



## **LIBRARY OF CONGRESS**

### **U.S. Copyright Office**

#### **37 CFR Part 203**

**[Docket No. 2017-1]**

#### **Freedom of Information Act Regulations**

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Interim rule with request for comments.

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**SUMMARY:** The U.S. Copyright Office is issuing an interim rule that amends its regulations governing its practices and procedures under the Freedom of Information Act (FOIA), to implement the FOIA Improvement Act of 2016. The regulations are issued on an interim basis without opportunity to comment to ensure that updated regulations are in place as soon as practicable to implement the Act. These amendments are intended to incorporate changes in the law, and provide clear guidance to members of the public in filing a FOIA request with the Office.

**DATES:** This interim rule is effective on March 9, 2017. Written comments must be received no later than 11:59 p.m. Eastern Time on April 24, 2017.

**ADDRESSES:** For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office Web site at <http://copyright.gov/rulemaking/foia2016>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the

internet, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Sarang V. Damle, General Counsel and Associate Register of Copyrights, by email at [sdam@loc.gov](mailto:sdam@loc.gov), or by telephone at 202-707-8350; or William J. Roberts, Jr., Associate Register of Copyrights and Director of Public Information and Education, by email at [wroberts@loc.gov](mailto:wroberts@loc.gov), or by telephone at 202-707-8391.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Act (FOIA), section 552 of title 5 of the United States Code, provides a statutory right of access to federal agency records. In part, FOIA establishes procedures by which a member of the public may request records from a federal agency and the parameters by which an agency must operate when responding to a request from the public. On June 30, 2016, the President signed into law the FOIA Improvement Act of 2016, Pub. L. 114-185 (2016). Section 2 of the Act amended FOIA to address a range of procedural issues. The Act amended FOIA to, *inter alia*, require agencies to make its records that have been requested three or more times available for public inspection in electronic format, to establish a 90 day period to file an administrative appeal, to notify requesters of the availability of dispute resolution services from the Office of Government Information Services (OGIS), and to prohibit the charging of fees when an agency fails to adhere to the requirements of FOIA.

Section 3 of the Act requires “the head of each agency . . . as defined in section 551 of title 5, United States Code” to review and issue new regulations in light of the amendments not later than 180 days after the date of enactment. Because the Library of

Congress (and by extension, the Copyright Office) is not an “agency” under 5 U.S.C. 551,<sup>1</sup> this deadline does not, strictly speaking apply to the Office. Nonetheless, in the interest of ensuring the Office’s FOIA practices reflect the requirements of the Act, the Office is promulgating these regulations immediately, on an interim basis to allow for notice and comment.

FOIA requires agencies to promulgate regulations addressing the requirements for making initial requests and appeals, the fees an agency may charge, and the standards and procedures for regular and expedited processing of requests, 5 U.S.C. 552(a)(4)(A)(i) and (a)(6)(E)(i), while providing areas of discretionary authority. In general, agency fee structures for FOIA services must be in compliance with the Office of Management and Budget’s *Uniform Freedom of Information Act Fee Schedule and Guidelines*. 59 FR 10012. Accordingly, the Office releases this interim rule to address the amendments made to FOIA and improvements to the Office’s administration of FOIA. The Office finds, for good cause, that allowing for notice and public procedure prior to the issuance of these interim regulations would be impracticable. To ensure that the Office’s FOIA regulations implement the FOIA Improvements Act as soon as practicable, these interim regulations will be effective March 9, 2017. However, the Office will accept public comment for 45 days, and will then develop a final rule in light of comments received.

#### *Guidelines for Adoption of Interim Rule*

In its amended regulations, the Office has adopted, where appropriate, the template for agency FOIA regulations released by the Office of Information Policy (OIP)

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<sup>1</sup> See *Ethnic Employees of the Library of Congress v. Boorstin*, 751 F.2d 1405, 1416 n.15 (D.C. Cir. 1985). The Administrative Procedure Act, and the Freedom of Information Act, apply to the U.S. Copyright Office by operation of the Copyright Act, see 17 U.S.C. 701(e), rather than via the definition of “agency” in 5 U.S.C. 551.

at the Department of Justice. In 2013, as part of the Second United States Open Government National Action Plan, the Administration initiated an interagency process to determine the feasibility and content of a FOIA regulation that could be adopted by all federal agencies. The OIP convened an inter-agency working group to study this issue. Over two years, the group engaged with federal agencies and reviewed regulatory language to determine that the most feasible approach was to provide a template with suggested language for agencies' use. OIP released this template on March 23, 2016, and subsequently updated the template to incorporate the changes of the Act.

