; and

(c) Notice that the Agency intends to release the records or information no less than 10 workdays after receipt of the notice by the submitter.

§ 2105.32 Will a submitter be notified of a FOIA lawsuit?

If you file a lawsuit seeking to compel the disclosure of confidential information, the Agency must promptly notify the submitter.

§ 2105.33 Will you receive notification of activities involving the submitter?

If any of the following occur, the Agency will notify you:

(a) The Agency provides the submitter with notice and an opportunity to object to disclosure;

(b) The Agency notifies the submitter of its intent to disclose the requested information; or

(c) A submitter files a lawsuit to prevent the disclosure of the information.

§ 2105.34 Can an Agency release information protected by Exemption 4?

If an Agency determines that the requested information is protected from release by Exemption 4 of the FOIA, the Agency has no discretion to release the information. Release of information protected from release by Exemption 4 is prohibited by the Trade Secrets Act, a criminal provision found at 18 U.S.C. 1905.

Subpart G—Fees

§ 2105.35 What general principles govern fees?

(a) The Agency will charge for processing requests under the FOIA in accordance with this subpart and with the OMB Fee Guidelines.

(b) The Agency may contact you for additional information to resolve fee issues.

(c) The Agency ordinarily will collect all applicable fees before sending copies of records to you.

(d) You may usually pay fees by check, certified check, or money order made payable to the "Department of Treasury."

(e) The Agency should ensure that it conducts searches, review, and duplication in the most efficient and the least expensive manner so as to minimize costs for both you and the Agency.

(f) If the Agency does not comply with any of the FOIA's statutory time limits:

(1) Except as provided in paragraph (f)(2) of this section, the Agency cannot assess any search fees (or, if you are in the fee category of a representative of the news media or an educational and noncommercial scientific institution, duplication fees).

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(2)(i) If the Agency has determined that unusual circumstances apply (as the term is defined in §2105.67) and the Agency provided you a timely written notice to extend the basic time limit in accordance with §2105.17, the non-compliance is excused for an additional 10 workdays.

(ii) If the Agency has determined that unusual circumstances exist and more than 5,000 pages are necessary to respond to the request, the noncompliance is excused if the Agency has provided you a timely written notice in accordance with §2105.17 and has discussed with you via written mail, email, or telephone (or made not less than 3 good-faith attempts to do so) how you could effectively limit the scope of the request.

(iii) If a court has determined that exceptional circumstances exist (as that term is defined in §2105.67), the noncompliance is excused for the length of time provided by the court order.

(g) If the fee for processing your request is less than \$50, you will not be charged unless multiple requests are aggregated under §2105.52 to an amount that is \$50 or more.

(h) If you fail to pay any FOIA-related fee within 30 calendar days of the date of billing, the processing of any new or ongoing requests and/or appeals from you shall ordinarily be suspended.

(i) If you would like to reformulate your request so it will meet your needs at a lower cost, you may wish to seek

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assistance from the Agency's designated FOIA contact or its FOIA Public Liaison (*see* §2105.63).

§ 2105.36 What are the requester fee categories?

(a) There are three categories of requesters for the purposes of determining fees:

(1) Commercial-use;

(2) Educational and noncommercial scientific institutions and representatives of news media; and

(3) All others.

(b) If you do not submit sufficient information in your FOIA request for the Agency to determine your proper fee category, the Agency may ask you to provide additional information (*see* §2105.49). If you request placement in a particular fee category but the Agency places you in a different fee category, the Agency will provide you with an explanation of why you were not placed in the fee category you requested (for example, if you were placed in the commercial use requester category rather than the category you requested, the Agency will describe how the records would further your commercial, trade, or profit interests).

(c) See §2105.67 for the definitions of each of these fee categories.

§ 2105.37 How does your requester category affect the fees you are charged?

You will be charged as shown in the following table:

TABLE 1 TO §2105.37

Requester category	Search fees	Review fees	Duplication fees
Commercial use requester	Yes	Yes	Yes.
Educational and noncommercial scientific institutions and representative of news media requester.	No	No	Yes (first 100 pages, or equivalent volume, free).
All other requesters	Yes (first two hours free)	No	Yes (first 100 pages, or equivalent volume, free).

§ 2105.38 How will fee amounts be determined?

(a) The Agency will charge the types of fees discussed in this subpart unless a waiver of fees is required under §2105.37 or has been granted under §2105.43.

(b) Because the types of fees discussed in this subpart already account for the overhead costs associated with a given fee type, the Agency should not add any additional costs to those charges.

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§ 2105.39 What search fees will you have to pay?

