

(c) *Additional information.* If, after receiving a request, OMB determines that your request does not reasonably describe the records sought, OMB will inform you what additional information is needed and why the request is otherwise insufficient. If a request does not reasonably describe the records sought, OMB's response to the request may be delayed.

(d) *Grant of request for access.* Once OMB makes a determination to grant a request for access, OMB will provide you a written response, which may include the following:

(1) A statement as to whether OMB will grant access by providing a copy of the record through electronic means or the mail; and

(2) The amount of fees charged, if any (see §1302.7). (Fees are applicable only to requests for duplicates.)

(e) *Adverse determination of request for access.* OMB will notify you of an adverse determination denying a request for access in writing. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; a determination on any disputed fee matter; or a denial of a request for expedited treatment. OMB's notification letter to you will include:

(1) The decision of OMB whether to grant in whole, or deny any part of the request;

(2) The reasons for the determination for any portion of the request that is denied; and

(3) A description of the procedure by which the OMB decision to deny your request may be appealed, including the name and address of the official with whom you may lodge such an appeal.

#### § 1302.4 Requests for an accounting.

You may request an accounting of disclosures by the same rules governing requests for access, outlined in §1302.2.

#### § 1302.5 Requests for an amendment or correction.

(a) *Requirement for written requests.* If you want to amend a record that pertains to you in a system of records maintained by OMB, you must submit your request in writing following the procedures established in this section unless the system manager waives the requirements in this section. OMB is not required to amend records that are not subject to the Privacy Act of 1974. However, individuals who believe that such records are inaccurate may bring this to the attention of OMB.

(b) *Procedures.* (1) You should address your request to amend a record in a system of records to the system manager. You should include the name of the system and a brief description of the record proposed for amendment. If the request to amend the record is the result of you gaining access to the record in accordance with the provisions concerning access to records as set forth in §1302.2, you may attach a copy of previous correspondence between you and OMB instead of providing a separate description of the record.

(2) If a requester cannot determine where within OMB to send the Privacy Act request to amend a record, the requester may send by mail or delivery to Privacy Officer, Office of Management and Budget, 725 17th Street NW, Room 9204, Washington, DC 20503 or by electronic means as described on OMB's privacy program web page: [www.whitehouse.gov/omb/privacy](http://www.whitehouse.gov/omb/privacy). OMB will forward the request to the component(s) it believes most likely to have the relevant records. For the quickest possible handling, the requester should specify "Privacy Act Record Amendment Request" on the letter.

(3) You must validate your identity as described in §1302.2(e). If OMB has previously verified your identity pursuant to §1302.2(e), further verification of identity is not required as long as the communication does not suggest that a need for verification is present.

(4) You should clearly indicate the exact portion of the record you seek to have amended. If possible, you should also propose alternative language, or at a minimum, identify the facts that you believe are not accurate, relevant,

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timely, or complete, with such particularity as to permit OMB not only to understand the basis for your request, but also to make an appropriate amendment to the record.

(5) Your request must also state why you believe your record is not accurate, relevant, timely, or complete. The burden of persuading OMB to amend a record will be upon you. You must furnish sufficient facts to persuade the official in charge of the system of the inaccuracy, irrelevancy, timeliness, or incompleteness of the record.

(6) OMB will not categorically reject incomplete or inaccurate requests. OMB will ask you to clarify the request as needed.

(c) *OMB action on the request.* (1) OMB will acknowledge, in writing, receipt of a request to amend a record within 10 business days (*i.e.*, excluding Saturdays, Sundays, and legal Federal holidays) of OMB's receipt.

(2) OMB will promptly respond to a Privacy Act request for amendment or correction. OMB ordinarily will respond to Privacy Act requests for amendment or correction according to their order of receipt. Consistent with OMB's FOIA procedures at 5 CFR 1303.40(b), OMB may designate multiple processing tracks that distinguish between simple and more complex Privacy Act requests for amendment or correction, based on the estimated amount of work or time needed to process the request. The response reflecting the decision upon a request for amendment will include the following:

(i) The decision of OMB whether to grant in whole, or deny any part of, the request to amend the record;

(ii) The reasons for the determination for any portion of the request which is denied; and

(iii) A description of the procedure by which the OMB decision to deny your request may be appealed, including the name and address of the official with whom you may lodge such an appeal.