First, the new regulation provides a clear structure for the required regulatory provisions of FOIA. It provides individual sections stating the time, place, fees, and procedures for making requests, as well as clear authority for the disposition of FOIA requests. *See* 5 U.S.C. 552(a)(3)(A)(ii). Providing discrete sections based on procedural subject matter improves readability and accessibility for the public. The regulation also establishes the availability of dispute resolution following the denial of an initial request or an administrative appeal.

Second, the regulation formalizes Office practices of multi-track processing and aggregation for administrative convenience. FOIA allows agencies to engage in multitrack processing "based on the amount of work or time (or both) involved in processing requests." *Id.* 552(a)(6)(D)(i). The interim regulation establishes that the Office will establish processing tracks for expedited, simple, and complex requests based on the estimated amount of work or time needed to process the request. The Office will notify a requester of the track into which their request falls, and will provide an opportunity to narrow or modify a request so that it may be processed in a different track.

The interim regulation also expands the Office’s ability to aggregate multiple requests that reasonably appear to be a single request, which would otherwise satisfy unusual circumstances. *See id.* 552(a)(6)(B)(iv).

Finally, the regulation provides areas where additional regulatory language can enhance customer service. In general, this language emphasizes the availability of the FOIA Public Liaison to assist requesters and members of the public, provides for communication by e-mail, and establishes guidelines for agency communication through the initial request and appeals processes. With regards to fees, the regulation describes the overall construct for assessing fees in the most efficient and least expensive manner, notifying requesters if a new computer program will be required to fulfill a request, and breaking down fees when an estimated fee is over twenty-five dollars (\$25.00). The Office has adopted these recommendations in an effort to advance the open government purposes of FOIA. *See NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (stating that the “basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”).

### **List of Subjects in 37 CFR Part 203**

Freedom of information.

### **Proposed Regulations**

For the reasons set forth in the preamble, the U.S. Copyright Office amends 37 CFR part 203 as follows:

#### **PART 203—FREEDOM OF INFORMATION ACT: POLICIES AND PROCEDURES**

1. The authority citation for part 203 is revised to read as follows:

**Authority:** 5 U.S.C. 552.

2. Revise § 203.1 to read as follows:

**§ 203.1 General.**

This information is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (“FOIA”), 5 U.S.C. 552. The rules contained in this part should be read in conjunction with the text of FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (“OMB Guidelines”). Requests made by individuals for records pertaining to themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under part 204 of this chapter. Requests for services for which the Copyright Act of 1976, title 17 of the United States Code, requires a fee are not processed under this part, but will be processed under the applicable regulations governing that service (including § 201.2 of this chapter). If the Copyright Office receives a request for services for which the Copyright Act requires a fee to be charged, the Office will notify the requester of the procedure established to obtain such services, and the applicable fees under § 201.3 of this chapter. Section 706(b) of the Copyright Act and the regulations issued under section 706(b) are not subject to FOIA.

§ 203.3 [Amended]

3. Amend § 203.3 by removing paragraph (m).

4. Revise § 203.4 to read as follows:

**§ 203.4 Proactive disclosure of Office records.**

Records that are required by FOIA to be made available for public inspection in electronic format may be accessed through the Office’s Web site at *www.copyright.gov*.

The Office is responsible for determining which of its records must be made publicly

available, for identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. The Office must ensure that its website of posted records and indices is reviewed and updated on an ongoing basis. The Office has a FOIA Public Liaison who can assist individuals in locating records particular to the Office. The Office’s FOIA Public Liaison contact information may be found at [www.copyright.gov/foia](http://www.copyright.gov/foia).

5. Remove the undesignated center heading “Availability of Information”.

6. Revise § 203.5 to read as follows:

**§ 203.5 Requirements for making requests.**

(a) *General information.* To be proper, a request must be made in accordance with the rules established under this part.