(a) The Agency will charge search fees for all requests, subject to the restrictions of §§ 2105.35(f), 2105.37, and 2105.38(a). The Agency may charge you for time spent searching even if it does not locate any responsive records or if it determines that the records are entirely exempt from disclosure.

(b) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be the average hourly General Schedule (GS) base salary, plus the District of Columbia locality payment, plus 16 percent for benefits, of employees in the following three categories, as applicable:

(1) Clerical—Based on GS-6, Step 5, pay (all employees at GS-7 and below are classified as clerical for this purpose);

(2) Professional—Based on GS-11, Step 7, pay (all employees at GS-8 through GS-12 are classified as professional for this purpose); and

(3) Managerial—Based on GS-14, Step 2, pay (all employees at GS-13 and above are classified as managerial for this purpose).

(c) You can review the current fee schedule for the categories discussed in paragraph (b) of this section at <https://www.cfa.gov/foia>.

(d) Some requests may require retrieval of records stored at a Federal records center operated by the National Archives and Records Administration. For these requests, the Agency will charge additional costs in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration.

§ 2105.40 What duplication fees will you have to pay?

(a) The Agency will charge duplication fees, subject to the restrictions of §§ 2105.35(f), 2105.37, and 2105.38(a).

(b) If photocopies or scans are supplied, the Agency will provide one copy per request at the cost determined by the table in appendix A to this part.

(c) For other forms of duplication, the Agency will charge the actual costs of producing the copy, including the

time spent by personnel duplicating the requested records. For each quarter hour spent by personnel duplicating the requested records, the fees will be the same as those charged for a search under § 2105.39(b).

(d) If the Agency must scan paper records to accommodate your preference to receive records in an electronic format or print electronic records to accommodate your preference to receive records in a paper format, you will pay both the per page amount noted in appendix A to this part and the time spent by personnel scanning or printing the requested records. For each quarter hour spent by personnel scanning or printing the requested records, the fees will be the same as those charged for a search under § 2105.39(b).

§ 2105.41 What review fees will you have to pay?

(a) The Agency will charge review fees if you make a commercial-use request, subject to the restrictions of §§ 2105.35(f), 2105.37, and 2105.38(a).

(b) The Agency will assess review fees in connection with the initial review of the record (the review conducted by the Agency to determine whether an exemption applies to a particular record or portion of a record).

(c) The Agency will not charge for reviews at the administrative appeal stage of exemptions applied at the initial review stage. However, if the appellate authority determines that an exemption no longer applies, any costs associated with the Agency's re-review of the records to consider the use of other exemptions may be assessed as review fees.

(d) The Agency will charge review fees at the same rates as those charged for a search under § 2105.39(b).

(e) The Agency can charge review fees even if the record(s) reviewed ultimately is not disclosed.

§ 2105.42 What fees for other services will you have to pay?

(a) Although not required to provide special services, if the Agency chooses to do so as a matter of administrative discretion, it will charge you the direct costs of providing the service.

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(b) Examples of these services include providing multiple copies of the same record, converting records that are not already maintained in a requested format to the requested format, obtaining research data under § 2105.66, sending records by means other than first class mail, and conducting a search that requires the creation of a new computer search program to locate the requested records.

(c) The Agency will notify you of these fees before they accrue and will obtain your written assurance of payment or an advance payment before proceeding (*see* §§ 2105.47 and 2105.48).

§ 2105.43 When will the Agency waive fees?

(a) The Agency will release records responsive to a request without charge (in other words, it will give you a full fee waiver) or at a reduced charge (in other words, it will give you a partial fee waiver, as discussed further in paragraph (b) of this section) if the Agency determines, based on all available information, that you have demonstrated (by addressing and meeting each of the criteria listed in § 2105.46) that disclosing the information is:

(1) In the public interest because it is likely to contribute significantly to public understanding of Government operations or activities, and

(2) Not primarily in your commercial interest.

(b) A partial fee waiver may be appropriate if some but not all of the requested records are likely to contribute significantly to public understanding of the operations and activities of the Government.

(c) When deciding whether to waive or reduce fees, the Agency will rely on the fee waiver justification submitted in your request letter. If the letter does not include sufficient justification, the Agency will deny the fee waiver request. The Agency may, at its discretion, request additional information from you (*see* § 2105.49).

(d) The burden is on you to justify entitlement to a fee waiver. Requests for fee waivers are decided on a case-by-case basis under the criteria discussed in paragraph (a) of this section and § 2105.46. If you have received a fee waiver in the past, that does not mean

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you are automatically entitled to a fee waiver for every request submitted.

(e) The Agency must not make value judgments about whether the information at issue is “important” enough to be made public; it is not the Agency’s role to attempt to determine the level of public interest in requested information.