### § 1302.6 Appeals.

(a) If you wish to appeal a decision by OMB with regard to your request to access or amend a record in accordance with the provisions of §§1302.2 and 1302.5, you should submit the appeal in

writing and, to the extent possible, include the information specified in paragraph (b) of this section.

(b) Your appeal should contain a brief description of the record involved or copies of the correspondence from OMB in which the request to access or to amend was denied and also the reasons why you believe that access should be granted or the information amended, as relevant. Your appeal should refer to the information you furnished in support of your claim and the reasons set forth by OMB in its decision denying access or amendment, as required by §§1302.2 and 1302.5. In order to make the appeal process as meaningful as possible, you should set forth your disagreement in an understandable manner. In order to avoid the unnecessary retention of personal information, OMB reserves the right to dispose of the material concerning the request to access or amend a record if OMB receives no appeal in accordance with this section within 180 days of the sending by OMB of its decision upon an initial request. OMB may treat an appeal received after the 180-day period as an initial request to access or amend a record.

(c) You may send your appeal by mail or delivery to the Senior Agency Official for Privacy, Office of Management and Budget, 725 17th Street NW, Room 9204, Washington, DC 20503 or by electronic means as described on OMB's privacy program web page: [www.whitehouse.gov/omb/privacy](http://www.whitehouse.gov/omb/privacy). For the quickest possible handling, the requester should specify "Privacy Act Record Appeal" on the letter.

(d) The Senior Agency Official for Privacy will review a refusal to amend a record within 30 business days (excluding Saturdays, Sundays, and legal Federal holidays) from the date on which the individual requests such review, unless the OMB Director extends the 30-day period for good cause. If the Senior Agency Official for Privacy's decision does not grant in full the request, the notice of the decision will describe the steps you may take to obtain judicial review of such a decision.

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**§ 1302.7 Fees.**

(a) *Prohibitions against charging fees for Privacy Act requests.* OMB will not charge you for:

(1) The search and review of requests for records subject to this part;

(2) Any copies of the record produced as a necessary part of the process of making the record available for access; or

(3) Any copies of the requested record when OMB determines that the only way you can access the record is by providing a copy to you through the mail.

(b) *Waiver.* OMB may at no charge provide copies of a record if it is determined the production of the copies is in the interest of the Government.

(c) *Fee schedule and method of payment.* OMB will charge fees as provided in paragraphs (c)(1) through (5) of this section except as provided in paragraphs (a) and (b) of this section.

(1) OMB will duplicate records at a rate of \$.10 per page for all copying of 4 pages or more. There is no charge for duplication 3 or fewer pages.

(2) Where OMB anticipates that the fees chargeable under this section will amount to more than \$25.00, OMB shall promptly notify you of the amount of the anticipated fee or such portion thereof as can readily be estimated. If the estimated fees will greatly exceed \$25.00, OMB may require an advance deposit. OMB's request for an advance deposit shall extend an offer to the requester to consult with OMB personnel in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of the requester.

(3) You should pay fees in full before the requested copies are issued. If the requester is in arrears for previous requests, OMB will not provide copies for any subsequent request until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Assistant Director for Management and Operations, Office of Management and Budget, Washington, DC 20503.

(5) OMB will provide a receipt for fees paid upon request.

**PART 1303—PUBLIC INFORMATION PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT**

**GENERAL**

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**AUTHORITY:** 5 U.S.C. 301 and 5 U.S.C. 552, unless otherwise noted.

**SOURCE:** 84 FR 22951, May 21, 2019, unless otherwise noted.

**GENERAL**

**§ 1303.1 Purpose.**

This part implements the Freedom of Information Act (FOIA), 5 U.S.C. 552,

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as amended, and prescribes the rules governing the public availability of Office of Management and Budget (OMB) records. The rules in this subpart should be read in conjunction with the text of the FOIA.

### § 1303.2 Authority and functions.

The general functions of OMB, as provided by statute and by executive order, are to develop and to execute the budget, oversee implementation of Administration policies and programs, advise and assist the President, and develop and implement management policies for the government.

### § 1303.3 Organization.

(a) The central organization of OMB is as follows:

(1) The Director's Office includes the Director, the Deputy Director, the Deputy Director for Management, and the Executive Associate Director.

(2) Staff Offices include General Counsel, Legislative Affairs, Communications, Management and Operations, and Economic Policy.

