

## § 16.1 General provisions.

(a) This subpart contains the rules that the Department of Justice follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552 ~~as amended~~. These rules should be read ~~together in conjunction~~ with the text of the FOIA, ~~which provides additional~~ and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (Mar. 27, 1987) (hereinafter “OMB Guidelines”). Additionally, the Department’s “FOIA Reference Guide” and its attachments contain information about ~~access~~ the specific procedures particular to the Department with respect to making FOIA requests and descriptions of the types of records maintained by the different Department components. This resource is available at [http://www.justice.gov/oip/04\\_3.html](http://www.justice.gov/oip/04_3.html). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a ~~U.S.C. 552a, which~~, are processed under subpart D of this part, ~~are processed 16 as well as~~ under this subpart ~~also.~~ Information routinely provided to the public as part of a regular Department activity (for example, press releases issued by the Office of Public Affairs) may be provided to the public without following this subpart. As a matter of policy, the Department makes discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(b) As ~~used~~ referenced in this subpart, component means the FOIA office of each separate bureau, office, ~~board,~~ division, commission, service, center, or administration ~~of the Department of Justice.~~

### ~~— § 16.2~~

#### ~~— Public reading rooms.~~

~~— (a) The Department maintains public reading rooms that~~ contains designated by the Department as a primary organizational entity.

## § 16.2 Proactive disclosure of Department records.

Records that are required by the FOIA ~~requires~~ to be made regularly available for public inspection and copying are accessible on the Department's Web site, <http://www.justice.gov>. ~~Each Department.~~ Each component is responsible for determining which of ~~the records it generates are~~ required to be made available in this way and for making those records available either in its own reading room or in the Department's central reading room. Each component shall maintain and make available for public inspection and copying a current subject matter index of its reading room records. Each index shall be updated regularly, at least quarterly, with respect to newly included records.

~~— (b) The Department maintains public reading rooms or areas at the locations listed below:~~

- (1) Bureau of Prisons—on the Seventh Floor, 500 First Street, NW., Washington, DC;
- (2) Civil Rights Division—in Room 930, 320 First Street, NW., Washington, DC;
- (3) Community Relations Service—in Suite 2000, 600 E Street, NW., Washington, DC;
- (4) Drug Enforcement Administration—in Room W 7216, 700 Army Navy Drive, Arlington, Virginia;
- (5) Executive Office for Immigration Review (Board of Immigration Appeals)—in Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia;
  
- (6) Federal Bureau of Investigation—at the J. Edgar Hoover Building, 935 Pennsylvania Avenue, NW., Washington, DC;
  
- (7) Foreign Claims Settlement Commission—in Room 6002, 600 E Street, NW., Washington, DC;
- (8) Immigration and Naturalization Service—425 I Street, NW., Washington, DC;
- (9) Office of Justice Programs—in Room 5430, 810 Seventh Street, NW., Washington, DC;
- (10) Pardon Attorney—on the Fourth Floor, 500 First Street, NW., Washington, DC;
- (11) Bureau of Alcohol, Tobacco, Firearms, and Explosives—650 Massachusetts Avenue, NW., Washington, DC;
- (12) United States Attorneys and United States Marshals—at the principal offices of the United States Attorneys and the United States Marshals, which are listed in most telephone books; and
- (13) All other components of the Department of Justice—in Room 6505 at the Main Justice Building, 950 Pennsylvania Avenue, NW., Washington, DC.

—(c) Components shall also make reading room records created by the Department on or after November 1, 1996, available electronically at the Department's World Wide Web site (which can be found at <http://www.usdoj.gov>), through use of the Department's "Freedom of Information Act Home Page." This includes each component's index of its reading room records, which will indicate which records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting such records. Each component has a FOIA Public Liaison who can assist individuals in locating records particular to a component. A list of the Department's FOIA Public Liaisons is available at <http://www.justice.gov/oip/servicecenters.htm> available electronically.

—[Order No. 2156-98, 63 FR 29593, June 1, 1998; 63 FR 51401, Sept. 25, 1998, as amended by Order No. 2650-2003, 68 FR 4928, Jan. 31, 2003]

—§ 16.3 Requirements for making requests.

(a) ~~How made and addressed. You may~~ General information.

(1) To make a request for records of the Department of Justice by writing, a requester must write directly to the FOIA office of the Department component that maintains those records. You may find the Department's "Freedom of Information Act Reference Guide"—which is available electronically at the Department's World Wide Web site, and is available in paper form as well—helpful in making your request. For additional information about the FOIA, you may refer directly to the statute. If you are making a request for records about yourself, see § 16.41(d) for Each component's FOIA office and any additional requirements. If you are making a request for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to you or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) will help the processing of your request. Your request should be sent to the component's FOIA office at the address for submitting a request to a given component are listed in Appendix I to of this part 16. In most cases, your Further details are provided in Attachments B and C of the Department's FOIA request should be sent to a Reference Guide. Those Attachments contain detailed descriptions of each component's central FOIA office. For records held by a field office of the Federal Bureau of Investigation (FBI) or the Immigration and Naturalization Service (INS), however, you must write directly to that FBI or INS field office address, which can be found in most telephone books or by calling the component's central FOIA office. (The functions of each component are summarized in, as well as their major information systems. Part 0 of this title and in the description of the Department and its components in the "United States Government Manual," which is issued annually and is available in most libraries, as well as for sale from the Government Printing Office's Superintendent of Documents. This manual also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs).) If you cannot chapter summarizes the functions of each component. These references can be used by requesters to determine where to send their request within the Department.

