

## § 261.15

## 12 CFR Ch. II (1–1–23 Edition)

of the adverse determination come to the attention of the Board.

### § 261.15 Exemptions from disclosure.

(a) *Types of records exempt from disclosure.* Pursuant to 5 U.S.C. 552(b), the following records of the Board are exempt from disclosure under this part:

(1) Any information that is specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to the executive order.

(2) Any information related solely to the internal personnel rules and practices of the Board.

(3) Any information specifically exempted from disclosure by statute to the extent required by 5 U.S.C. 552(b)(3).

(4) Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.

(5) Inter- or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the Board, provided that the deliberative process privilege shall not apply to records that were created 25 years or more before the date on which the records were requested.

(6) Any information contained in personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Any records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7).

(8) Any matter that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, including a State financial institution supervisory agency.

(b) *Release of nonpublic information.*

(1) The Board may make any nonpublic information furnished in connection with an application for Board approval of a transaction available to the public in response to a request in accordance

with § 261.11, and may, without prior notice and to the extent it deems necessary, comment on such information in any opinion or statement issued to the public in connection with a Board action to which such information pertains.

(2) The fact that the Board has determined to release particular nonpublic information does not waive the Board's ability to withhold similar nonpublic information in response to the same or a different request.

(3) Except where disclosure is expressly prohibited by statute, regulation, or order, the Board may release records that are exempt from mandatory disclosure whenever the Board or designated Board members, the Secretary, or the General Counsel determines that such disclosure would be in the public interest. The Board will provide predisclosure notice to submitters of confidential information in accordance with § 261.18(b)(1). Confidential supervisory information may only be released as set forth in subpart C.

(c) *Delayed release.* Except as required by law, publication in the FEDERAL REGISTER or availability to the public of certain information may be delayed if immediate disclosure would likely:

(1) Interfere with accomplishing the objectives of the Board in the discharge of its statutory functions;

(2) Interfere with the orderly conduct of the foreign affairs of the United States;

(3) Permit speculators or others to gain unfair profits or other unfair advantages by speculative trading in securities or otherwise;

(4) Result in unnecessary or unwarranted disturbances in the securities markets;

(5) Interfere with the orderly execution of the objectives or policies of other government agencies; or

(6) Impair the ability to negotiate any contract or otherwise harm the commercial or financial interest of the United States, the Board, any Reserve Bank, or any department or agency of the United States.

### § 261.16 Fee schedules; waiver of fees.

(a) *Fee schedules.* Consistent with the limitations set forth in 5 U.S.C. 552(a)(4)(A)(viii), the fees applicable to

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a request for records pursuant to § 261.11 are set forth in table 1 to this section. These fees cover only the full allowable direct costs of search, duplication, and review. No fees will be charged where the average cost of collecting the fee (calculated at \$5.00) exceeds the amount of the fee.

(b) *For purposes of computing fees.* (1) Search time includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Such activity is distinct from “review” of material to determine whether the material is exempt from disclosure.

(2) Direct costs mean those expenditures that the Board actually incurs in searching for, reviewing, and duplicating records in response to a request made under § 261.11, as shown in table 1 to this section.

(3) Duplication refers to the process of making a copy, in any format, of a document.

(4) Review refers to the process of examining documents that have been located as being potentially responsive to a request for records to determine whether any portion of a document is exempt from disclosure. It includes doing all that is necessary to prepare the documents for release, including the redaction of exempt information. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Payment procedures.* The Board may assume that a person requesting records pursuant to § 261.11 will pay the applicable fees, unless the request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (g) of this section.

(1) *Advance notification of fees.* If the estimated charges are likely to exceed the amount authorized by the requester, the Office of the Secretary shall notify the requester of the estimated amount. Upon receipt of such notice, the requester may confer with the Office of the Secretary to reformulate the request to lower the costs or may authorize a higher amount. The time period for responding to requests under § 261.12(e) and the processing of the request will be suspended until the

requester agrees in writing to pay the applicable fees.

(2) *Advance payment.* The Board may require advance payment of any fee estimated to exceed \$250. The Board may also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. The time period for responding to a request under § 261.12(e) and the processing of the request will be suspended until the Office of the Secretary receives the required payment.

(3) *Late charges.* The Board may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest is at the rate prescribed in 31 U.S.C. 3717 and accrues from the date of the billing.

(d) *Categories of uses.* The fees assessed depend upon the intended use for the records requested. In determining which category is appropriate, the Board will look to the intended use set forth in the request for records. Where a requester’s description of the use is insufficient to make a determination, the Board may seek additional clarification before categorizing the request.

(1) A *commercial use requester* is one who requests records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation.

(2) *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, including organizations that disseminate solely on the internet. The term “news” means information that is about current events or that would be of current interest to the public. A non-affiliated journalist who demonstrates a solid basis for expecting publication through a news media entity, such as a publishing contract or past publication record, will be considered as a representative of the news media.

(3) *Educational institution* is any school that operates a program of

scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. The Board may seek verification from the requester that the request is in furtherance of scholarly research.

(4) *Noncommercial scientific institution* is an institution that is not operated on a “commercial” basis, as defined in paragraph (d)(1) of this section, 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 is 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.

(5) *Fees table*. Please refer to table 1 to this section to determine what fees apply for different categories of users.

(e) *Nonproductive search*. Fees for search and review may be charged even if no responsive documents are located or if the request is denied.

(f) *Aggregated requests*. A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the Board reasonably believes that a requester is separating a single request into a series of requests for the purpose of evading the assessment of fees, the Board may aggregate any such requests and charge accordingly. It is considered reasonable for the Board to presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(g) *Waiver or reduction of fees*. A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in § 261.12(e), shall not begin until either a waiver has been granted or, if the waiver is denied, until the requester has agreed to pay the applicable fees.

