

6 JAN 1999

FOIA FEES

1. Background

a. The DON follows the uniform fee schedule developed by DoD and established to conform with the Office of Management and Budget's (OMB's) Uniform Freedom of Information Act Fee Schedule and Guidelines.

b. Fees reflect direct costs for search; review (in the case of commercial requesters); and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, which does not supersede the collection of fees under the FOIA.

c. FOIA fees do not supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. For example, 5 U.S.C. 552 (a)(4)(a)(vi) enables a Government agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. DON activities should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

2. FOIA Fee Terms

a. "**Direct costs**" means those expenditures a DON activity actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed in this enclosure. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

b. "**Duplication**" refers to the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to ensure

6 JAN 1999

that the copy provided is in a form that is reasonably usable, the requester shall be notified that the copy provided is the best available, and that the activity's master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a DON activity estimates that assessable duplication charges are likely to exceed \$25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

c. **"Review"** refers to the process of examining documents located in response to a FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. DON activities may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

d. **"Search"** refers to time spent looking, both manually and electronically, for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the record to determine if it, or portions thereof are responsive to the request. DON activities should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the activity and the requester. For example, activities should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time.

6 JAN 1999

(1) DON activities may charge for time spent searching for records, even if that search fails to locate records responsive to the request.

(2) DON activities may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure.

(3) In practice, if the DON activity estimates that search charges are likely to exceed \$25.00, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

3. Categories of Requesters - Applicable Fees

a. **Commercial Requesters** refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, DON activities must determine the use to which a requester will put the documents requested. Moreover, where an activity has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, it should seek additional clarification before assigning the request to a specific category.

(1) Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought.

(2) When DON activities receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to 2 hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for

commercial use. Such situations must be addressed on a case-by-case basis.

b. **Educational Institution** refers to a pre-school, a public or private elementary or secondary school, an institution of graduate high education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(1) Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought.

(2) Requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly research.

(3) Fees shall be waived or reduced in the public interest if criteria of paragraph 7 of this enclosure have been met.

c. **Non-commercial Scientific Institution** refers to an institution that is not operated on a "commercial" basis 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.

(1) Fees shall be limited to only reasonable standard charges for document duplication (excluding the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought.

(2) Requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of or scientific research.

d. **Representative of the news media**

(1) Refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media

6 JAN 1999

entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but DON activities may also look to the past publication record of a requester in making this determination.

(2) To be eligible for inclusion in this category, a requester must meet the criteria established above, and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(3) Representative of the news media does not include private libraries, private repositories of Government records, information vendors, data brokers or similar marketers of information whether to industries and businesses, or other entities.

(4) Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought. Fees shall be waived or reduced if the fee waiver criteria have been met.

e. **All Other Requesters.** DON activities shall charge requesters who do not fit into any of the categories described above fees which recover the full direct cost of searching for and duplicating records, except that the first 2 hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought. Requests from

subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. DON activities are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest.

4. Fee Declarations: Requesters should submit a fee declaration appropriate for the below categories, if fees are expected to exceed the minimum fee threshold of \$15.00.

a. **Commercial.** Requesters should indicate a willingness to pay all search, review and duplication costs.

b. **Educational or Noncommercial Scientific Institution or News Media.** Requesters should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

c. **All Others.** Requesters should indicate a willingness to pay assessable search and duplication costs if more than 2 hours of search effort or 100 pages of records are desired.

d. If the above conditions are not met, then the request need not be processed and the requester shall be so informed.

