

Commission of Fine Arts

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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.