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(g) of this section, OSTP shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, OSTP shall notify the requester(s).

§ 2402.8 Appeal of denials.

(a) *Right to administrative appeal.* A requester has the right to appeal to the FOIA Appeals Officer any adverse determination.

(b) *Notice of appeal.* (1) *Time for appeal.* To be considered timely, an appeal must be postmarked, or in the case of electronic submissions, transmitted no later than ninety (90) calendar days after the date of the initial adverse determination or after the time limit for response by OSTP has expired. Prior to submitting an appeal, the requester must pay in full any outstanding fees associated with the request.

(2) *Form of appeal.* An appeal shall be initiated by filing a written notice of appeal. The notice shall specify the tracking number assigned to the FOIA request by OSTP and be accompanied by copies of the original request and adverse determination. To expedite the appellate process and give the requester an opportunity to present his or her arguments, the notice should contain a brief statement of the reason(s) why the requester believes the adverse determination to be in error. Requesters may submit appeals by mail or electronically. If sent by regular mail, appeals shall be sent to: Chief FOIA Officer, Office of Science and Technology Policy, Eisenhower Executive Office Building, 1650 Pennsylvania Avenue NW, Washington, DC 20504. Appeals sent via electronic mail shall be submitted to ostpfoia@ostp.eop.gov. Updates to this contact information will be made on the OSTP website. To facilitate handling, the requester should mark both the appeal letter and envelope, if submitted by mail, or subject line of the transmission, if submitted electronically, with "Freedom of Information Act Appeal."

(c) *Decisions on appeals.* The FOIA Appeals Officer shall make a determination in writing on the appeal under 5 U.S.C. 552(a)(6)(A)(ii) within twenty (20)

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working days after the receipt of the appeal. If the denial is wholly or partially upheld, the Chief FOIA Officer shall:

(1) Notify the requester that judicial review is available pursuant to 5 U.S.C. 552(a)(4)(B)–(G); and

(2) Notify the requester that the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740, Email: ogis@nara.gov, Telephone: 202-741-5770, Facsimile: 202-741-5769, Toll-free: 1-877-684-6448.

(d) *Dispute resolution services.* Dispute resolution is a voluntary process. If OSTP agrees to participate in the dispute resolution services provided by the Office of Government Information Services, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(e) *When appeal is required.* Before seeking judicial review of OSTP's adverse determination in Federal district court, a requester generally must first submit a timely administrative appeal.

§ 2402.9 Fees.

(a) *Fees generally required.* OSTP shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. OSTP shall charge fees in accordance with paragraph (b) of this section unless fees are waived or reduced in accordance with § 2402.10.

(b) *Calculation of fees.* In general, fees for searching, reviewing, and duplication will be based on the direct costs of these services, including the average hourly salary (basic pay plus 16% for benefits) of the personnel conducting the search, reviewing the records for exemption, or duplicating the records. Charges for time less than a full hour will be in increments of quarter hours.

(1) *Search fees.* Search fees may be charged even if responsive documents are not located or are located but withheld on the basis of an exemption.

However, search fees shall not be charged or shall be limited as follows:

(i) *Educational, scientific, or news media requests.* No search fee shall be charged if the request is not sought for a commercial use and is made by an educational or non-commercial scientific institution, whose purpose is scholarly or scientific research, or by a representative of the news media.

(ii) *Other non-commercial requests.* No search fee shall be charged for the first two hours of searching if the request is not for a commercial use and is submitted by an entity that is not an educational or scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media.

(iii) *Requests for records about oneself.* No search fee shall be charged to search for records performed under the terms of the Privacy Act, 5 U.S.C. 552a(f)(5).

(2) *Review fees.* Review fees shall be assessed only with respect to those requesters who seek records for a commercial use. A review fee shall be charged for the initial examination of documents located in response to a request to determine whether the documents may be withheld from disclosure and for the redaction of document portions exempt from disclosure. Records or portions of records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such subsequent review are also assessable.