5. Fee Restrictions

a. No fees may be charged by any DON activity if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, activities shall provide the first 2 hours of search time, and the first 100 pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved 2 hours and 10 minutes of search time, and resulted in 105 pages of documents, an activity would determine the cost of only 10 minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than, the cost to the activity for billing the requester and processing the fee collected, no charges would result.

b. Requesters receiving the first 2 hours of search and the first 100 hundred pages of duplication without charge are entitled to such only once per request. Consequently, if a DON activity, after completing its portion of a request, finds it necessary to refer the request to a

6 JAN 1999

subordinate office, another DON activity, or another Federal agency to action their portion of the request, the referring activity shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

c. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the DON activity of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of Treasury to handle such remittance is negligible and shall not be considered in activity determinations.

d. For the purposes of these restrictions, the word "pages" refers to paper copies of a standard size, which will normally be "8 1/2 x 11" or "11 x 14." Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout however, might meet the terms of the restriction.

e. In the case of computer searches, the first 2 free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal \$24.00 (2 hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time. In the event the direct operating cost of the hardware configuration cannot be determined, computer search shall be based on the salary scale of the operator executing the computer search.

6. Fee Assessment

a. Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

b. In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, DON activities shall adhere to the following procedures:

(1) Analyze each request to determine the category of the requester. If the activity's determination regarding the category of the requester is different than that claimed by the requester, the activity shall:

6 JAN 1999

(a) Notify the requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the DON activity shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(b) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the activity.

c. Estimate of Fees. DON activities must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among activities, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should the activity's actual costs exceed the amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

d. Advance Payment of Fees. DON activities may not require advance payment of any fee (i.e., before work is commenced or continued on a request) unless the requester has failed to pay fees in a timely fashion (i.e., 30 calendar days from the date of the assessed billing in writing), or the activity has determined that the fee will exceed \$250.00.

e. When a DON activity estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, the activity shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no payment history.

f. Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the DON activity may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid

the fee, and to make an advance payment of the full amount of the estimated fee before the DON activity begins to process a new or pending request from the requester. Interest will be at the rate prescribed by 31 U.S.C. 3737 and confirmed with respective finance and accounting offices.

g. After all the work is completed on a request, and the documents are ready for release, DON activities may require payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed to previously pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing).

h. DON activities may charge for time spent searching for records, even if that search fails to locate records responsive to the request. DON activities may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure. In practice, if the DON activity estimates that search charges are likely to exceed \$25.00, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

i. **Aggregating Requests.** Except for requests that are for a commercial use, a DON activity may not charge for the first 2 hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When an activity reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the activity may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period however, such a presumption becomes harder to sustain and activities should have a solid basis for determining that aggregation is warranted in such cases. DON activities are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to

conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may an activity aggregate multiple requests on unrelated subjects

j. FOIA Fees Must Be Addressed in Response Letters.

DON activities shall ensure that requesters receive a complete breakout of all fees which are charged and apprised of the "Category" in which they have been placed. For example: "We are treating you as an 'All Other Requester.' As such, you are entitled to 2 free hours of search and 100 pages of reproduction, prior to any fees being assessed. We have expended an additional 2 hours of search at \$25.00 per hour and an additional 100 pages of reproduction, for a total fee of \$65.00."

7. Fee Waivers. Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters, when the DON activity determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the DON/DoD and is not primarily in the commercial interest of the requester. When assessable costs for a FOIA request total \$15.00 or less, fees shall be waived automatically for all requesters, regardless of category. Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

a. Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government."

b. The subject of the request. DON activities should analyze whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the DON/DoD. Requests for records in the possession of the DON which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value, will likely not contribute to public understanding of the operations or activities of the DON/DoD. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DON/DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the DON/DoD, however, the age of a particular record shall not be the sole criteria for denying

6 JAN 1999

relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the DON/DoD, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the DON/DoD.

c. The informative value of the information to be disclosed. This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the DON. While the subject of a request may contain information that concerns operations or activities of the DON, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a previously released record that has been heavily redacted, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the DON must be approached with caution and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the DON.

d. The contribution to an understanding of the subject by the general public likely to result from disclosure. The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform, the public rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigence are insufficient without demonstrating the capacity to further disclose the information in a manner that will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

6 JAN 1999

e. The significance of the contribution to public understanding. In applying this factor, DON activities must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public? A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. DON activities shall not make value judgments as to whether the information is important enough to be made public.

f. Disclosure of the information "is not primarily in the commercial interest of the requester."