(1) To make a request for records, a requester should write directly by e-mail to [copfoia@loc.gov](mailto:copfoia@loc.gov), by postal mail to the FOIA Requester Service Center, Copyright Office, PIE, P.O. Box 70400, Washington, DC 20024, or submit the request in person between the hours of 8:30 a.m. and 5 p.m. on any working day except legal holidays at Room LM-401, The James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC. If a request is made by mail, both the request and the envelope containing it should include “Freedom of Information Act Request”. A request will receive the quickest possible response if it is clearly marked and addressed to the FOIA Requester Service Center. Guidelines for submitting a request can be found at [www.copyright.gov/foia](http://www.copyright.gov/foia).

(2) A requester who is making a request for records about himself or herself must comply with part 204 of this chapter.

(3) 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 made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requestor, or by submitting proof that the individual is deceased (e.g., a copy of a death certificate or obituary). As an exercise of administrative discretion, the Office can require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) *Description of records sought.* The request must reasonably describe the records sought. A request reasonably describes records if it enables the Office to identify the records requested in such a way that is not unreasonably burdensome or disruptive to Office operations. 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, registration, recordation, or reference number. Before submitting their requests, requesters may contact the FOIA Public Liaison to discuss the records they seek and to receive assistance in describing the records. If after receiving a request the Office determines that it does not reasonably describe the records sought, the Office will inform the requester what additional information is needed or why the request is insufficient. The requester may discuss with the FOIA Public Liaison how to reformulate or modify a request. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed.

(c) *Formats.* Requests may specify the preferred form or format (including electronic formats) for the records identified. The Office will accommodate the request if the record is readily reproducible in that form or format.

(d) *Contact information.* Requesters must provide contact information, such as a phone number, email address, and/or mailing address, to assist the Office in communicating with a requester and providing released records.

7. Remove the undesignated center heading “Charges for Search for Reproduction”.

8. Revise § 203.6 to read as follows:

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

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

(b) *Authority to grant or deny requests.* The Register of Copyrights, and the Associate Register of Copyrights and Director of Public Information and Education are authorized to grant or to deny any requests for records.

(c) *Consultation, referral, and coordination.* When reviewing records located by the Office in response to a request, the Office will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under FOIA. As to any such record, the Office will proceed in one of the following ways:

(1) *Consultation.* When records originated with the Office, but contain within them information of interest to another agency or Federal Government office, the Office may consult with the other entity prior to making a release determination.

(2) *Referral.* (i) When the Office believes that a different agency is best able to determine whether to disclose the record, the Office will refer the responsibility for responding to the request regarding that record to that agency. Ordinarily, the Office that originated the record is presumed to be the best agency to make the disclosure determination. If, however, the Office and the originating agency jointly agree that the Office is in the best position to respond, then the record may be handled as a consultation.

(ii) Whenever the Office refers any responsibility for responding to a request to another agency, it will document the referral, maintain a copy of the record that it refers, and notify the requester of the referral. The notification will include the name(s) of the agency to which the record was referred and that agency's FOIA contact information.

(3) *Coordination.* When the Office believes that a different agency is best able to determine whether to disclose the record, but disclosure of the identity of the different agency could harm an interest protected by an applicable exemption, the Office will coordinate with the originating agency to seek its views of disclosability of the record. The release determination for the record that is the subject of the coordination will then be conveyed to the requester by the Office.

(d) *Timing of responses to consultations and referrals.* All consultations and referrals received by the Office will be handled according to the date that the first agency received the perfected FOIA request.

(e) *Agreements regarding consultations and referrals.* The Office may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

9. Add §§ 203.7 through 203.10, an undesignated center heading, and § 203.11 to read as follows:

**Sec.**

**203.7 Timing of responses to requests.**

**203.8 Responses to requests.**

**203.9 Administrative appeals.**

**203.10 Preservation of records.**

**CHARGES FOR RESPONDING TO FOIA REQUESTS**

**§ 203.11 Fees.**

**§ 203.7 Timing of responses to requests.**

(a) *In general.* The Office will respond to all properly addressed emailed and mailed requests and all personally delivered written requests for records within 20 working days of receipt. The Office ordinarily will respond to requests according to their order of receipt. In instances involving a misdirected request rerouted to the Office, the response time will commence on the date that the request is received by the Office, but in any event not later than 10 working days after the request is first received by the Library of Congress.

(b) *Multitrack processing.* The Office will designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. The Office may also designate additional processing tracks that

distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors the Office may consider are the number of records requested, the number of pages involved in processing the request, and the need for consultations or referrals. The Office will advise a requester of the track into which their request falls and, when appropriate, will offer the requester an opportunity to narrow or modify their request so that it can be placed in a different processing track.