(2) When a requester is unable to send your determine the proper Department component to which to direct a request, you the requester may send the request to the FOIA/PA Mail Referral Unit, Justice Management Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001. That office The Mail Referral Unit will forward your the request to the component(s) that it believes determines to be most likely to maintain the records that are sought.

(3) A requester who is making a request for records about himself or herself must comply with the verification of identity provision set forth in subpart D of this part.

(4) Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. 1746 have authorizing disclosure of the records to the requester, or submits proof that the individual is deceased (e.g., a copy of a death certificate or an obituary). As an exercise of its administrative discretion, each component can require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) Addressing requests. Requests should be addressed to the FOIA office of the component that maintains the requested records that you want. Your request will be considered received as of the date it is received by the proper component's. Attachment B of the FOIA Reference Guide lists the addresses of each FOIA office. For the quickest possible handling, you should mark both your request letter and the envelope "Freedom of Information Act Request." and the methods for submitting requests to each component.

—(b)(c) Description of records sought. You Requesters must describe the records that you seeksought in enoughsufficient detail to enable Department personnel to locate them with a reasonable amount of effort. WheneverTo the extent possible, your requestrequesters should include specific information about each record soughtthat may assist a component in identifying the requested records, such as the date, title or name, author, recipient, and subject matter of the record. In addition, if you want records about a court case, you should provide the title of the case, the court in which the case was filed, and the nature of the case. If known, you number, file designation, or reference number. Requesters should refer to Appendix I of this part for additional component-specific requirements. In general, requesters should include any file designations or descriptions for the records that you want. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Department will be able to locate those records in response to your request. If a component determines that your request does not as much detail as possible about the specific records or the types of records that they are seeking. If the requester fails to reasonably describe the records, it sought, the component shall tell you eitherinform the requester what additional information is needed or why yourthe request is otherwise insufficient. The component also shall give you an opportunitydeficient. Requesters who are attempting to reformulate or modify such a request may discuss your request so that you may modify it to meet the requirements of this section. If your request does not reasonably describe the records you seek, the agency's response to your request may be delayedtheir request with the component's designated FOIA contact or its FOIA Public Liaison. When a requester fails to provide sufficient detail after having been asked to clarify a request, the component shall notify the requester that the request has not been properly made and that no further action will be taken.

—(c) Agreement to pay fees. If you make a FOIA request, it shall be considered an agreement by you to pay all applicable fees charged under § 16.11, up to \$25.00, unless you seek a waiver of fees. The component responsible for responding to your request ordinarily will confirm this agreement in an acknowledgement letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

—[Order No. 2156-98, 63 FR 29593, June 1, 1998; 63 FR 51401, Sept. 25, 1998]

—§ 16.4 Responsibility for responding to requests.

(a) In general. Except ~~as stated in the instances described~~ in paragraphs (c), ~~(d),~~ and (e) of this section, the component that first receives a request for a record and ~~has possession of~~ maintains that record is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date ~~the component that it~~ begins its search ~~for them~~. If any other date is used, the component shall inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), shall not be considered responsive to a request.

(b) Authority to grant or deny requests. The head of a component, or ~~the component head's~~ designee, is authorized to grant or to deny any requests for ~~a record of records~~ that are maintained by that component.

(c) Consultations and referrals. ~~When~~ A component ~~receives a request for a record in its possession,~~ ~~it~~ receipt of a request shall determine whether another component, or another agency of the Federal government, is in a better able position to determine ~~decide~~ whether ~~the record is any~~ records responsive to the request are exempt from disclosure under the FOIA and, if so, whether ~~they~~ should be ~~disclosed as a matter of administrative discretion,~~ released on a discretionary basis. If the receiving component determines that it is best able to process the record in response to the request, then it shall do so. If the receiving component determines ~~that it is not best able to process~~ the ~~record~~ contrary, then it shall either:

(1) Respond to the request ~~regarding that record~~, after consulting with the component or agency best able to determine whether to disclose it and with any other component or the agency that has a substantial interest in ~~the records involved~~;

(2) Refer the responsibility for responding to the request ~~regarding that record or portion of the request~~ to the component best able to determine whether to disclose ~~the relevant records~~, or to ~~another~~ the agency that originated created or initially acquired the record ~~(but only if as long as that agency is subject to the FOIA).~~ Ordinarily, the component or agency that originated created or initially acquired the record will be presumed to be best able to ~~determine whether to disclose it~~.