(3) Offices that provide OMB-wide support include the Legislative Reference Division and the Budget Review Division.

(4) Resource Management Offices, which develop and support the President's management and budget agenda in the areas of Natural Resources, Energy and Science; National Security; Health; Education, Income Maintenance and Labor; and General Government Programs.

(5) Statutory offices include the Office of Federal Financial Management; Office of Federal Procurement Policy; Office of E-government and Information Technology; Made in America Office; and Office of Information and Regulatory Affairs.

(b) OMB is located in the Eisenhower Executive Office Building, 17th Street and Pennsylvania Avenue NW, and the New Executive Office Building, 725 17th Street NW, Washington, DC 20503. OMB has no field offices. Security in both buildings prevents visitors from entering the building without an appointment.

[84 FR 22951, May 21, 2019, as amended at 89 FR 48825, June 10, 2024]

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### PROACTIVE DISCLOSURES

#### § 1303.10 Availability of proactive disclosures.

OMB makes available records that are required by the FOIA to be made available for public inspection in an electronic format. OMB information pertaining to matters issued, adopted, or promulgated by OMB that is within the scope of 5 U.S.C. 552(a)(2) is available electronically on OMB's website at [www.whitehouse.gov/omb/](http://www.whitehouse.gov/omb/). Additionally, for help accessing these materials, you may contact OMB's FOIA Officer at (202) 395-3642.

### REQUIREMENTS FOR MAKING REQUESTS

#### § 1303.20 Where to send requests.

The FOIA Officer is responsible for acting on all initial requests. Individuals wishing to file a request under the FOIA should address their request in writing to FOIA Officer, Office of Management and Budget, 725 17th Street NW, Room 9272, Washington, DC 20503, via fax to (202) 395-3504, by email at [OMBFOIA@omb.eop.gov](mailto:OMBFOIA@omb.eop.gov), or the Government-wide FOIA.gov portal. Requesters must provide contact information sufficient to enable OMB to communicate with the requester. Additionally, OMB's FOIA Public Liaison is available to assist requesters who have questions and can be reached at (202) 395-FOIA or in writing at the address provided in this section.

[89 FR 48825, June 10, 2024]

#### § 1303.21 Requesters making requests about themselves or on behalf of others.

In order to obtain greater access to records, a requester who is making a request for records about the requester or on behalf of another individual must comply with the verification of identity requirements as determined by OMB pursuant to OMB's requirements for making requests for access in 5 CFR part 1302. OMB may require a requester to supply additional information as necessary in order to verify the identity of the requester or to verify that a particular individual has consented to disclosure.

[89 FR 48825, June 10, 2024]

**§ 1303.22 Requirement for providing description of the records sought.**

(a) Requesters must describe the records sought in sufficient detail to enable OMB personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may help the agency identify the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. Before submitting their requests, requesters may contact the FOIA Officer or FOIA Public Liaison to discuss the records they seek and to receive assistance in describing the records.

(b) If, after receiving a request, OMB determines that the request does not reasonably describe the records sought, OMB will inform the requester what additional information is needed and why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the FOIA Officer or the FOIA Public Liaison. If a request does not reasonably describe the records sought, OMB's response to the request may be delayed.

RESPONSIBILITY FOR RESPONDING TO  
REQUESTS

**§ 1303.30 Responsibility for responding to requests.**

(a) *Search cutoff date.* In determining which records are responsive to a request, OMB ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, OMB will inform the requester of that date.

(b) *Transfer of records to the National Archives and Records Administration (NARA).* Permanent records of OMB which have been transferred to the control of NARA under the Federal Records Act are not in the control of OMB and are therefore not accessible by a FOIA request to OMB. Requests for such records should be directed to NARA.

(c) *Consultation and referral.* When reviewing records, OMB will determine whether another agency of the Federal Government is better able to determine

whether the record is exempt from disclosure under the FOIA. As to any such record, OMB will proceed in one of the following ways:

(1) *Consultation.* When records contain information of interest to another agency, OMB typically will consult with that agency prior to making a release determination.

(2) *Referral.* (i) When OMB believes that a different agency is best able to determine whether to disclose the record, OMB will refer the responsibility for responding to the request regarding that record to that agency, will notify the requester, and will inform them of the agency which will be processing the record, including that agency's FOIA contact information. Ordinarily, the agency that originated the record is best situated to make the disclosure determination. However, if OMB and the originating agency jointly agree that OMB is in the best position to respond regarding the record, then OMB may respond to the requester.