(c) *Unusual circumstances.* (1)(i) Whenever the Office cannot meet the statutory time limit for processing a request because of “unusual circumstances,” as defined in paragraph (c)(2) of this section, the Office will notify the requester in writing of the unusual circumstances and the estimated date of determination. Where an extension of time greater than 10 days is required, the Office will give the requester the opportunity to:

- (A) Limit the scope of the request so that it may be processed within 20 working days; or
- (B) Arrange with the Office an alternative time frame for processing the request or a modified request.

(ii) The Office will make available the FOIA Public Liaison to assist the requester in modifying the request.

(2) As used in this paragraph (c), “unusual circumstances” means, only to the extent reasonably necessary to the proper processing of the particular request:

(i) The need to search for and collect the requested records from establishments that are physically separate from the Office;

(ii) The need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or,

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Copyright Office which have a substantial subject matter interest therein.

(d) *Aggregating requests.* To satisfy unusual circumstances under the FOIA, the Office may aggregate requests in cases where it reasonably 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. The Office will not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) The Office will process requests and appeals on an expedited basis whenever it is determined that the request or appeal involves:

- (i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or,
- (ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request or appeal is made by a person who is primarily engaged in disseminating information.

(2) A request for expedited processing may be made at any time. Requests for expedited processing of initial requests should be made to the FOIA Requester Service Center. Requests for expedited processing of an administrative appeal should be submitted to the Office of the Register of Copyrights.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, setting forth the basis for the claim that a “compelling need” exists for the requested information.

(4) The Office will notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request will be given priority and processed as soon as is practicable. If a request for expedited processing is denied, the requester may submit an appeal to the Office of the Register of Copyrights. The Office will act expeditiously on any appeal of a denial of expedited processing.

**§ 203.8 Responses to requests.**

(a) *In general.* The Office, to the extent practicable, will communicate with requesters having access to the Internet electronically, such as email or web portal.

(b) *Acknowledgement of requests.* The Office will acknowledge a request in writing and assign it an individualized tracking number if it will take longer than 10 working days to process. The Office will include in the acknowledgement a brief description of the records sought.

(c) *Estimated dates of completion and interim responses.* Upon request, the Office will provide an estimated date by which the Office expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the agency may provide interim responses, releasing the records on a rolling basis.

(d) *Grants of requests.* Once the Office determines it will grant a request in full or in part, it will notify the requester in writing. The Office will also inform the requester of any fees charged under § 203.11 and will disclose the requested records to the requester promptly upon payment of any applicable fees. The Office will inform the requester of the availability of the FOIA Public Liaison to offer assistance.

(e) *Adverse determinations.* If the Office makes an adverse determination denying a request in any respect, it will notify the requester of that determination in writing.

Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; 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.

(f) *Content of denial.* The denial shall be signed by the Associate Register of Copyrights and Director of Public Information and Education or a designee and shall include:

- (1) The name and title or position of the person responsible for the denial;
- (2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the agency in denying the request;
- (3) When applicable, an estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;
- (4) A statement that the denial may be appealed under § 203.9, and a description of the appeal requirements; and,
- (5) A statement notifying the requester of the assistance available from the Office's FOIA Public Liaison and the dispute resolution services offered by the Office of Government Information Services.

(g) *Markings on released documents.* Records disclosed in part shall be marked clearly to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted must also be indicated on the record, if technically feasible.

**§ 203.9 Administrative appeals.**

(a) *Requirements for making an appeal.* A requester may appeal any adverse determination to the Register of Copyrights. Examples of adverse determinations are provided in § 203.8(e). Requesters can submit appeals by mail to the Register of Copyrights, Copyright Office, P.O. Box 70400, Washington, DC 20024. The requester must make the appeal in writing and to be considered timely it must be postmarked within 90 calendar days after the date of the Office’s response. The appeal should clearly identify the agency determination that is being appealed, include the assigned docket number, and include a statement explaining the basis for the appeal. To facilitate handling, the requester should include on both the appeal letter and envelope “Freedom of Information Act Appeal.”