—(d) Law enforcement information. ~~Whenever a request is made for a record containing information that relates to an investigation of a possible violation of law and was originated by another component or agency, the receiving~~ make the disclosure assessment. The referring component shall ~~either refer the responsibility for responding to the request regarding that information to that other component or agency or consult with that other component or agency~~ document the referral and maintain a copy of the records that it refers.

—(e(d) Classified information. On receipt of any request involving classified information, the component shall take appropriate action to ensure compliance with part 17 of this title.

Whenever a request ~~is made for~~involves a record containing information that has been classified, or may be appropriate for classification, by another component or agency under ~~Executive Order 12958 or any other applicable~~ executive order concerning the classification of records, the receiving component shall refer the responsibility for responding to the request regarding that information to the component or agency that classified the information, or should consider the information for classification, ~~or has the primary interest in it, as appropriate.~~ Whenever a component's record contains information that has been derivatively classified ~~by a component because, i.e.,~~ it contains information classified by another component or agency, the component shall refer the responsibility for responding to that portion of the request ~~regarding that information~~ to the component or agency that classified the underlying information.

—(f(e) Notice of referral. Whenever a component refers ~~all or~~ any part of the responsibility for responding to a request to another component or agency, it ordinarily shall will notify the requester of the referral and inform the requester of the name of each component or agency to which the request has been referred and of the part of the request that has been referred ~~records were referred, unless identifying the recipient will itself disclose a sensitive, exempt fact.~~

—(g(f) Timing of responses to consultations and referrals. All consultations and referrals received by the Department will be handled according to the date that the FOIA request initially was received by the first component or agency, not any later date.

—(h(g) Agreements regarding consultations and referrals. Components may make establish agreements with other components or agencies to eliminate the need for consultations or referrals ~~for~~ with respect to particular types of records.

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

(a) In general. Components ordinarily shall will respond to requests according to their order of receipt. Appendix I to this part contains the list of the Department components that are designated to accept requests. In instances involving misdirected requests, i.e., where a request is sent to one of the Department components designated in Appendix I but is actually seeking records maintained by another Department component, the response time will commence on the date that the request is received by the appropriate component, but in any event not later than ten working days after the request is first received.

(b) Multitrack processing. ~~(4)~~ All components must designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. A component may ~~use two or more also~~ designate additional processing tracks ~~by distinguishing that distinguish~~ between simple and more complex requests based on the estimated amount of work and/or time needed to process the request, ~~including through limits based on.~~ A component can consider factors such as the number of pages involved. ~~If a component does so, it in processing the request or the need for consultations or referrals. Components shall advise requesters in its slower track(s) of the limits of its faster track(s).~~

~~—(2) A component using multitrack processing may provide into which their request falls and, when appropriate, shall offer the requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the component's faster track(s). A component doing so will contact the requester either by telephone or by letter, whichever is more efficient in each case narrow their request so that it can be placed in a different processing track.~~

(c) Unusual circumstances. ~~(1) Where~~ Whenever the statutory time limits for processing a request cannot be met because of “unusual circumstances,” as defined in the FOIA, and the component ~~determines to extend~~ extends the time limits on that basis, the component shall ~~as soon as practicable, before expiration of the twenty-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 ~~is for more than~~ exceeds ten working days, the component shall, ~~as described by the FOIA,~~ provide the requester with an opportunity ~~either to modify the request so that it may be processed within the time limits or agree to arrange an alternative time period with for processing.~~ The component ~~for processing the request or a modified request shall make available its designated FOIA contact and its FOIA Public Liaison for this purpose.~~

~~—(2) Where a component~~(d) Aggregating requests. For the purposes of satisfying unusual circumstances under the FOIA, components may aggregate requests in cases where it reasonably ~~believes appears~~ that multiple requests, submitted ~~either~~ by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, ~~and the. Components will not aggregate multiple requests that involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.~~

~~—(d)(e)~~ Expedited processing. (1) Requests and appeals will be ~~taken out of order and given processed on an~~ expedited ~~treatment~~ basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited ~~treatment~~ processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person ~~who is~~ primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

(2) A request for expedited processing may be made at ~~the any~~ time ~~of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be received by the proper component.~~ Requests based on ~~the categories in~~ paragraphs (d)(1)(i), (ii), and (iii) of this section must be submitted to the component that maintains the records requested. ~~Requests When making a request for expedited processing of an administrative appeal, the request should~~

be submitted to the Office of Information Policy. Requests for expedited processing that are based on ~~the category in~~ paragraph (e)(1)(iv) of this section must be submitted to the Director of Public Affairs, ~~whose address is: at the~~ Office of Public Affairs, U.S. Department of Justice, ~~Room 4428,~~ 950 Pennsylvania Avenue, NW., Washington, DC 20530-0001. A component that receives a misdirected request ~~that must be handled by the Office of Public Affairs for expedited processing under the standard set forth in paragraph (e)(1)(iv) of this section~~ shall forward it immediately to the Office of Public Affairs for its determination. The time period for making the determination on the request for expedited processing under paragraph (e)(1)(iv) of this section shall commence on the date that office by hand delivery or fax the Office of Public Affairs receives the request, provided that it is routed within ten working days.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct ~~to the best of that person's knowledge and belief~~, explaining in detail the basis for requesting making the request for expedited processing. For example, ~~a requester within the category in~~ under paragraph (d)(1)(ii) of this section, ~~if a requester who is~~ not a full-time member of the news media, must establish that he or she is a person whose ~~main~~ primary professional activity or occupation is information dissemination, ~~though it need not be his or her sole occupation.~~ Such a requester ~~within the category in paragraph (d)(1)(ii) of this section~~ also must establish a particular urgency to inform the public about the government activity involved in the request, ~~—one that extends~~ beyond the public's right to know about government activity generally. ~~The formality of certification may be waived. A requester cannot satisfy the "urgency to inform" requirement solely by demonstrating that numerous articles have been published on a given subject.~~ As a matter of administrative discretion, a component may waive the formal certification requirement.