(ii) When OMB believes that a different agency is best able to determine whether to disclose the record, but also believes that disclosure of the identity of the different agency could harm an interest protected by an applicable FOIA exemption, such as the exemptions that protect personal privacy or national security interests, OMB will coordinate with the originating agency to seek its views on the disclosability of the record and convey the release determination for the record that is the subject of the coordination to the requester. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that

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Intelligence Community agency could cause national security harms.

[84 FR 22951, May 21, 2019, as amended at 89 FR 48825, June 10, 2024]

### TIMING OF RESPONSES TO REQUESTS

#### § 1303.40 Timing of responses to requests.

(a) *In general.* Upon receipt of any request for information or records, the FOIA Officer will determine within 20 working days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such request whether it is appropriate to grant the request and will immediately notify the requester of such determination and the reasons therefore and the right of such person to seek assistance from the FOIA Public Liaison. The 20-day period, as used herein, shall commence on the date on which the FOIA Officer or the FOIA Public Liaison first receives the request but in any event not later than 10 working days after the request is first received by any component's office that is designated by these regulations to receive requests. OMB may toll this 20-day period either one time while OMB is awaiting information that it has reasonably requested from the requester or any time when necessary to clarify with the requester issues regarding fee assessment. OMB's receipt of the requester's response to OMB's request for information ends the tolling period.

(b) *Multitrack processing.* (1) FOIA requests are placed on one of three tracks:

(i) Track one covers those requests that seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA and in accordance with paragraph (e) of this section;

(ii) Track two covers simple requests;

(iii) Track three covers complex requests.

(2) Whether a request is simple or complex is based on the amount of work or time needed to process the request. OMB considers various factors, including the number of records requested, the number of pages involved in processing the request, and the need for consultations or referrals. OMB will advise the requester of the processing track in which their request has been

placed and provide an opportunity to narrow or modify their request so that the request can be placed in a different processing track.

(c) *Unusual circumstances.* Whenever the statutory time limit for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and OMB extends the time limit on that basis, OMB will, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds 10 working days, OMB will, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing. OMB will alert requesters to the availability of its FOIA Public Liaison, who will assist in the resolution of any disputes between the requester and OMB, and notify the requester of the right of the requester to seek dispute resolution services from the Office of Government Information Services (OGIS).

(d) *Aggregating requests.* To satisfy unusual circumstances under the FOIA, OMB may aggregate those requests for the purposes of this section when OMB reasonably believes that a requester, or a group of requesters acting in concert, has submitted requests that constitute a single request, that would otherwise satisfy the unusual circumstances specified in this section. Multiple requests involving unrelated matters will not be aggregated.

(e) *Expedited processing.* (1) Requests and appeals will be given expedited treatment in cases where OMB determines:

(i) The lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) There is an urgency to inform the public about an actual or alleged Federal Government activity;

(iii) Failure to respond to the request expeditiously would result in the loss of due process rights in other proceedings; or

(iv) There are possible questions, in a matter of widespread and exceptional

public interest, about the Government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of the requester's knowledge and belief, explaining in detail the basis for requesting expedited processing. OMB may waive this certification requirement at its discretion.

(4) OMB will decide whether to grant a request for expedited processing and will notify the requester within 10 calendar days after the date of the request. If a request for expedited treatment is granted, OMB will prioritize the underlying FOIA request, place the request in the processing track for expedited requests, and process the request as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

[84 FR 22951, May 21, 2019, as amended at 89 FR 48825, June 10, 2024]

#### RESPONSES TO REQUESTS

##### § 1303.50 Responses to requests.

(a) *Acknowledgments of requests.* OMB will assign an individualized tracking number to each request received that will take longer than ten days to process; and acknowledge each request, informing the requester of their tracking number if applicable; and, upon request, make available information about the status of a request to the requester using the assigned tracking number, including—

(1) The date on which OMB originally received the request; and

(2) An estimated date on which OMB will complete action on the request.

(b) *Grants of requests.* Once OMB makes a determination to grant a request in full or in part, it will notify the requester in writing. OMB also will inform the requester of any fees charged under § 1303.9 and shall provide the requested records to the requester promptly upon payment of any applicable fees. OMB will inform the requester

of the availability of the FOIA Public Liaison to offer assistance.