(b) *Adjudication of appeals.* (1) The Register of Copyrights or a designee will adjudicate all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(c) *Decisions on appeals.* The Office shall provide its decision on an appeal in writing. A decision that upholds the Office’s determination in whole or in part will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions

applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services (OGIS) of the National Archives and Records Administration as a non-exclusive alternative to litigation. If the Office's decision is remanded or modified on appeal, the Agency will notify the requester of that determination in writing. The Office will then further process the request in accordance with the appeal determination and will respond directly to the requester.

(d) *Engaging in dispute resolution.* Mediation is a voluntary process. If the Office agrees to participate in the mediation services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(e) *When an appeal is required.* Before seeking review by a court of an agency's adverse determination, a requester must first submit a timely administrative appeal.

#### **§ 203.10 Preservation of records.**

The Office must preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 14 of the National Archives and Records Administration. The Office shall not dispose of or destroy records while they are the subject of a pending request, appeal, or lawsuit under FOIA.

### **CHARGES FOR RESPONDING TO FOIA REQUESTS**

#### **§ 203.11 Fees.**

(a) *In general.* (1) The fee schedule of this section does not apply with respect to the charging of fees for those records for which the Copyright Act requires a fee to be

charged. The fees required to be charged are contained in §201.3 of this chapter, or have been established by the Register of Copyrights or Library of Congress pursuant to the requirements of that section. The Copyright Office will charge for processing requests under FOIA in accordance with the provisions of this section and with the OMB Guidelines. For purposes of assessing fees for processing requests, FOIA establishes three categories of requesters:

- (i) Commercial use requesters;
- (ii) Non-commercial scientific or educational institutions or news media requesters; and
- (iii) All other requesters.

(2) Different fees are assessed depending on the category. Requesters may seek a fee waiver, which the Office will consider in accordance with paragraph (k) of this section.

To resolve any fee issues that arise under this section, an agency may contact a requester for additional information. The Office shall ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner. The Office will ordinarily collect all applicable fees before sending copies of records to a requester.

Requesters must pay fees by check or money order made payable to the United States Copyright Office.

(b) *Definitions.* For the purpose of this section:

(1) *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. The Office's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information. The Office will notify requesters of their placement in this category.

(2) *Direct costs* are those expenses that the Office incurs in searching for, duplicating, and/or reviewing records in order to respond to a FOIA request. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) *Duplication* 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, audiovisual materials, or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. The Office may seek verification from the requester that the request is in furtherance of scholarly research and the Office will advise requesters of their placement in this category.

(5) *Noncommercial scientific institution* is an institution that is not operated on a commercial basis and is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution that the records are sought to further scientific research and are not for a commercial use. The Office will advise requesters of their placement in this category.

(6) *Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. 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, the Office can also consider a requester’s past publication record in making this determination. The Office will advise requesters of their placement in this category.

(7) *Review* 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. Review includes taking all necessary steps to prepare a record for disclosure, including the process of redacting the record and marking the appropriate exemptions and time spent obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 203.9. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review costs are properly charged even if a record ultimately is not disclosed.

(8) *Search* is the process of looking for and retrieving records or information responsive to a request. Search includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(c) *Charging fees.* In responding to FOIA requests, the Office will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section.

(1) *Search.* (i) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. The

Office will charge search fees for all other requesters, subject to the restrictions of paragraph (d) of this section. Fees may be assessed for time spent searching even if the search fails to locate any responsive records or where the records located are subsequently determined to be entirely exempt from disclosure.

(ii) For each quarter hour spent by administrative staff in searching for a requested record, \$7.50; for each quarter hour spent by professional staff in searching for a requested record, \$17.50, with a half hour minimum in both cases.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, the actual direct costs of conducting the search including the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the direct costs of operator/programmer salary apportionable to search (at no less than \$65 per hour or fraction thereof).

(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), agencies will charge additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* The Office will charge duplication fees to all requesters, subject to the restrictions of paragraph (d) of this section. The Office will honor a requester's preference for receiving a record in a particular form or format when the Office can readily reproduce it in the form or format requested. For copies of the public records, deposits, or indexes of the Office, the Office will charge fees according to § 201.3 of this

chapter. For copies of all other Copyright Office records not otherwise provided for in this section, a minimum fee of \$15.00 for up to 15 pages and \$.50 per page over 15.

(3) *Review.* The Office will charge review fees to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. If a particular exemption is deemed to no longer apply on appeal, any costs associated with the Office's re-review of the records may be assessed as review fees. Review fees will be charged at the same rates as described in paragraph (c)(1)(ii) of this section.