(4) A component shall notify the requester within ten calendar days of ~~the~~ receipt of a request for expedited processing, ~~the proper component shall decide whether to grant it and shall notify the requester of the~~ of its decision whether to grant or deny expedited processing. If ~~a request for~~ expedited ~~treatment~~ processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a ~~request for~~ component ~~denies~~ expedited processing ~~is denied~~, any appeal of that decision which complies with the procedures set forth in § 16.8 of this subpart shall be acted on expeditiously.

#### § 16.6 Responses to requests.

(a) ~~Acknowledgements~~ Acknowledgments of requests. ~~On~~ Upon receipt of a request that will take longer than ten days to process, a component ~~ordinarily~~ shall send ~~an acknowledgement letter to the requester which shall confirm the requester's agreement to pay fees under § 16.3(c) and provide an~~ acknowledgment letter that assigns the request an ~~assigned request~~ individualized tracking number ~~for further reference.~~

(b) Grants of requests. ~~Ordinarily, a component shall have twenty business days from when a request is received to determine whether to grant or deny the request.~~ Once a component makes a determination to grant a request in ~~whole~~ full or in part, it shall notify the requester in writing. The component also shall inform the requester ~~in the notice~~ of any ~~fee~~ fees charged under § ~~16.41~~ 10 of this subpart and shall disclose the requested records to the requester promptly ~~on~~ upon



payment of any applicable fee. ~~Records disclosed in part shall be marked or annotated to show the amount of information deleted unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also shall be indicated on the record, if technically feasible.~~ fees.

(c) Adverse determinations of requests. A component making an adverse determination denying a request in any respect shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, ~~consist of: a determination to withhold any~~ include decisions ~~that: the~~ requested record is exempt, in whole or in part; ~~a determination that a~~ 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 ~~or,~~ cannot be located; ~~a determination that a,~~ or has ~~been destroyed; or the requested~~ record is not readily reproducible in the form or format sought by the requester; ~~a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a.~~ Adverse determinations also include denials involving fees or fee waiver; ~~and a denial~~ matters or denials of a request requests for expedited treatment. ~~The denial letter shall be signed by the head of the component, or the component head's designee, and shall include: processing.~~

(d) Content of denial letter. The denial letter shall be signed by the head of the component, or designee, and shall include:

- (1) The name and title or position of the person responsible for the denial;
- (2) A brief statement of the reason(s) reasons for the denial, including any FOIA exemption applied by the component in denying the request; and
- (3) An estimate of the volume of any records or information withheld, ~~in~~ for example, by providing the number of pages or ~~in~~ some other reasonable form of estimation. This estimate does estimation is not need to be provided required, if the volume is otherwise indicated ~~through~~ by deletions marked on records that are disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; ~~and.~~
- (4) A statement that the denial may be appealed under § 16.98(a) of this subpart, and a description of the requirements ~~of § 16.9(a), set forth therein.~~

(e) Markings on released documents. Markings on released documents must be clearly visible to the requester.

(f) Use of record exclusions.

(1) In the event that a component identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the head of the FOIA office of that component must confer with the Office of Information Policy (OIP) to obtain approval to apply the exclusion.

(2) When a component applies an exclusion to exclude records from the requirements of the FOIA pursuant to 5 U.S.C. 552

~~—§ 16.7~~

~~—Classified information.~~

~~—In processing a request for information that is classified under Executive Order 12958 (3 CFR, 1996 Comp., p. 333) or any other executive order, the originating component shall review the information to determine whether it should remain classified. Information determined to no longer require classification shall not be withheld on the basis of Exemption 1 of the FOIA. On receipt of any appeal involving classified information, the Office of Information and Privacy shall take appropriate action to ensure compliance with part 17 of this title.~~

~~—§ 16.8~~

~~—Business information.~~

~~—(a) In general. Business information obtained by the Department from a submitter will be disclosed under the FOIA only under this section.~~

~~—(b) Definitions. For purposes of this section:~~

~~—(1) Business(c), the component utilizing the exclusion will respond to the request as if the excluded records did not exist. This response should not differ in wording from any other response given by the component.~~

(3) Any component invoking an exclusion shall maintain an administrative record of the process of invocation and approval of the exclusion by OIP.

