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## 29 C.F.R. § 1401.29

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### Fees.

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(a) *In general.* (1) The FMCS will charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. For purposes of assessing fees, the 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. The Agency will consider requests for fee waivers in accordance with the requirements in subsection (k) of the FOIA. To resolve any fee issues that arise under this section, the FMCS may contact a requester for additional information. The Agency is to conduct searches, review, and duplication in an efficient and cost-effective manner. The FMCS ordinarily will 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 Treasury of the United States, or by another method as determined by the Agency.

(b) *Definitions.* For purposes of this section:

*Commercial use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The FMCS'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 Agency will notify requesters of their placement in this category.

*Direct costs* are those expenses that an agency incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.*, the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

*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.

*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 the requester's role at the educational institution. The FMCS may seek verification from the requester that the request is in furtherance of scholarly research and will advise requesters of their placement in this category.

*Noncommercial scientific institution* is an institution that is not operated on a “commercial” basis, as defined in this paragraph (b) 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. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use. The FMCS will advise requesters of their placement in this category.

*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. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. Freelance journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected. However, the Agency can also consider a requester's past publication record in making this determination. The Agency will advise requesters of their placement in this category.

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