(1) **The existence and magnitude of a commercial interest.** If the request is determined to be of a commercial interest, DON activities should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, DON activities may draw inference from the requester's identity and circumstances of the request. Activities are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

(2) **The primary interest in disclosure.** Once a requester's commercial interest has been determined, DON activities should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be

6 JAN 1999

of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

h. The factors and examples used in this subsection are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, DON activities should rule in favor of the requester.

i. The following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(1) A record is voluntarily created to prevent an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(2) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. \$15.00 - \$30.00).

8. Payment of Fees

a. Normally, fees will be collected at the time of providing the documents to the requester when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs, and the fees do not exceed \$250.00.

b. However, after all work is completed on a request, and the documents are ready for release, DON activities may request payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed previously to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing).

c. When a DON activity estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, the activity shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

d. Advance payment of a fee is also applicable when a requester has previously failed to pay fees in a timely fashion (i.e., 30 calendar days) after being assessed in writing by the activity. Further, where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the DON activity may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the activity begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and confirmed with respective finance and accounting offices.

9. Effect of the Debt Collection Act of 1982 (P.L. 97-365). The Debt Collection Act of 1982 provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. DON activities may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717. DON activities should verify the current interest rate with respective finance and accounting offices. After one demand letter has been sent and 30 calendar days have lapsed with no payment, DON activities may submit the debt to respective finance and accounting offices for collection.

10. Refunds. In the event that a DON activity discovers that it has overcharged a requester or a requester has overpaid, the DON activity shall promptly refund the charge to the requester by reimbursement methods that are agreeable to the requester and the activity.

11. Computation of Fees

a. It's imperative that DON activities compute all fees to ensure accurate reporting in the Annual FOIA Report, but ensure that only applicable fees be charged to the requester. For example, although we calculate

8 JAN 1999

correspondence and preparation costs, these fees are not recoupable from the requester.

b. DD 2086, Record of Freedom of Information (FOI) Processing Cost, should be filled out accurately to reflect all processing costs, as requesters may solicit a copy of that document to ensure accurate computation of fees. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

12. FOIA Fee Schedule. The following fee schedule shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. The appropriate fee category of the requester shall be applied before computing fees.

a. Manual Search

| Type | Grade | Hourly Rate |
|--------------|-----------------------|-------------|
| Clerical | E9/GS8 and below | \$12.00 |
| Professional | 01-06/GS9-GS15 | \$25.00 |
| Executive | 07/GS16/ES1 and above | \$45.00 |

b. Computer Search. Fee assessments for computer search consist of two parts; individual time (hereafter referred to as human time) and machine time.

(1) Human time. Human time is all the time spent by humans performing the necessary tasks to prepare the job for a machine to execute the run command. If execution of a run requires monitoring by a human, that human time may be also assessed as computer search. The terms programmer/operator" shall not be limited to the traditional programmers or operators. Rather, the terms shall be interpreted in their broadest sense to incorporate any human involved in performing the computer job (e.g. technician, administrative support, operator, programmer, database administrator, or action officer).

(2) Machine time. Machine time involves only direct costs of the central processing unit (CPU), input/output devices, and memory capacity used in the actual computer configuration. Only this CPU rate shall be charged. No

6 JAN 1999

other machine-related costs shall be charged. In situations where the capability does not exist to calculate CPU time, no machine costs can be passed on to the requester. When CPU calculations are not available, only human time costs shall be assessed to requesters. Should DON activities lease computers, the services charged by the lessor shall not be passed to the requester under the FOIA.

c. Duplication

| Type | Cost per Page |
|---|---|
| Pre-Printed material | \$.02 |
| Office copy | \$.15 |
| Microfiche | \$.25 |
| Computer copies (tapes, discs or printouts) | Actual cost of duplicating the tape, disc or printout (includes operator's time and cost of the medium) |

d. Review Time (in the case of commercial requesters, only)

| Type | Grade | Hourly Rate |
|--------------|-----------------------|-------------|
| Clerical | E9/GS8 and below | \$12.00 |
| Professional | 01-06/GS9-GS15 | \$25.00 |
| Executive | 07/GS16/ES1 and above | \$45.00 |

e. Audiovisual Documentary Materials. Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

f. Other Records. Direct search and duplication cost for any record not described in this section shall be computed in the manner described for audiovisual documentary material.