#### § 16.7 Confidential commercial information.

(a) Definitions. (1) Confidential commercial information means commercial or financial information obtained by the Department from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) Submitter means any person or entity from whom the Department obtains ~~business~~confidential commercial information, directly or indirectly. ~~The term includes corporations; state, local, and tribal governments; and foreign governments.~~

—(e)(b) Designation of businessconfidential commercial information. A submitter of businessconfidential commercial information ~~will~~must use good -faith efforts to designate, by appropriate markings, either at the time of submission or atwithin a reasonable time thereafter, any ~~portions~~portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

—(d) ~~Notice to submitters. A component shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.~~

—(e) ~~Where notice is required. Notice shall be given to a submitter wherever:~~

—(1) ~~The~~(c) When notice to submitters is required.

(1) A component shall promptly provide written notice to a submitter whenever:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

—~~2~~(ii) The component has a reason to believe that the requested information may be protected from disclosure under Exemption 4.

—(f) ~~Opportunity to object to disclosure. A component will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by the component until after its disclosure decision has been made shall not be considered by the component. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.~~

—(g) ~~Notice of intent to disclose. A component shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever a component~~

~~decides to disclose business information over the objection of a submitter, the component shall give the submitter written notice, which shall include:~~

~~—(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;~~

~~—(2) A description of the business information to be disclosed; and~~

~~—(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.~~

~~—(h)(2) The notice shall either 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, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.~~

(d) Exceptions to submitter notice requirements. The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) The component determines that the information ~~should not be disclosed~~ is exempt under the FOIA;

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

(3) Disclosure of the information is required by a statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235) of June 23, 1987; or

(4) The designation made by the submitter under paragraph (e) of this section appears obviously frivolous—, except that, in such a case, the component shall, ~~within a reasonable time prior to a specified disclosure date,~~ give the submitter written notice of any final decision to disclose the information and must provide that notice within a reasonable number of days prior to a specified disclosure date.

—(i)(e) Opportunity to object to disclosure. (1) A component will specify a reasonable time period within which the submitter must respond to the notice referenced above. If a submitter has any objections to disclosure, it should provide the component 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.

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. Information received by the component after the date of any disclosure decision will not be considered by the component.

Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) Analysis of objections. A component shall 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 a component decides to disclose information over the objection of a submitter, the component shall provide the submitter written notice, which shall include:

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

(2) A description of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) Notice of FOIA lawsuit. Whenever a requester files a lawsuit seeking to compel the disclosure of businessconfidential commercial information, the component shall promptly notify the submitter.

~~—(j) Corresponding notice to requesters. Whenever a (i) Requester notification. The component shall notify a requester whenever it provides a the submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the component shall also notify the requester(s). Whenever a component, whenever it notifies a the submitter of its intent to disclose the requested information under paragraph (g) of this section, the component shall also notify the requester(s); and whenever a submitter files a lawsuit seeking to prevent the disclosure of business the information, the component shall notify the requester(s).~~

~~—[Order No. 2156-98, 63 FR 29593, June 1, 1998; 63 FR 51401, Sept. 25, 1998]~~

~~—§ 16.98 Administrative appeals.~~

~~—Appeals.~~

~~—(a) Appeals of (a) Requirements for making an appeal. A requester may appeal any adverse determinations. If you are dissatisfied with a component's response to your request, you may appeal an adverse determination denying your his or her request, in any respect, to the Office of Information and Privacy, U.S. Department of Justice, Flag Building, Suite 570, Washington, DC 20530-0001. You must make your appeal in writing and it must be received by the Policy. The contact information for the Office of Information and Privacy within 60 days of the Policy is contained in the FOIA Reference Guide. Examples of adverse determinations are provided in § 16.6(c) of this~~

subpart. The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 45 calendar days after the date of the letter denying your request. You the request. Appeals that have not been postmarked or transmitted within the specified timeframe will be considered untimely and will be administratively closed with notice to the requester. The appeal letter may include as much or as little related information as you wish, as long as it should clearly identifies identify the component's determination (including that is being appealed and the assigned request number, if known) that you are appealing. For the quickest possible handling, you. The requester should mark your both the appeal letter and the envelope, or subject line of the electronic transmission, "Freedom of Information Act Appeal." Unless the Attorney General directs otherwise,  
a

(b) Adjudication of appeals. (1) The Director of the Office of Information and Privacy Policy or designee will act on behalf of the Attorney General on all appeals under this section, except that:

~~—(1) In the case of an adverse determination by the Deputy Attorney General or the Associate Attorney General, the Attorney General or the Attorney General's designee will act on the appeal;~~

~~—(2) An adverse determination by the Attorney General will be the final action of the Department; and~~

~~—(3) An appeal ordinarily will not be acted on adjudicated if the request becomes a matter of FOIA litigation.~~

~~—(b) Responses to appeals. The decision on your~~(3) On receipt of any appeal will involving classified information, the Office of Information Policy shall take appropriate action to ensure compliance with part 17 of this title.