(c) *Adverse determinations of requests.* Adverse determinations, or denials of requests, include decisions that the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing. In the case of an adverse determination, the FOIA Officer will immediately notify the requester of—

(1) The right of the requester to appeal to the head of OMB within 90 calendar days after the date of such adverse determination in accordance with § 1303.70;

(2) The right of such person to seek dispute resolution services from the FOIA Public Liaison or the OGIS at NARA;

(3) The names and titles or positions of each person responsible for the denial of such request; and

(4) OMB's estimate of the volume of any requested records OMB is withholding, unless providing such estimate would harm an interest protected by the exemption in 5 U.S.C. 552(b) under which the withholding is being made.

[84 FR 22951, May 21, 2019, as amended at 89 FR 48825, June 10, 2024]

#### CONFIDENTIAL COMMERCIAL INFORMATION

##### § 1303.60 Notification procedures for confidential commercial information.

(a) *Definitions.* (1) "Confidential commercial information" means commercial or financial information obtained by OMB from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity,

that provides confidential commercial information, either directly or indirectly, to the Federal Government.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, at the time of submission, any portion of its submission that it considers to be protected from disclosure under Exemption 4 of the FOIA. These designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to submitters is required.* (1) OMB will promptly notify a submitter when OMB determines that a pending FOIA lawsuit seeks to compel the disclosure of records containing the submitter's confidential information, or if OMB determines that it may be required to disclose such records, provided:

(i) The requested information has been designated by the submitter as information considered protected from disclosure under Exemption 4 in accordance with paragraph (b) of this section; or

(ii) OMB has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure.

(2) The notice will describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, OMB may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

(d) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

(1) OMB determines that the information is exempt under the FOIA, and therefore will not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by law, including regulation

issued in accordance with the requirements of Executive Order 12,600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such case, OMB will give the submitter written notice of any final decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.* (1) Unless OMB specifies a different period, submitters who fail to respond to OMB's notice within 30 days of OMB's notice will be deemed to have consented to disclosure.

(2) If a submitter has any objections to disclosure, it should provide OMB 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 privileged or confidential. OMB is not required to consider any information received after the date of any disclosure decision.

(3) Any information provided by a submitter under this section may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* OMB will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* Whenever OMB decides to disclose information over the objection of a submitter, OMB will provide the submitter written notice, which will include:

(1) A statement of the reasons why each of the submitter's disclosure objections were not sustained;

(2) A description of the information to be disclosed or copies of the records as OMB intends to release them; and

(3) A specified disclosure date, at least 30 days after OMB transmits its notice of intent to disclose, except for good cause.

(h) *Requester notification.* OMB will notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure;

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whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

[84 FR 22951, May 21, 2019, as amended at 89 FR 48826, June 10, 2024]

### APPEALS

#### § 1303.70 Appeals.

(a) A requester must appeal to the head of OMB in writing within 90 calendar days after the date of such adverse determination addressed to the FOIA Officer at the address specified in §1303.20. The appeal must include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the Deputy Director, or their designee, within 20 working days. If on appeal the denial is upheld in whole or in part, the written determination will also contain a notification of the provisions for judicial review, the names of the persons who participated in the determination, and notice of the services offered by OGIS as a non-exclusive alternative to litigation.

(b) OGIS's dispute resolution services is a voluntary process. If OMB agrees to participate in the mediation services provided by OGIS, OMB will actively engage as a partner to the process in an attempt to resolve the dispute. An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation. Before seeking review by a court of an agency's adverse determination, a requester generally must first submit a timely administrative appeal.

[84 FR 22951, May 21, 2019, as amended at 89 FR 48826, June 10, 2024]

### PRESERVATION OF RECORDS

#### § 1303.80 Preservation of records.

OMB will preserve all correspondence pertaining to the requests that it receives under this section, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or NARA's General Records Schedule 4.2. OMB will not dispose of or destroy records while they

are the subject of a pending request, appeal, or lawsuit under the FOIA.

### FEEES

#### § 1303.90 Definitions.

For the purpose of this part, all definitions set forth in the FOIA apply.

(a) The term "direct costs" means those expenditures that OMB actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Not included in direct costs are overhead expenses such as costs of space, heating, or lighting the facility in which the records are stored.