g. Costs for Special Services. Complying with requests for special services is at the discretion of the DON activity. Neither the FOIA nor its fee structure cover these kinds of services. Therefore, DON activities may recover the costs of special services requested by the

6 JAN 1999

requester after agreement has been obtained in writing from the requester to pay for such fees as certifying that records are true copies, sending records by special methods such as express mail, etc.

13. Collection of Fees and Fee Rates for Technical Data

a. Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information.

b. DON activities shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full costs shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under information released under FOIA.

c. **Waiver.** DON activities shall waive the payment of costs required in paragraph 13a of this enclosure which are greater than the costs that would be required for release of this same information under the FOIA if:

(1) The request is made by a citizen of the United States or a United States corporation and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, DON activities may require the citizen or corporation to pay a

deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(2) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(3) The DON activity determines in accordance with paragraph 7 that such a waiver is in the interest of the United States.

d. Fee Rates

(1) Manual Search

| Type | Grade | Hourly Rate |
|--------------------------|--------------------------|-------------|
| Clerical | E9/GS8 and below | \$13.25 |
| Clerical Minimum Charge) | | \$8.30 |
| Professional | O1 to O6/ GS9 to GS15 | ** |
| Executive | O7/GS16/ES-1 and above | ** |

** Rate to be established at actual hourly rate prior to search. A minimum charge will be established at 1/2 Minimum Charge)

(2) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale for manual search) for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(3) Duplication

| Type | Cost |
|---|--------|
| Aerial photograph, maps, specifications, permits, charts, blueprints, and other technical engineering documents | \$2.50 |
| Engineering data (microfilm) | |
| Aperture cards | |
| Silver duplicate negative, per card | \$.75 |
| When key punched and verified, per card | \$.85 |
| Diaz duplicate negative, per card | \$.65 |
| When key punched and verified, per card | \$.75 |
| 35mm roll film, per frame | \$.50 |
| 16mm roll film, per frame | \$.45 |
| Paper prints (engineering drawings), each | \$1.50 |
| Paper reprints of microfilm indices, each | \$.10 |

(4) Review Time

| Type | Grade | Hourly Rate |
|--------------------------|--------------------------|-------------|
| Clerical | E9/GS8 and below | \$13.25 |
| Clerical Minimum Charge) | | \$8.30 |
| Professional | O1 to O6/ GS9 to GS15 | ** |
| Executive | O7/GS16/ES1 or higher | ** |

** Rate to be established at actual hourly rate prior to search.
A minimum charge will be established at 1/2 Minimum Charge)

SECNAVINST 5720.42F

6 JAN 1999

(5) Other Technical Data Records. Charges for any additional services not specifically provided in subsection 13d above, consistent with Volume 11A of DoD 7000.14-R (NOTAL) shall be made by DON activities at the following rates:

| | |
|---|---------|
| Minimum charge for office copy up to six images) | \$3.50 |
| Each additional image | \$.10 |
| Each typewritten page | \$3.50 |
| Certification and validation with seal, each | \$5.20 |
| Hand-drawn plots and sketches, each hour or fraction Thereof | \$12.00 |

14. Processing FOIA Fee Remittances

a. Payments for FOIA charges, less fees assessed for technical data or by a Working Capital Fund or a Non-Appropriated Fund (NAF) activity, shall be made payable to the U.S. Treasurer and deposited in Receipt Account Number 172419.1203.

b. Payments for fees assessed for technical data shall be made payable to the DON activity that incurred the costs and will be deposited directly into the accounting line item from which the costs were incurred.

c. Payments for fees assessed by Working Capital Fund or Non-Appropriated Fund (NAF) activities shall be made payable to the DON activity and deposited directly into their account.