(c) Decisions on appeals. A decision on an appeal must be made in writing. A decision affirming an adverse that upholds a component's determination in whole or in part shall will contain a statement of that identifies the reason(s) reasons for the affirmance, including any FOIA exemption(s) exemptions applied, and will inform you of provide the FOIA provisions for court review requester with notification of the decision statutory right to file a lawsuit. If the adverse determination is reversed a component's decision is remanded or modified on appeal, in whole or in part, you the requester will be notified of that determination in a written decision and your request will be reprocessed writing. The component will thereafter further process the request in accordance with that appeal decision determination and respond directly to the requester.

~~—(e)(d) When appeal is required. If you wish to seek Before seeking review by a court of any a component's adverse determination, you a requester generally must first submit a timely administrative appeal it under this section.~~

§ 16.10

~~—9~~ Preservation of records.

Each component shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized ~~by~~pursuant to title 44 of the United States Code or the General Records Schedule 14 of the National Archives and Records Administration's General Records Schedule 14-Administration. Records that are identified as responsive to a request will not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 16.11

—10 Fees.

(a) In general. Components shall charge for processing requests under the FOIA in accordance with ~~paragraph (c)~~the provisions of this section, ~~except where fees are limited and with the OMB Guidelines. In order to resolve any fee issues that arise under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (k) of this section, a component may contact a requester for additional information.~~ A component ordinarily ~~shall~~will collect all applicable fees before sending copies of ~~requested~~ records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) Definitions. For purposes of this section:

(1) Commercial-use request means is a request ~~from or on behalf of a person who seeks that asks for~~ information for a use or a purpose that furthers ~~his or her~~ commercial, trade, or profit ~~interests~~interest, which can include furthering those interests through litigation. ~~Components shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester's stated use, the component shall provide the requester a reasonable opportunity to submit further clarification.~~

(2) Direct costs means are those expenses that an agency ~~actually incur~~expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include ~~, for example,~~ the salary of the employee performing the work (i.e., the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Components shall ensure that searches, review, and duplication machinery. Not included are conducted in the most efficient and the least expensive manner. Direct costs are do not include overhead expenses such as the costs of space, and of heating or lighting ~~of the~~ facility ~~in which the records are kept~~.

(3) Duplication means the making of is 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, ~~microform,~~ audiovisual materials, or electronic records ~~(for example, magnetic tape or disk),~~ among others. ~~Components shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format by the office responding to the request.~~

(4) Educational institution ~~means a preschool, a public or private elementary or secondary~~ is any school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. ~~To be~~ A requester in this category, ~~a requester~~ 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 rather are sought to further scholarly research. Records requested for the intention of fulfilling credit requirements are not considered to be sought for a scholarly purpose.

(5) Noncommercial scientific institution ~~means~~ is an institution that is not operated on a “commercial” basis, as ~~that term is~~ defined in paragraph (b)(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. ~~To be~~ A requester in this category, ~~a requester~~ 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 and not for a commercial use.

(6) Representative of the news media, ~~or news media requester, means~~ is any person actively gathering news for an or entity ~~that is~~ organized and operated to publish or broadcast news to the public that actively 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” 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 ~~broadcasting that broadcast~~ “news” to the public at large and publishers of periodicals ~~(but only in those instances where they can qualify as disseminators of “news”)~~ who that disseminate “news” and make their products available for purchase or subscription by through a variety of means to the general public. For “freelance” journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, A request for records supporting that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. “Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as working for that entity. A publishing contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester's past publication record in making this determination. A component's decision to grant a requester media status will be made on a case-by-case basis based upon the requester's intended use.

(7) Review ~~means~~ is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. ~~It also~~ Review time includes processing any record for disclosure—~~for example, such as~~ doing all that is necessary to ~~redact it and~~ prepare ~~it the record~~ for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are ~~recoverable~~ properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a business confidential commercial information



submitter under § 16.87 of this subpart, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) Search ~~means~~ is the process of looking for and retrieving records or information responsive to a request. ~~#~~Search time includes page-by-page or line-by-line identification of information within records; and ~~also includes the~~ reasonable efforts expended to locate and retrieve information from ~~records maintained in electronic form or format. Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, components shall not search line by line where duplicating an entire document would be quicker and less expensive~~ records.

(c) Charging fees. In responding to FOIA requests, components shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section: Because the fee amounts provided below already account for the direct costs associated with a given fee type, components should not add any additional costs to those charges.

(1) Search. (i) Search fees shall be charged for all requests ~~—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—~~ subject to the limitations ~~restrictions~~ of paragraph (d) of this section. Components may properly charge for time spent searching even if they do not locate any responsive ~~record~~ records or if they ~~withhold~~ determine that the ~~record(s) located as~~ records are entirely exempt from disclosure.

