

## § 2105.67

## 45 CFR Ch. XXI (10–1–24 Edition)

(1) If the Agency was the awarding agency, it will request the research data from the recipient;

(2) The recipient must provide the research data within a reasonable time; and

(3) The Agency will review the research data to see if it can be released under the FOIA.

(b) If the Agency obtains the research data solely in response to your FOIA request, the Agency may charge you a reasonable fee equaling the full incremental cost of obtaining the research data.

(1) This fee should reflect costs incurred by the Agency, the recipient, and applicable subrecipients.

(2) This fee is in addition to any fees the Agency may assess under the FOIA.

(c) The Agency will forward a copy of the request to the recipient, who is responsible for searching for and reviewing the requested information in accordance with these FOIA regulations. The recipient will forward a copy of any responsive records that are located, along with any recommendations concerning the releasability of the data, and the total cost incurred in searching for, reviewing, and providing the data.

(d) The Agency will review and consider the recommendations of the recipient regarding the releasability of the requested research data. However, the Agency, not the recipient, is responsible for deciding whether the research data will be released or withheld.

### § 2105.67 What definitions apply to this part?

For the purposes of this part, the following definitions apply:

*Agency* means the Commission of Fine Arts.

*Commercial interest* means a commercial, trade, or profit interest as these terms are commonly understood. Your status as profitmaking or non-profitmaking is not the deciding factor in determining whether you have a commercial interest.

*Commercial use* means a use that furthers your commercial, trade or profit interests or that of the person on whose behalf the request is made.

*Confidential information* means trade secrets or commercial or financial information (that is privileged or confidential and obtained by the Agency from a person) that may be protected from disclosure under Exemption 4 of the FOIA.

*Direct costs* means those resources that the Agency expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery, 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* means 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* means any school that operates a program of scholarly research. In order to fall within this category, you must show that the request is authorized by and made under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research.

*Exceptional circumstances* means a delay that does not result from a predictable workload of requests (unless the Agency demonstrates reasonable progress in reducing its backlog of pending requests).

*Exempt* means the record in question, or a portion thereof, is not subject to disclosure due to one or more of the FOIA's nine statutory exemptions, found at 5 U.S.C. 552(b)(1)–(9).

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*Expedited processing* means giving a FOIA request priority and processing it ahead of other requests pending in the Agency because you have shown a compelling need for the records.

*Fee category* means one of the three categories, discussed in §§ 2105.36 and

## Commission of Fine Arts

## §2105.67

2105.37, that agencies place you in for the purpose of determining whether you will be charged fees for search, review, and duplication.

*FOIA* means the Freedom of Information Act, 5 U.S.C. 552, as amended.

*FOIA libraries* means a physical or electronic compilation of records required to be made available to the public for inspection and copying under 5 U.S.C. 552(a)(2). It also includes a physical or electronic compilation of records that the Agency, at its discretion, makes available to the public for inspection and copying.

*Frequently requested records* means records that have been released to any person in response to a FOIA request and that have been requested, or that the Agency anticipates will be requested, at least two more times under the FOIA.

*Multitrack processing* means placing simple requests, requiring relatively minimal review, in one processing track and more voluminous and complex requests in one or more other tracks. Requests in each track are ordinarily processed on a first-in/first-out basis.

*Noncommercial scientific institution* means an institution that is not operated for commerce, trade or profit, 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. To be in this category, you must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

*OMB Fee Guidelines* means the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget on March 27, 1987.

*Published* means, for the purposes of §2105.66 only, when:

(1) Research findings are published in a peer-reviewed scientific or technical journal; or

(2) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

*Recipient* means, for the purposes of §2105.66 only, an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include Government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are Government-owned or controlled, or are designated as federally-funded research and development centers.

*Record* means an agency record that is either created or obtained by an agency and is under agency possession and control at the time of the FOIA request, or is maintained by an entity under Government contract for the purposes of records management.

*Representative of the news media* means 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. The term news as used in this definition means information that is about current events or that would be of current interest to the public. Examples of news media entities are newspapers, television, websites, or radio stations broadcasting to the public at large, and publishers of periodicals (but only if such entities qualify as disseminators of news) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all inclusive. As methods of news delivery evolve, alternative representatives of news media may come into being. A freelance journalist will qualify as a news-media entity if he or she can demonstrate a solid basis for expecting publication through that entity,

whether or not the journalist is actually employed by that entity (for example, a publication contract would present a solid basis for such an expectation).

*Research data means*, for the purposes of §2105.66 only, the recorded factual material commonly accepted in the historic and/or architectural communities as necessary to validate research findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. The term recorded as used in this definition excludes physical objects (*e.g.*, laboratory samples). Research data also do not include:

(1) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(2) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

*Review* means the examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential information submitter under subpart G

of this part, but it excludes time spent resolving general legal or policy issues regarding the application of FOIA exemptions.

*Search* means the process of looking for and retrieving records responsive to a request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve electronic records.

*Submitter* means any person or entity outside the Federal Government from whom the Agency obtains confidential information, directly or indirectly. The term includes, but is not limited to individuals, corporations, and state, local, tribal, and foreign governments.

*Unusual circumstances* means the need to search for and collect requested records from field facilities or other establishments that are separate from the office processing the request; the need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or the need for consultation, which shall be conducted with all practicable speed, with another agency, or among two or more components of the Agency, having a substantial interest in the determination of the request.

*Workday* means a regular Federal workday. It excludes Saturdays, Sundays, or Federal legal public holidays. Items arriving or delivered after 5 p.m. Eastern Time will be deemed received on the next workday.

*You* means a person requesting records, or filing an appeal, under the FOIA.

## APPENDIX A TO PART 2105—FEE SCHEDULE

Types of records	Fee
(1) Physical records:	
Pages no larger than 8.5 x 14 inches, when reproduced by standard office copying machines or scanned into an electronic format.	\$ .15 per page (\$ .30 for double-sided copying).
Color copies of pages no larger than 8.5 x 11 inches .....	\$ .90 per page.
Pages larger than 8.5 x 14 inches .....	Direct cost to CFA.
Color copies of pages no larger than 11 x 17 inches .....	\$1.50 per page.
Photographs and records requiring special handling (for example, because of age, size, or format).	Direct cost to CFA.
(2) Electronic records:	
Charges for services related to processing requests for electronic records .....	Direct cost to CFA.
(3) Certification:	
Each certificate of verification attached to authenticate copies of records .....	\$ .25.