

§ 5.53

shipping, we reserve the right to pass on the actual costs of special delivery to the requester. Requesters may provide their mailing account and billing information to the agency, so that they may pay directly for special delivery options.

(e) *Certification of records.* The FOIA does not require agencies to certify records as true copies. We may elect, as a matter of administrative discretion, to certify records upon request; however, such a request must be submitted in writing. Further, we will only certify as true copies records that have not left the agency's chain of custody. The charge for certification is \$25.00 per record certified.

(f) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an OpDiv or StaffDiv to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the OpDiv or StaffDiv must inform the requester of the contact information for that program.

§ 5.53 How does HHS calculate FOIA fees for different categories of requesters?

(a) If you are a commercial use requester, we charge you fees for searching, reviewing, and duplicating responsive records.

(b) If you are an educational or non-commercial scientific institution requester, or a member of the news media, you are entitled to search time, review time, and up to 100 pages of duplication (or the cost equivalent for other media) without charge. We charge duplication fees after the first 100 pages (or its cost equivalent).

(c) If you do not fall into either of the categories in paragraphs (a) and (b) of this section (*i.e.* you are an "other requester"), you are entitled to two hours of free search time, up to 100 pages of duplication (or the cost equivalent of other media) without charge, and you will not be charged for review time. We may charge for search time beyond the first two hours and for duplication beyond the first 100 pages (or its cost equivalent).

45 CFR Subtitle A (10–1–23 Edition)

(d)(1) If we fail to comply with the FOIA's time limits in which to respond to a request, we may not charge search fees, or, in the instances of the requester categories referenced in paragraph (b) of this section, may not charge duplication fees, except as described in (d)(2)-(4).

(2) If we have determined that unusual circumstances as defined by the FOIA apply and we provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 days.

(3) If we have determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, we may charge search fees, or, in the instances of requests from requesters described in paragraph (b) of this section, may charge duplication fees if the following steps are taken: we must have provided timely written notice to the requester in accordance with the FOIA and must have 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). If this exception is satisfied, we may charge all applicable fees incurred in the processing of the request.

(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.

§ 5.54 How may I request a fee waiver?

(a) Requesters may seek a waiver of fees by submitting a written application demonstrating how 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 and is not primarily in the commercial interest of the requester.

(b) We must furnish records responsive to a request without charge or at a reduced rate when we determine, based on all available information,