(4) *Other direct costs.* Other costs incurred by the Copyright Office in fulfilling a request will be chargeable at the actual cost to the Office.

(d) *Restrictions on charging fees.* (1)(i) If the Copyright Office fails to comply with FOIA's time limits in which to respond to a request, it may not charge search fees or, in the instances of requests from educational institutions, non-commercial scientific institutions, or representatives of the news media, may not charge duplication fees, except as described in this paragraph (d).

(ii) If the Office has determined that unusual circumstances, as defined by FOIA, apply and the agency provides timely written notice to the requester, a failure to comply with the time limit shall be excused for an additional 10 days.

(iii) If the Office has determined that unusual circumstances, as defined by FOIA, apply and more than 5,000 pages are necessary to respond to the request, the Office may charge fees if the Office has provided timely written notice of the unusual circumstances to the

requester in accordance with FOIA and the Office has discussed with the requester (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).

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

(2) No search or review 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, the Office 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.

(4) No fee will be charged when the total fee, after deducting the first 100 pages (or its cost equivalent) and the first two hours of search, is equal to or less than \$25.00.

(5) No fees will be charged for ordinary packaging and mailing costs.

(e) *Notice of anticipated fees in excess of \$25.00.* (1) When the Office determines or estimates that the fees to be assessed will exceed \$25.00, the Office shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, 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 Office will advise the requester accordingly. If the request is a noncommercial use requester, the notice shall include the services provided without charge indicated in

paragraph (d)(3) of this section, and shall advise the requester whether those entitlements have been provided.

(2) When a requester has been provided notice of anticipated fees in excess of \$25.00, the request shall not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, to designate which fees the requester is willing to pay, or, for noncommercial requests, to indicate that the requester seeks only the services that can be provided in paragraph (d)(3) of this section without charge. The Office is not required to accept payment in installments.

(3) When the requester has committed to pay some designated amount of fees, but the Office estimates that the total fee will exceed that amount, the Office shall toll processing of the request when it notifies the requester of the estimated fees in excess of the requester's commitment. The Office shall inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The Office shall make available the FOIA Public Liaison to assist the requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if the Office chooses to do so as a matter of administrative discretion, the direct costs of providing the service shall be charged.

(g) *Charging interest.* The Office 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 and will accrue from the billing date until payment is received by the Office.

(h) *Aggregating requests.* When the Office reasonably believes that a requester or group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the Office may aggregate those requests and charge accordingly. The Office may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, agencies will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters cannot be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraph (i)(2) or (3) of this section , the Copyright Office cannot require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

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

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any agency within 30 calendar days of the billing date, the Office may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the Office may require that the requester make an advance payment of the full amount of

any anticipated fee before the Office begins to process a new request or continues to process a pending request or any pending appeal. Where the Office has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which the Office requires advance payment, the request will not be considered received and further work will not be 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 Office's fee determination, the request will be closed.

(j) *Other statutes specifically providing for fees.* The provisions of this section do not apply with respect to the charging of fees for which the copyright law requires a fee to be charged. Requesters asking for copies of records about themselves shall be processed under the Privacy Act fee schedule found in § 204.6 of this chapter. Fees for services by the Office in the administration of the copyright law are contained in § 201.3 of this chapter. In instances where records responsive to a request are subject to the statutorily-based fee schedule, the Office will inform the requester of the service and appropriate fee.

(k) *Requirements for waiver or reduction of fees.* (1) Records responsive to a request shall be furnished without charged or at a reduced rate where the Office determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interested because it is likely to contribute significantly to the 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) In deciding whether the requester has demonstrated the requirement of paragraph (k)(1)(i) of this section, the Office shall consider all four of the following factors:

(i) The subject of the request must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure 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 the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public’s 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 as well as the requester’s ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public’s understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, the Office shall not make value judgments about whether the information at issue is “important” enough to be made public.

(3) In deciding whether the requester has demonstrated the requirement of paragraph (k)(1)(ii) of this section, the Office shall consider the following two factors:

(i) The Office shall identify any commercial interest of the requester that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

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

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

Dated: December 28, 2016.

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**Karyn Temple Claggett,**  
*Acting Register of Copyrights and  
Director of the U.S. Copyright Office.*

Approved by:

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**Carla D. Hayden,**  
*Librarian of Congress.*

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