(ii) For each quarter hour spent by ~~clerical~~ personnel ~~in~~ searching for ~~and retrieving a~~ requested record, the fee will be \$4.00. ~~Where a search and retrieval cannot be performed entirely by clerical personnel—for example, where the identification of records within the scope of a request requires the use of professional personnel—the fee will be \$7.00 for each quarter hour of search time spent by professional personnel. Where the time of managerial personnel is required, the fee will be \$10.25 for each quarter hour of time spent by those personnel.~~

~~—(iii) For computer, including electronic searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(3) of this section) will be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs will include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for responsive records, as well as the costs of operator/programmer salary apportionable to the search that do not require new programming, the fees will be as follows: Professional—\$16.50; and administrative—\$13.00.~~

(iii) Requesters will be charged the direct costs associated with conducting any search that requires the creation of a new program to locate the requested records.

(iv) For requests that require the retrieval of records stored by an agency at a Federal records center operated by the National Archives and Records Administration (NARA), additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) Duplication. Duplication fees will be charged to all requesters, subject to the ~~limitations~~restrictions of paragraph (d) of this section. ~~For~~A component shall honor a ~~paper photocopy of requester's preference for receiving~~ a record ~~(no more than one copy of which need be in a particular form or format where it is readily reproducible by the component in the form or format requested. Where photocopies are supplied),~~ the ~~fee~~component will be to provide one copy per request at a cost of five cents per page. For copies ~~of records~~ produced ~~by computer, such as on tapes or printouts, disks, or other electronic media,~~ components will charge the direct costs, ~~including operator time,~~ of producing the copy, including operator time. ~~Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials.~~ For other forms of duplication, components will charge the direct costs ~~of that duplication~~.

(3) Review. Review fees will be charged to requesters who make ~~a commercial use request~~requests. Review fees will be ~~charged only for~~assessed in connection with the initial review of the record ~~review—in other words, i.e., the review done when~~conducted by a component ~~determines to determine~~ whether an exemption applies to a particular record or ~~record~~portion at the initial request level of a record. No charge will be made for review at the administrative appeal level ~~for an exemption already~~stage of exemptions applied at the initial review stage. However, ~~records or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered when the appellate authority determines that a particular exemption no longer applies; the, any~~ costs ~~of that associated with a component's re-review are chargeable where it is made necessary by such a change of the records in order to consider the use of circumstances; other exemptions may be assessed as review fees.~~ Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) Limitations~~Restrictions~~ on charging fees. (1) No search ~~fee~~fees will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media. When the component fails to comply with the time limits in which to respond to a request, and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, it may not charge search fees, or, in the instances of requests from requesters defined in paragraphs (b)(4), (b)(5) and (b)(6) of this section, may not charge duplication fees.

(2) No search ~~fee~~or review ~~fee~~fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, components will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search ~~or~~.

(4) When, after first deducting the 100 free pages (or its cost equivalent),

~~—(4) Whenever) and the first two hours of search,~~ a total fee calculated under paragraph (c) of this section is \$~~14~~25.00 or less for any request, no fee will be charged.

~~—(5) The provisions of paragraphs (d) (3) and (4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than \$14.00.~~

~~—(e) Notice of anticipated fees in excess of \$25.00. When a component determines or estimates that the fees to be charged under assessed in accordance with this section will amount to more than exceed \$25.00, the component shall notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee, accordingly. In cases in which a requester has been notified that the actual or estimated fees amount to more than are in excess of \$25.00, the request shall not be considered received and further work shall will not be done on #completed until the requester agrees commits in writing to pay the anticipated total fee. Any such agreement should be memorialized in writing. A notice under this paragraph will offer actual or estimated total fee. Such a commitment must be made by the requester an opportunity to discuss in writing, must indicate a given dollar amount, and must be received by the component within 30 calendar days from the matter with Department personnel in order to reformulate date of notification of the fee estimate. If a commitment is not received within this period, the request to meet the requester's needs at a lower cost shall be closed. Components will make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request in an effort to reduce fees. Components are not required to accept payments in installments.~~

(f) Charges for other services. ~~Apart from the other provisions of this section, when Although not required to provide special services, if~~ a component chooses to do so as a matter of administrative discretion ~~to provide a special service—~~, the direct costs of providing the service will be charged. Examples of such as services include certifying that records are true copies, providing multiple copies of the same document, or sending ~~them~~ records by means other than ordinary first class mail ~~—the direct costs of providing the service ordinarily will be charged.~~

(g) Charging interest. Components may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 ~~31 U.S.C. 3717~~ and will accrue from the date of the billing date until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) Aggregating requests. ~~Where~~ When a component reasonably believes that a requester or a group of requesters acting together in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. ~~Where~~ For requests are separated by a

longer period, components will aggregate them only where there ~~exists~~ is a ~~solid~~ reasonable basis for determining that aggregation is warranted under in view of all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) Advance payments. (1) For requests other than those described in paragraphs (i)(2) and ~~(i)~~ (3) of this section, a component shall not require the requester to make an advance payment ~~—in other words, a payment made~~ before work is ~~begun~~ commenced or continued on a request. Payment owed for work already completed (i.e., ~~a prepayment~~ payment before copies are sent to a requester) is not an advance payment.

