

## Commission of Fine Arts

## § 2105.55

### § 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

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days from the date of the final response.

(b) Appeals covered by § 2105.54(a)(6) must be received by the FOIA Appeals Officer no later than 90 days from the date of the letter denying the fee waiver.

(c) Appeals covered by § 2105.54(a)(7) may be filed any time after the time limit for responding to the request has passed.

(d) Appeals covered by § 2105.54(a)(8) should be filed as soon as possible.

(e) Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

### **§ 2105.56 How do you file an appeal?**

(a) You must submit the appeal in writing by mail, fax or email to the FOIA Appeals Officer (using the address available at <https://www.cfa.gov/foia/>). Your failure to send an appeal directly to the FOIA Appeals Officer may delay processing.

(b) The appeal must include:

(1) Copies of all correspondence between you and the Agency concerning the FOIA request, including the request and the Agency's response (if there is one); and

(2) An explanation of why you believe the Agency's response was in error.

(c) The appeal should include your name, mailing address, daytime telephone number (or the name and telephone number of an appropriate contact), email address, and fax number (if available) in case the Agency needs additional information or clarification.

(d) An appeal concerning a denial of expedited processing or a fee waiver denial should also demonstrate fully how the criteria in § 2105.18 or §§ 2105.43 and 2105.46 are met.

(e) All communications concerning an appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL."

(f) The Agency will reject an appeal that does not attach all correspondence required by paragraph (b)(1) of this section, unless the FOIA Appeals Officer determines, in his or her sole discretion, that good cause exists to accept the defective appeal. The time limits for responding to an appeal will not

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begin to run until the correspondence is received.

### **§ 2105.57 Who makes decisions on appeals?**

(a) The FOIA Appeals Officer is the deciding official for FOIA appeals.

(b) When necessary, the appropriate deciding official for FOIA appeals will consult other appropriate offices, including legal counsel, for denials of records and fee waivers.

(c) The deciding official for FOIA appeals normally will not make a decision on an appeal if the request becomes a matter of FOIA litigation.

### **§ 2105.58 How are decisions on appeals issued?**

(a) A decision on an appeal must be made in writing.

(b) A decision that upholds the Agency's determination in whole or in part must contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision must provide you with notification of the statutory right to file a lawsuit and will inform you of the dispute resolution services offered by the Office of Government Information Services (OGIS) of the National Archives and Records Administration as a non-exclusive alternative to litigation. If the Agency's decision is remanded or modified on appeal, the Agency will notify you of that determination in writing. The Agency will then further process the request in accordance with that appeal determination and will respond directly to you.

(c) Dispute resolution is a voluntary process. If the Agency agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

### **§ 2105.59 When can you expect a decision on your appeal?**

(a) The basic time limit for responding to an appeal is 20 workdays after receipt of an appeal meeting the requirements of § 2105.56.

(b) If the Agency is unable to reach a decision on your appeal within the given time limit for response, the appropriate deciding official for FOIA appeals will notify you of your statutory

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right to seek review in a United States District Court.

### § 2105.60 Can you receive expedited processing of appeals?

(a) To receive expedited processing of an appeal, you must demonstrate to the Agency's satisfaction that the appeal meets one of the criteria under § 2105.18 and include a statement that the need for expedited processing is true and correct to the best of your knowledge and belief.

(b) The appropriate deciding official for FOIA appeals will advise you whether the Agency will grant expedited processing within 10 calendar days of receiving the appeal.

(c) If the appropriate deciding official for FOIA appeals decides to grant expedited processing, he or she will give the appeal priority over other pending appeals and process it as soon as practicable.

### § 2105.61 Must you submit an appeal before seeking judicial review?

Before seeking review by a court of the Agency's adverse determination, you generally must first submit a timely administrative appeal.

## Subpart I—General Information

### § 2105.62 Where are records made available?

Records that are required by the FOIA to be made proactively available for public inspection and copying are accessible on the Agency's website. They may also be available at the Agency's office location.

### § 2105.63 What are public liaisons?

(a) The Agency has a FOIA Officer or Public Liaison who can assist requesters who have concerns about the service they received when seeking records or who are seeking assistance under § 2105.3 or § 2105.35(i).

(b) FOIA Public Liaisons report to the Agency's Chief FOIA Officer and you can raise concerns to them about the service you have received.

(c) FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in resolving disputes.

(d) A list of the Agency's FOIA Public Liaisons is available at <https://www.cfa.gov/foia>.

### § 2105.64 When will the Agency make records available without a FOIA request?

(a) Each Agency must:

(1) Determine which of its records must be made publicly available under the FOIA (for example, certain frequently requested records);

(2) Identify additional records of interest to the public that are appropriate for public disclosure; and

(3) Post those records in FOIA libraries.

(b) Because of these proactive disclosures, you are encouraged to review the Agency's FOIA libraries before filing a FOIA request. The material you seek may be immediately available electronically at no cost.

### § 2105.65 How will FOIA materials be preserved?

(a) Each Agency must preserve all correspondence pertaining to the requests that it receives under subpart B of this part, as well as copies of all requested records, until disposition or destruction is authorized by the General Records Schedule 4.2 of the National Archives and Records Administration (NARA) or another NARA-approved records schedule.

(b) Materials that are identified as responsive to a FOIA request will not be disposed of or destroyed while the request or a related appeal or lawsuit is pending. This is true even if they would otherwise be authorized for disposition or destruction under the General Records Schedule 4.2 of NARA or another NARA-approved records schedule.

### § 2105.66 How will an Agency handle a request for federally-funded research data?

(a) If you request research data that were used by the Federal Government in developing certain kinds of agency actions, and the research data relate to published research findings produced under an award, in accordance with OMB Circular A-110: