

## Corporation for National and Community Service

## § 2507.16

(c) *When appeal is required.* A requester must generally submit a timely administrative appeal before they seek court review of the Agency's adverse determination.

(d) *Requirements for making an appeal.* A requester must:

- (1) Make the appeal in writing;
- (2) Transmit or postmark the appeal within 90 calendar days after the date of adverse determination;
- (3) Clearly identify the assigned request number and the Agency determination they are appealing;
- (4) Mark the subject line of the appeal email, or letter and envelope, with "FOIA Appeal."

(e) *Where to file an appeal.* A requester may file an appeal by sending an email to [foia@cns.gov](mailto:foia@cns.gov) to the attention of the FOIA Appeals Officer, or a letter to: FOIA Appeals Officer, AmeriCorps, 250 E Street SW, Washington, DC 20525. There is no charge for filing an administrative appeal.

(f) *Adjudication of appeals.* (1) The FOIA Appeals Officer will conduct *de novo* review and make the final determination on appeals.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(g) *Decisions on appeals.* The FOIA Appeals Officer will provide the decision on any appeal in writing within 20 days (excepting Saturdays, Sundays, and legal public holidays) from the date the FOIA Appeals Officer received the appeal. The FOIA Appeals Officer's determination of an appeal constitutes the Agency's final action.

(1) If the FOIA Appeals Officer's decision upholds the Agency's determination, the decision will:

- (i) State the reasons for the affirmation, including any FOIA exemptions applied;
- (ii) Notify the requester of their statutory right to file a lawsuit; and
- (iii) Inform the requester of the mediation services offered by OGIS as a non-exclusive alternative to litigation.

(2) If the FOIA Appeals Officer's decision remands or modifies the Agency determination, either in whole or in part, they will notify the requester of that determination in writing. Thereafter, AmeriCorps will re-process the FOIA request in accordance with that

determination and, if applicable, promptly send the releasable records to the requester, unless a reasonable delay is justified.

[87 FR 55309, Sept. 9, 2022; 87 FR 57643, Sept. 21, 2022]

### § 2507.15 Mediation and dispute resolution services.

If a requester receives an adverse determination on a FOIA request, they have the right to seek dispute resolution services from the FOIA Public Liaison or mediation services from OGIS. Congress has charged OGIS with resolving FOIA disputes between Federal agencies and requesters. OGIS's mediation services are an alternative to litigation, but do not preclude it.

## Subpart G—Fees

### § 2507.16 Definitions for this subpart.

In addition to the definitions in § 2507.3, the following definitions apply to this subpart:

*Commercial use request* is a FOIA request for a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The Agency's decision to place a requester in the commercial use category will be made on a case-by-case basis, in consideration of the requester's intended use of the information.

*Direct costs* are the expenses AmeriCorps incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. Direct costs do not include overhead expenses such as the costs of space, or of heating or lighting a facility.

*Duplication fees* are the reasonable direct costs of making copies of records to respond to a FOIA request, including the cost of materials to produce paper copies and materials plus operator time to produce tapes, disks, or other media.

*Educational institution* is any school that operates a program of scholarly research. To qualify for this fee category, a requester must show that the request is authorized by, and made under the auspices of, an educational institution and that the records are not

## § 2507.17

sought for a commercial use, but rather are sought to further scholarly research. The request must serve the scholarly research goals of the institution rather than an individual research goal.

*Fee waiver* is a waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied, including that the information is in the public interest and is not requested for a commercial interest.

*Noncommercial scientific institution* is an institution that is not operated on a “commercial” basis 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 made under the auspices of, a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

*Representative of the news media* is 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. In this clause, the term “news” means information that is about current events or that would be of current interest to the public. A freelance journalist will be regarded as a representative of the news media if they demonstrate a solid basis for expecting publication through a news media entity.

*Review fees* are the direct costs incurred during the initial examination of a document to determine if it must be disclosed under the FOIA. This includes doing all that is necessary to prepare a record for disclosure, such as redacting the record and marking the appropriate exemptions. Review time also includes time spent obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter. It does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review fees are properly charged even if a record ultimately is not disclosed.

## 45 CFR Ch. XXV (10–1–24 Edition)

*Search fees* are costs of all time spent looking for responsive material, including, if necessary, page-by-page or line-by-line identification of information within records.

### § 2507.17 Fees overview.

(a) AmeriCorps will charge fees for processing FOIA requests in accordance with the provisions of this subpart and with the OMB Guidelines, unless a waiver or reduction of fees has been granted under § 2507.24.

(b) AmeriCorps will search for, review, and duplicate records in the most efficient and the least expensive manner.

(c) AmeriCorps may properly charge 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.

(d) When a request is made for commercial purposes, review fees will be assessed for the Agency’s time spent on its initial analysis to determine whether an exemption applies to a record or portion of a record.

(e) No charge will be made at the administrative review stage for review of exemptions that were applied at the initial review stage. However, if one or more exemptions are deemed to no longer apply, the costs associated with the Agency’s re-review of the records to consider the use of other exemptions may be assessed as review fees.

(f) Requesters may seek a fee waiver. AmeriCorps will consider requests for a fee waiver in accordance with the requirements in § 2507.24.

(g) To resolve any fee issues that arise under this section, AmeriCorps may contact a requester for additional information.

### § 2507.18 Requester categories and fees charged.

(a) The FOIA establishes the following categories of requesters and, depending on the category, these types of fees to be paid:

(1) Commercial use requesters: these pay search, review, and duplication fees.

(2) Non-commercial scientific institutions, educational institutions whose

## Corporation for National and Community Service

## § 2507.20

purpose is scholarly or scientific research, or news media requesters: these pay only duplication fees.

(3) All other requesters: these pay search and duplication fees.

(b) The fee schedule for search, review, and duplication is as follows:

TABLE 1 TO PARAGRAPH (b)

Requester	Search fee	Review fee	Duplication fee
Commercial use requester .....	\$70.00 per hour .....	\$70.00 per hour .....	For photocopies, 20¢ per page.
Educational & Non-Commercial Scientific institutions.	No fee .....	No fee .....	For photocopies, the first 100 pages are free; after that, 20¢ per page.
Representatives of the news media.	No fee .....	No fee .....	For photocopies, the first 100 pages are free; after that, 20¢ per page.
All others .....	The first two hours are free; after that, \$70.00 per hour.	No fee .....	For photocopies, the first 100 pages are free; after that, 20¢ per page.

### § 2507.19 Circumstances in which fees may not be charged.

(a) If AmeriCorps fails to comply with the time limits for responding to a request, and if no unusual or exceptional circumstances, as defined by the FOIA, apply to processing the request, it may not charge search fees (or, for requesters with preferred fee status, may not charge duplication fees).

(b) If AmeriCorps fails to comply with the extended time limit for unusual circumstances under § 2705.10(c), it may not charge search fees (or, for requesters with preferred fee status, may not charge duplication fees), except as follows:

(1) If unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, AmeriCorps may charge search fees (or, for requesters with preferred fee status, may charge duplication fees), so long as AmeriCorps has given the requester timely written notice and has discussed with the requester via email, telephone, or paper mail (or made at least three good-faith attempts to do so) how the requester could limit the scope of the request.

(2) If a court determines that exceptional circumstances exist, AmeriCorps' failure to comply with a time limit will be excused for the length of time provided by the court order.

(c) AmeriCorps will charge search or review fees for a quarter-hour period only when more than half of that period is required for search or review.

(d) AmeriCorps will not charge any fee if the total fee calculated according to § 2507.18 is \$25.00 or less for any request.

### § 2507.20 Notice of anticipated fees in excess of \$25.00.

(a) When AmeriCorps estimates that fees will exceed \$25.00 and the requester has not stated in writing their willingness to pay fees as high as anticipated, it will inform the requester of the estimated fees, including a breakdown for search, review, or duplication.

(1) AmeriCorps will inform the requester if only a portion of the fee can be readily estimated.

(2) For non-commercial-use requesters subject to search fees, the notice will tell them that they are entitled to two hours of search time at no charge. For all requesters who ask for non-electronic copies of the records, AmeriCorps will inform them that they are entitled to 100 pages of duplication at no charge. In both cases, AmeriCorps will tell the requester whether those entitlements are included in the estimate.

(b) When AmeriCorps notifies a requester that the actual or estimated total fee exceeds \$25.00, it will stop work on the request and the processing time will be tolled until the requester, in writing:

(1) Commits to paying the actual or estimated total fee; or

(2) Designates a specific dollar amount of fees they are willing to pay; or

## **§ 2507.21**

(3) Tells AmeriCorps that they seek only that which can be provided with two free hours of search time and 100 free pages of duplication, in the case that they are eligible for these entitlements.

(c) If the requester has specified a fee amount they are willing to pay, but AmeriCorps estimates that the total fee will be greater than that:

(1) It will notify the requester of the estimated excess and ask if they wish to either revise the amount of fees they are willing to pay or modify the request, and

(2) The Agency will stop work on the request and toll the processing time according to § 2507.10(f).

(d) The FOIA Officer or FOIA Public Liaison will be available to help any requester reformulate a request to meet the requester's needs at a lower cost.

### **§ 2507.21 Other charges.**

(a) *Charges for other services.* Although it is not required to provide special services, if AmeriCorps chooses as a matter of administrative discretion to do so, it will charge the direct costs of providing those services. 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.

(b) *Charging interest.* AmeriCorps may charge interest on any unpaid bill starting on the 31st 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 the agency. AmeriCorps 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.

### **§ 2507.22 Aggregating requests to ensure payment of fees.**

(a) When AmeriCorps reasonably believes that a requester or a group of requesters acting together is attempting to divide a single request into multiple smaller requests so as to avoid fees,

## **45 CFR Ch. XXV (10–1–24 Edition)**

AmeriCorps may aggregate those requests and charge accordingly.

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

(2) For requests separated by more than 30 days, AmeriCorps will aggregate them only where there is a reasonable basis for determining that aggregation is justified in view of all the circumstances involved.

(b) Multiple requests involving unrelated matters will not be aggregated.

### **§ 2507.23 Collection and payment of fees.**

(a) AmeriCorps must ordinarily receive all applicable fees before it sends copies of records to a requester. This is payment for work already completed, not an advance payment.

(b) AmeriCorps may require an advance payment before work begins or is continued on a request when one of the following two circumstances exists. In these cases, AmeriCorps will not consider the FOIA request to have been received and will not conduct further work on the request until it receives the required payment. If the requester does not pay the advance payment within 30 calendar days after the date of AmeriCorps' fee determination, the request will be closed.

(1) If AmeriCorps determines or estimates that a total fee will be greater than \$250.00, it may require that the requester pay in advance, up to the amount of the entire anticipated fee, before starting to process the request. AmeriCorps may choose to process the request before it collects fees if it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) When a requester has previously failed to pay a properly charged FOIA fee to the Agency within 30 calendar days of the billing date, AmeriCorps may require the requester to pay the full amount past due, plus any applicable interest on that prior request, and may also require the requester to pay in advance 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. If AmeriCorps has a reasonable basis to

believe that a requester has misrepresented their identity in order to avoid paying outstanding fees, it may require the requester to provide proof of identity.

(c) Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(d) AmeriCorps is not required to accept payments in installments.

#### **§ 2507.24 Fee waivers or fee reductions.**

(a) Requests for a waiver or reduction of fees should be made when the FOIA request is first submitted to AmeriCorps and should address in specific detail the factors below. However, a requester may ask for a fee waiver at a later time, if their FOIA request is still pending or is on administrative appeal.

(b) AmeriCorps will grant a waiver of fees, or a one-time reduction of the rate established under § 2507.18, when it determines that the requester has demonstrated that disclosure of the requested information is in the public interest and is not primarily in the commercial interest of the requester.

(1) To determine 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, AmeriCorps will consider the following factors:

(i) 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.

(ii) Disclosure of the requested records must be meaningfully informative about Federal Government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. Disclosure of information that is already in the public domain, in either the same or a substantially identical form, would not contribute to such understanding.

(iii) 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, as well as their ability and intention to effectively convey information to the public, will be considered. A representative of the news media making the request for professional purposes satisfies this consideration.

(iv) The public’s understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, AmeriCorps will not make value judgments about whether the information at issue is “important” enough to be made public.

(2) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, AmeriCorps will give requesters an opportunity to explain the purpose of the request. The Agency will consider the following factors:

(i) If there is an identified commercial interest, AmeriCorps will determine whether that is the primary interest furthered by the request.

(ii) The identified commercial interest is not the primary interest furthered by the request (such that a waiver or reduction of fees is justified) where the public interest in disclosure is greater than the identified commercial interest in disclosure. AmeriCorps ordinarily will presume that when a news media requester has satisfied the public interest standard, it is a public interest that is primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

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

(d) A requester may appeal the denial of a fee waiver.

### **Subpart H—Miscellaneous**

#### **§ 2507.25 Preservation of records.**

AmeriCorps will preserve all correspondence relating to FOIA requests it receives, and all records processed for those requests, until the destruction of the correspondence and records is authorized by Title 44 of the United States Code and the records disposition authority granted by NARA. The