§ 2105.44 When may you ask the Agency for a fee waiver?

(a) You should request a fee waiver when your request is first submitted to the Agency (*see* § 2105.5).

(b) You may submit a fee waiver request at a later time if the Agency has not yet completed processing your request.

§ 2105.45 How will the Agency notify you if it denies your fee waiver request?

If the Agency denies your request for a fee waiver, it will notify you, in writing, of the following:

(a) The basis for the denial, including a full explanation of why the fee waiver request does not meet the Agency’s fee waiver criteria in § 2105.46;

(b) The name and title or position of each person responsible for the denial;

(c) The name and title of legal counsel consulted;

(d) Advisement of the right to seek dispute resolution services from the Agency’s FOIA Public Liaison and the Office of Government Information Services (OIGS);

(e) Your right to appeal the denial under subpart H of this part and a description of the requirements set forth therein, within 30 workdays from the date of the fee waiver denial letter; and

(f) Your anticipated fees, in accordance with § 2105.47.

§ 2105.46 How will the Agency evaluate your fee waiver request?

(a) In deciding whether your fee waiver request meets the requirements of § 2105.43(a)(1), the Agency will consider the criteria listed in paragraphs (a)(1) through (4) of this section.

(1) How the records concern the operations or activities of the Federal Government.

(2) How disclosure is likely to contribute to public understanding of

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those operations or activities, including:

(i) How the contents of the records are meaningfully informative;

(ii) The logical connection between the content of the records and the operations or activities;

(iii) How disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding;

(iv) Your identity, vocation, qualifications, and expertise regarding the requested information and information that explains how you plan to disclose the information in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding; and

(v) Your ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject (for example, how and to whom do you intend to disseminate the information). If we have categorized you as a representative of the news media under §2105.36, we will presume you have this ability and intent.

(3) How disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding, including:

(i) Whether the information being requested is new;

(ii) Whether the information would confirm or clarify data that has been released previously;

(iii) How disclosure will increase the level of public understanding of the operations or activities of the Agency that existed prior to disclosure; and

(iv) Whether the information is already publicly available. If the Government previously has published the information you are seeking or it is routinely available to the public in a library, reading room, through the internet, or as part of the administrative record for a particular issue, it is less likely that there will be a significant contribution from release.

(4) How the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure.

(b) In deciding whether the fee waiver meets the requirements in §2105.43(a)(2), the Agency will consider any commercial interest of yours that would be furthered by the requested disclosure.

(1) You are encouraged to provide explanatory information regarding this consideration.

(2) The Agency will not find that disclosing the requested information will be primarily in your commercial interest where the public interest is greater than any identified commercial interest in disclosure.

(3) If you do have a commercial interest that would be furthered by disclosure, explain how the public interest in disclosure would be greater than any commercial interest you or your organization may have in the documents.

(i) Your identity, vocation, and intended use of the requested records are all factors to be considered in determining whether disclosure would be primarily in your commercial interest.

(ii) If you are a representative of a news media organization seeking information as part of the news gathering process, we will presume that the public interest outweighs your commercial interest.

(iii) If you represent a business/corporation/association or you are an attorney representing such an organization, we will presume that your commercial interest outweighs the public interest unless you demonstrate otherwise.

§2105.47 When will you be notified of anticipated fees?

(a) The Agency will notify you under this section unless:

(1) The anticipated fee is less than \$50 (see §2105.35(g));

(2) You have been granted a full fee waiver; or

(3) You have previously agreed to pay all the fees associated with the request.

(b) If none of the exceptions in paragraph (a) of this section apply, the Agency will:

(1) Promptly notify you of the estimated costs for search, review, and/or duplication;

(2) Ask you to provide written assurance within 20 workdays that you will

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pay all fees or fees up to a designated amount;

(3) Notify you that it will not be able to comply with your FOIA request unless you provide the written assurance requested; and

(4) Give you an opportunity to reduce the fee by modifying the request.

(c) If the Agency does not receive your written response containing the additional information that resolves any fee issues, in accordance with paragraphs (b)(2) and/or (4) of this section, within 20 workdays after the Agency has requested it, the Agency will presume that you are no longer interested in the records and will close the file on the request.

(d) After the Agency begins processing a request, if it finds that the actual cost will exceed the amount you previously agreed to pay, the Agency will:

(1) Stop processing the request;

(2) Promptly notify you of the higher amount and ask you to provide written assurance of payment; and

(3) Notify you that it will not be able to fully comply with your FOIA request unless you provide the written assurance requested; and

(4) Give you an opportunity to reduce the fee by modifying the request.

(e) If you wish to modify your request in an effort to reduce fees, the Agency's FOIA Officer or Public Liaison can assist you.