(3) *Duplication fees.* Records will be photocopied at a rate of ten cents (\$0.10) per page. For other methods of reproduction or duplication, OSTP will charge the actual direct costs of producing the document(s). Duplication fees shall not be charged for the first 100 pages of copies unless the copies are requested for a commercial use.

(c) *Aggregation of requests.* When OSTP determines that a requester, or a group of requesters acting in concert, is attempting to evade the assessment of fees by submitting multiple requests in place of a single, more complex request, OSTP may aggregate any such requests and assess fees accordingly.

(d) *Fees likely to exceed \$25.* If total fee charges are likely to exceed \$25, OSTP shall notify the requester of the estimated amount to be charged. The notification shall offer the requester an opportunity to confer with the FOIA Public Liaison to reformulate the request to meet the requester's needs at a lower cost. OSTP may administratively close a submitted FOIA request if the requester does not respond in writing within thirty (30) calendar days after the date on which OSTP notifies the requester of the fee estimate.

(e) *Advance payments.* Fees may be paid upon provision of the requested records, except that payment may be required prior to that time if the requester has previously failed to pay fees or if OSTP determines that the total fees will exceed \$250. When payment is required in advance of the processing of a request, the time limits prescribed in §2402.6 shall not be deemed to begin until OSTP has received payment of the assessed fees. If the requester has previously failed to pay fees or charges are likely to exceed \$250, OSTP shall notify the requester of the estimated cost and:

(1) Obtain satisfactory assurance from the requester, in writing, of full payment; or

(2) OSTP may require the requester to pay the full amount of any fees owed or make an advance payment of the full amount of OSTP's estimated charges.

(3) If OSTP does not receive an adequate response, assurance, or advance payment within thirty (30) calendar days of a fee determination or notification issued under the authority of this section, OSTP will administratively close the corresponding request.

(f) *Other charges.* OSTP will recover the full costs of providing services, such as those enumerated below, when it elects to provide them:

(1) Certifying that records are true copies; and

(2) Sending records by special methods, such as express mail.

(g) *Remittances.* Remittances shall be made either via personal check or bank draft drawn on a bank in the United States, or by postal money order. Remittances shall be made payable to the order of the Treasury of the United

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States and mailed to the Chief FOIA Officer, Office of Science and Technology Policy, Eisenhower Executive Office Building, 1650 Pennsylvania Avenue NW, Washington, DC 20504. Updates to this contact information will be made on the OSTP website.

(h) *Receipts and refunds.* OSTP will provide a receipt for fees paid upon request. OSTP will not refund fees paid for services actually rendered.

§ 2402.10 Waiver of fees.

(a) *In general.* OSTP shall waive part or all of the fees assessed under § 2402.9 if, based upon information provided by a requester or otherwise made known to OSTP, the disclosure of the requested information is in the public interest. Disclosure is in the public interest if it is likely to contribute significantly to public understanding of government operations or activities and is not primarily for commercial purposes. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis. To determine whether a fee waiver requirement is met, OSTP shall consider the following factors:

(1) Disclosure of the requested information would shed light on the operations or activities of the Federal Government. 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.

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

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

(ii) 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

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and intention to effectively convey information to the public must be considered. OSTP will presume that a representative of the news media will satisfy this consideration.

(3) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, OSTP will consider the following criteria:

(i) OSTP will identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters are encouraged to provide explanatory information regarding this consideration.

(ii) If there is an identified commercial interest, OSTP will determine whether that is the primary interest furthered by the request. OSTP will ordinarily presume that when a news media requester has satisfied the conditions in paragraphs (a)(1) and (2) of this section, the request is not primarily in the commercial interest of the requester. Data brokers or others who merely compile and market government information for direct economic return will not receive the benefit of this presumption.

(b) *Timing of fee waivers.* A request for a waiver or reduction of fees should be made when a request for records is first submitted to the agency and should address the criteria referenced in paragraph (a) of this section. 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 of the fee waiver request was received.

(c) *Clarification.* Where OSTP has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, OSTP may seek clarification from the requester before assigning the request to a specific category for fee assessment purposes.