(2) ~~Where~~ When a component determines or estimates that a total fee to be charged under this section will ~~be more than~~ exceed \$250.00, it may require that the requester ~~to~~ make an advance payment ~~of an amount~~ up to the amount of the entire anticipated fee before beginning to process the request, ~~except where~~. A component may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester ~~that has~~ with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any component or agency within 30 calendar days of the ~~date of~~ billing date, a component may require that the requester ~~to~~ pay the full amount due, plus any applicable interest, ~~on that prior request~~ and ~~to the component may require that the requester~~ make an advance payment of the full amount of any anticipated fee, before the component begins to process a new request or continues to process a pending request ~~from that requester or any pending appeal~~. Where a component has a reasonable basis to believe that a requester has misrepresented his or her identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which a component requires advance payment ~~or payment due under paragraph (i)(2) or (3) of this section~~, the request shall not be considered received and further work will not be ~~done on it~~ completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the component's fee letter, the request will be closed.

(j) 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 agency to set and collect fees for particular types of records. In instances where records responsive to ~~requests~~ a request are ~~maintained for distribution by agencies operating such~~ subject to a statutorily-based fee schedule ~~programs, components~~ program, the component will inform ~~requesters~~ the requester of the ~~steps for obtaining records from those sources so~~ contact information for that ~~they may do so~~ most economically source.

(k) Requirements for waiver or reduction of fees.

(1) Records responsive to a request ~~will~~ shall be furnished without charge or at a ~~charge~~ reduced rate below that established under paragraph (c) of this section, where a component determines, based on all available information, that the requester has demonstrated that:

(i) 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

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) ~~To determine~~In deciding whether ~~the first fee-waiver requirement~~disclosure of the requested information is ~~met~~in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government, components will consider the following factors:

(i) ~~The subject of the request: Whether the subject of the requested records concerns “the operations or activities of the government.”~~ The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or attenuated.

~~—(ii) The informative value of the information to be disclosed: Whether the disclosure is “likely to contribute” to an understanding of government operations or activities.~~(ii) The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either ~~a duplicative~~the same or a substantially identical form, would not ~~be as likely to~~ contribute to such understanding where nothing new would be added to the public's understanding.

~~—(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to “public understanding.”~~(iii) 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 ~~and~~as well as his or her ability and intention to effectively convey information to the public shall be considered. It shall ordinarily be presumed that a representative of the news media ~~will satisfy~~satisfies this consideration.

(iv) ~~The significance of the contribution to public understanding: Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure,~~ must be enhanced by the disclosure to a significant extent. However, components shall not make value judgments about whether the information ~~that would contribute significantly to public understanding of the operations or activities of the government~~at issue is “important” enough to be made public.

(3) To determine whether ~~the second fee-waiver requirement is met~~disclosure of the requested information is primarily in the commercial interest of the requester, components will consider the following factors:

~~—(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. Components shall consider~~(i)

Components shall identify any commercial interest of the requester (with reference to the definition of “commercial use”, as defined in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

~~—(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.” A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. Components ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.~~

~~—(ii) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure.~~

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

(5) Requests for ~~the~~ a waiver or reduction of fees should be made when the request is first submitted to the component and should address the factors listed in paragraphs (k)(2) and (3) of this section, insofar as criteria referenced above. A requester may submit a fee waiver request at a later time so long as they apply to each request. Components will exercise their discretion to consider the cost-effectiveness of their investment of the underlying record request is pending or on administrative resources in this decisionmaking process, however, in deciding to grant waivers or reductions of 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 will be required to pay any costs incurred up to the date the fee waiver request was received.

~~—[Order No. 2156-98, 63 FR 29593, June 1, 1998; 63 FR 34965, June 26, 1998; 63 FR 36295, July 2, 1998; 63 FR 51401, Sept. 25, 1998]~~

~~—§ 16.12~~

~~—11 Other rights and services.~~

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

~~—Subpart B—Production or Disclosure in Federal and State Proceedings~~

~~—Source:~~

~~—Order No. 919-80, 45 FR 83210, Dec. 18, 1980, unless otherwise noted.~~

~~—§ 16.21~~

~~—Purpose and scope.~~

~~—(a) This subpart sets forth procedures to be followed with respect to the production or disclosure of any material contained in the files of the Department, any information relating to material contained in the files of the Department, or any information acquired by any person while such person was an employee of the Department as a part of the performance of that person's official duties or because of that person's official status:~~

~~—(1) In all federal and state proceedings in which the United States is a party; and~~

~~—(2) In all federal and state proceedings in which the United States is not a party, including any proceedings in which the Department is representing a government employee solely in that employee's individual capacity, when a subpoena, order, or other demand (hereinafter collectively referred to as a "demand") of a court or other authority is issued for such material or information.~~

~~—(b) For purposes of this subpart, the term employee of the Department includes all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of the Attorney General of the United States, including U.S. Attorneys, U.S. Marshals, U.S. Trustees and members of the staffs of those officials.~~

~~—(c) Nothing in this subpart is intended to impede the appropriate disclosure, in the absence of a demand, of information by Department law enforcement agencies to federal, state, local and foreign law enforcement, prosecutive, or regulatory agencies.~~

~~—(d) This subpart is intended only to provide guidance for the internal operations of the Department of Justice, and is not intended to, and does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.~~