(1) The Board will grant a waiver or reduction of fees where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. In making this determination, the Board will consider the following factors:

(i) Whether the subject of the records would shed light on identifiable operations or activities of the government with a connection that is direct and clear, not remote or attenuated; and

(ii) Whether disclosure of the information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public’s understanding.

(B) The 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 the requester’s ability and intention to effectively convey information to the public must be considered. The Board will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. A commercial interest includes any commercial, trade, profit, or litigation interest.

(2) A request for a waiver or reduction of fees must include:

(i) A clear statement of the requester’s interest in the documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit for such use;

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(iii) A statement of how the public will benefit from such use and from the Board's release of the documents;

(iv) A description of the method by which the information will be disseminated to the public; and

(v) If specialized use of the information is contemplated, a statement of the requester's qualifications that are relevant to that use.

(3) The requester has the burden to present evidence or information in support of a request for a waiver or reduction of fees.

(4) The Board will notify the requester of its determination on the request for a waiver or reduction of fees. The requester may appeal a denial in accordance with § 261.14(a).

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

(6) A request for a waiver or reduction of fees should be made when the request for records is first submitted to the Board and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester must pay any costs incurred up to the date the fee waiver request was received.

(h) *Restrictions on charging fees.* (1) If the Board fails to comply with the FOIA's time limits in which to respond to a request, the Board may not charge search fees, or, in the instances of requests from requesters described in paragraphs (d)(2) through (4) of this section, may not charge duplication fees, except as permitted under paragraphs (h)(2) through (4) of this section.

(2) If the Board determines that unusual circumstances exist, as described in 5 U.S.C. 552(a)(6)(B), and has provided timely written notice to the re-

quester and subsequently responds within the additional 10 working days as provided in § 261.12(e)(3), the Board may charge search fees, or, in the case of requesters described in paragraphs (d)(2) through (4) of this section, may charge duplication fees.

(3) If the Board determines that unusual circumstances exist, as described in 5 U.S.C. 552(a)(6)(B), and more than 5,000 pages are necessary to respond to the request, then the Board may charge search fees, or, in the case of requesters described in paragraphs (d)(2) through (4) of this section, may charge duplication fees, if the Board has:

(i) Provided timely written notice of unusual circumstances to the requester in accordance with the FOIA; and

(ii) Discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii).

(4) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(i) *Employee requests.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived where the total charges (including charges for information provided under the Privacy Act of 1974 (5 U.S.C. 552a)) are \$50 or less; but the Board may waive fees in excess of that amount.

(j) *Special services.* The Board may agree to provide, and set fees to recover the costs of, special services not covered by the FOIA, such as certifying records or information and sending records by special methods such as express mail or overnight delivery.

TABLE 1 TO § 261.16—FEES

Type of requester	Search costs per hour	Review costs per hour	Duplication costs
Commercial .....	Clerical/Technical staff—\$20	Clerical/Technical staff—\$20	Photocopy per standard page—.10.
	Professional/Supervisory staff—\$40.	Professional/Supervisory staff—\$40.	Other types of duplication—Direct Costs.

TABLE 1 TO § 261.16—FEES—Continued

Type of requester	Search costs per hour	Review costs per hour	Duplication costs
Educational; or Non-commercial scientific; or News media.	Manager/Senior professional staff—\$65. Computer search, including computer search time, output, operator's salary—Direct Costs. Costs waived .....	Manager/Senior professional staff—\$65.  Costs waived .....	First 100 pages <i>free</i> , then: Photocopy per standard page—.10. Other types of duplication—Direct Costs. First 100 pages <i>free</i> , then: Photocopy per standard page—.10. Other types of duplication—Direct Costs.
	All other requesters ..... First 2 hours <i>free</i> , then: Clerical/Technical staff—\$20.  Professional/Supervisory staff—\$40. Manager/Senior professional staff—\$65. Computer search, including computer search time, output, operator's salary—Direct Costs.	Costs waived .....	

**§ 261.17 Request for confidential treatment.**

(a) *Submission of request.* Any submitter of information to the Board who desires that such information be withheld pursuant to § 261.15(a)(4) or (6) shall file a request for confidential treatment with the Board (or in the case of documents filed with a Reserve Bank, with that Reserve Bank) at the time the information is submitted or within 10 working days thereafter.

(b) *Form of request.* Each request for confidential treatment shall state in reasonable detail the facts supporting the request, provide the legal justification, use good faith efforts to designate by appropriate markings any portion of the submission for which confidential treatment is requested, and include an affirmative statement that such information is not available publicly. A submitter's request for confidentiality in reliance upon § 261.15(a)(4) generally expires 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *Designation and separation of confidential material.* All information considered confidential by a submitter shall be clearly designated *CONFIDENTIAL* in the submission and separated from information for which confidential treatment is not requested. Failure to segregate confidential information

from other material may result in release of the unsegregated material to the public without notice to the submitter.

(d) *Exceptions.* This section does not apply to:

(1) Data items collected on forms that are approved pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and deemed confidential by the Board. Any such data items deemed confidential by the Board shall so indicate on the face of the form or in its instructions. The data may, however, be disclosed in aggregate form in such a manner that individual company data is not disclosed or derivable.

(2) Any comments submitted by a member of the public on applications and regulatory proposals being considered by the Board, unless the Board determines that confidential treatment is warranted.

(3) A determination by the Board to comment upon information submitted to the Board in any opinion or statement issued to the public as described in § 261.15(b)(1).

(e) *Special procedures.* The Board may establish special procedures for particular documents, filings, or types of information by express provisions in this part or by instructions on particular forms that are approved by the Board. These special procedures shall take precedence over this section.