§ 2105.48 When will the Agency require advance payment?

(a) The Agency may require advance payment before starting further work when it finds the estimated fee is over \$250.

(1) When the Agency determines or estimates that a total fee to be charged under this section will exceed \$250.00, it may require that you make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The Agency 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.

(2) If you have previously failed to pay a properly charged FOIA fee within 30 calendar days of the billing date, the

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Agency may require that you pay the full amount due, plus any applicable interest on that prior request. The Agency may require that you make an advance payment of the full amount of any anticipated fee before it begins to process a new request or continues to process a pending request or any pending appeal.

(b) If the Agency believes that you did not pay a previous FOIA fee within 30 calendar days of the date of billing, the Agency will require you to either:

(1) Demonstrate you paid prior fee within 30 calendar days of the date of billing; or

(2) Pay any unpaid amount of the previous fee, plus any applicable interest penalties (*see* § 2105.51), and pay in advance the estimated fee for the new request.

(c) When the Agency notifies you that an advance payment is due under paragraph (a) of this section, it will give you an opportunity to reduce the fee by modifying the request.

(d) Your payment of the funds you owe the Agency for work it has already completed before records are sent to you is not an advance payment under paragraph (a) of this section.

(e) If the Agency requires advance payment, it will start further work only after receiving the advance payment. It will also notify you that it will not be able to comply with your FOIA request unless you provide the advance payment. Unless you pay the advance payment within 20 workdays after the date of the Agency's fee letter, the Agency will presume that you are no longer interested and will close the file on the request.

§ 2105.49 What if the Agency needs clarification about fee issues?

If your FOIA request does not contain sufficient information for the Agency to determine your proper fee category or leaves another fee issue unclear, the Agency may ask you to provide additional clarification. If it does so, the Agency will notify you that it will not be able to comply with your FOIA request unless you provide the clarification requested.

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§ 2105.50 How will you be billed?

If you are required to pay a fee associated with a FOIA request, the Agency will send a bill for collection.

§ 2105.51 How will the Agency collect fees owed?

(a) The Agency may charge interest on any unpaid bill starting on the 31st day following the billing date.

(b) The Agency will assess interest charges at the rate provided in 31 U.S.C. 3717 and interest will accrue from the billing date until the Agency receives payment.

(c) The Agency will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset to collect overdue amounts and interest.

(d) This section does not apply if you are a state, local, or tribal government.

§ 2105.52 When will the Agency combine or aggregate requests?

(a) The Agency may aggregate requests and charge accordingly when it reasonably believes that you, or a group of requesters acting in concert with you, are attempting to avoid fees by dividing a single request into a series of requests on a single subject or related subjects.

(1) The Agency may presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(2) The Agency may aggregate requests separated by a longer period only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved.

(b) The Agency will not aggregate multiple requests involving unrelated matters.

§ 2105.53 What if other statutes require the Agency to charge fees?

(a) The fee schedule in appendix A to this part does not apply to fees charged under any statute that specifically requires the Agency to set and collect fees for particular types of records.

(b) If records otherwise responsive to a request are subject to a statutorily-

based fee schedule, the Agency will inform you whom to contact to obtain the records.

Subpart H—Administrative Appeals

§ 2105.54 When may you file an appeal?

(a) You may file an appeal when:

(1) The Agency withholds records, or parts of records;

(2) The Agency informs you that your request has not adequately described the records sought;

(3) The Agency informs you that it does not possess or cannot locate responsive records and you have reason to believe this is incorrect or that the search was inadequate;

(4) The Agency did not address all aspects of the request for records;

(5) You believe there is a procedural deficiency (for example, fees are improperly calculated or you have been placed in the wrong fee category);

(6) The Agency denied your request for a fee waiver;

(7) The Agency did not make a decision within the time limits in § 2105.15 or, if applicable, § 2105.16; or

(8) The Agency denied, or was late in responding to, a request for expedited processing filed under the procedures in § 2105.18.

(b) An appeal under paragraph (a)(8) of this section relates only to the request for expedited processing and does not constitute an appeal of the underlying request for records. Special procedures apply to requests for expedited processing of an appeal (*see* § 2105.60).

(c) Before filing an appeal, you may wish to communicate with the contact person listed in the FOIA response, the Agency's FOIA Officer, and/or the FOIA Public Liaison to see if the issue can be resolved informally. However, appeals must be received by the FOIA Appeals Officer within the time limits in § 2105.55 or they will not be processed.

§ 2105.55 How long do you have to file an appeal?

(a) Appeals covered by § 2105.54(a)(1) through (5) must be received by the FOIA Appeals Officer no later than 90