(b) The term "search" means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

(c) The term "duplication" means the making of a copy of a document, or of the information contained in it, that is necessary to respond to a FOIA request. Such copies can be in the form of paper, microform, audio-visual materials, or electronic records (e.g., magnetic tape or disk), among others.

(d) The term "review" refers to the process of examining documents located in response to a request to determine whether any portion of any document located is permitted to be withheld. It also refers to the processing of any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(e) The term "commercial use request" is a request that asks for information for a use or purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation.

(f) The term "educational institution" is any school that operates a program of teaching or scholarly research. To be eligible for inclusion in this category, requesters must show that the

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request is being made as authorized by and in connection with the requester's role at a qualifying institution and that the records are not sought for commercial use, but are sought in furtherance of teaching or scholarly research. OMB may seek assurance from the requester that the request is in furtherance of teaching or scholarly research and will advise requesters of their placement in this category.

(g) The term "non-commercial scientific institution" refers to an institution that is not operated on a commercial basis (as that term is referenced in paragraph (e) of this section) and that is operated solely for the purpose of conducting scientific research where the results of the research 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.

(h) The term "representative of the news media" refers to 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.

(i) The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast "news" to the public at large and publishers of periodicals that disseminate "news" and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, OMB can also consider a requester's past publication record in

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making this determination. OMB will advise requesters of their placement in this category.

### § 1303.91 Fees to be charged—general.

OMB will charge fees that recoup the full allowable direct costs it incurs. Moreover, it will use the most efficient and least costly methods to comply with requests for documents made under the FOIA. For example, employees should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. Search should be distinguished, moreover, from review of material in order to determine whether the material is exempt from disclosure. When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see 5 U.S.C. 552(a)(4)(A)(vi)), such as the National Technical Information Service, OMB will inform requesters of the steps necessary to obtain records from those sources.

(a) *Search.* Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. OMB will charge search fees for all other requesters, subject to the restrictions of paragraph (h) of this section.

(1) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be charged as follows: Professional—\$10.00; and clerical/administrative—\$4.75.

(2) Requesters shall be charged the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. Requesters shall be notified of the costs associated with creating such a program and must agree to pay the associated costs before the costs may be incurred.

(b) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; *i.e.*,

the review conducted by an agency to determine whether an exemption applies to a particular record or portion of a record. Records or portions of records withheld in full 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 direct costs for such a subsequent review are assessable. However, review costs will not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. Review fees will be charged at the same rates as those charged for a search under paragraph (a)(1) of this section.

(c) *Duplication of records.* The requester's specified preference of form or format of disclosure will be honored if the record is readily reproducible in that format. Where photocopies are supplied, OMB will provide one copy per request at a cost of five cents per page. For copies prepared by computer, such as tapes or printouts, OMB will charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, OMB will charge the actual direct costs of producing the document(s).

(d) *Other charges.* OMB 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; or

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

(e) *Remittances.* Remittances shall be in the form of either a personal check, a bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed to the FOIA Officer at the address found in § 1303.10(b).

(f) *Receipts and refunds.* A receipt for fees paid will be provided upon request. Refund of fees paid for services actually rendered will not be made.

(g) *First 100 pages and two hours of search time.* With the exception of requesters seeking documents for a commercial use, OMB will provide the first 100 pages of duplication (or the cost

equivalent for other media) and the first two hours of search time without charge.

(h) *Restrictions on assessing fees.* If OMB fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in § 1303.90(g) through (i), may not charge duplication fees, except as described in the following circumstances:

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

(2) If OMB has determined that unusual circumstances, as defined by the FOIA, apply, and more than 5,000 pages are necessary to respond to the request, OMB may charge search fees, or, in the case of requesters described in § 1303.90(g) through (i), may charge duplication fees, if OMB has provided timely written notice to the requester in accordance with the FOIA and OMB has 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).

(3) If a court determines 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) *No Fees under \$25.* No fee will be charged when the total fee, after deducting the first 100 free pages (or its cost equivalent) and the first two hours of search, is equal to or less than \$25. If OMB estimates that the charges are likely to exceed \$25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance their willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel to meet the requester's needs at a lower cost.

[84 FR 22951, May 21, 2019, as amended at 89 FR 48826, June 10, 2024]