

Federal Communications Commission

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delivery evolve (for example, the adoption of electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Commission may also consider the past publication record of the requester in making such a determination. See 5 U.S.C. 552(a)(4)(A)(ii).

(8) The term *all other requester* refers to any person not within the definitions in paragraphs (a)(4) through (a)(7) of this paragraph.

(b) [Reserved]

[74 FR 14078, Mar. 30, 2009, as amended at 76 FR 24389, May 2, 2011]

§ 0.467 Search and review fees.

(a)(1) Subject to the provisions of this section, an hourly fee shall be charged for recovery of the full, allowable direct costs of searching for and reviewing records requested under § 0.460 or § 0.461, unless such fees are reduced or waived pursuant to § 0.470. The fee is based on the pay grade level of the FCC's employee(s) who conduct(s) the search or review, or the actual hourly rate of FCC contractors or other non-FCC personnel who conduct a search.

NOTE TO PARAGRAPH (a)(1): The fees for FCC employees will be modified periodically to correspond with modifications in the rate of pay approved by Congress and any such modifications will be announced by public notice and will be posted on the Commission's Web site, <http://www.fcc.gov/foia/#feeschedule>.

(2) The fees specified in paragraph (a)(1) of this section are computed at Step 5 of each grade level based on the General Schedule or the hourly rate of non-FCC personnel, including in addition twenty percent for personnel benefits. Search and review fees will be assessed in ¼ hour increments.

(b) Search fees may be assessed for time spent searching, even if the Commission fails to locate responsive

records or if any records located are determined to be exempt from disclosure.

(c) The Commission shall charge only for the initial review, *i.e.*, the review undertaken initially when the Commission analyzes the applicability of a specific exemption to a particular record. The Commission shall not charge for review at the 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 of such a subsequent review, under these circumstances, are properly assessable.

(d) The fee charged will not exceed an amount based on the time typically required to locate records of the kind requested.

(e)(1) If the Commission estimates that search charges are likely to exceed the greater of \$25 or the amount which the requester indicated he/she is prepared to pay, then it shall notify the requester of the estimated amount of fees. Such a notice shall offer the requester the opportunity to confer with Commission personnel with the object of revising or clarifying the request. See § 0.465(c)(2) and § 470(d).

(2) The time for processing a request for inspection shall be tolled while conferring with the requester about his or her willingness to pay the fees required to process the request. See § 0.461(e).

(f) When the search has been completed, the custodian of the records will give notice of the charges incurred to the person who made the request.

(g) The fee shall be paid to the Financial Management Division, Office of Managing Director, or as otherwise directed by the Commission.

(h) Records shall be inspected within seven days after notice is given that they have been located and are available for inspection. See § 0.461(n). After that period, they will be returned to storage, and additional charges may be imposed for again producing them.

[74 FR 14078, Mar. 30, 2009, as amended at 76 FR 24390, May 2, 2011]

§ 0.468 Interest.

Interest shall be charged those requesters who fail to pay the fees

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charged. The agency will begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. The date on which the payment is received by the agency will determine whether and how much interest is due. The interest shall be set at the rate prescribed in 31 U.S.C. 3717.

§ 0.469 Advance payments.

(a) The Commission may not require advance payment of estimated FOIA fees except as provided in paragraph (b) or where the Commission estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00 and the requester has no history of payment. Where allowable charges are likely to exceed \$250.00 and the requester has a history of prompt payment of FOIA fees the Commission may notify the requester of the estimated cost and obtain satisfactory assurance of full payment. Notification that fees may exceed \$250.00 is not, however, a prerequisite for collecting fees above that amount.

(b) Where a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), the Commission may require the requester to pay the full amount owed plus any applicable interest as provided in § 0.468, and to make an advance payment of the full amount of the estimated fee before the Commission begins to process a new request or a pending request from that requester.

(c) When the Commission acts under paragraph (a) of this section, the administrative time limits prescribed in §§ 0.461(g) and (k) (*i.e.*, twenty business days from receipt of initial requests and twenty business days from receipt of appeals from initial denials, plus permissible extensions of these time limits (see § 0.461(g)(1)(i) through (iii) and § 0.461(k)(1)(i) through (iii)) will begin only after the agency has received the fee payments described in this section. See § 0.461(e)(2)(ii) and § 0.467(e)(2).

§ 0.470 Assessment of fees.

(a)(1) *Commercial use requesters.* (i) When the Commission receives a re-

quest for documents for commercial use, it will assess charges that recover the full direct cost of searching for, reviewing and duplicating the records sought pursuant to § 0.466 and § 0.467, above.

(ii) Commercial use requesters shall not be assessed search fees if the Commission fails to comply with the time limits under § 0.461(g)(1), if no unusual or exceptional circumstances (§ 0.461(g)(1)(i) through (iii)) apply to the processing of the request.

(2) *Educational and non-commercial scientific institution requesters and requesters who are representatives of the news media.* (i) The Commission shall provide documents to requesters in these categories for the cost of reproduction only, pursuant to § 0.465 above, excluding reproduction charges for the first 100 pages, provided however, that requesters who are representatives of the news media shall be entitled to a reduced assessment of charges only when the request is for the purpose of distributing information.

(ii) Educational requesters or requesters who are representatives of the news media shall not be assessed fees for the cost of reproduction if the Commission fails to comply with the time limits under § 0.461(g)(1), if no unusual or exceptional circumstances (§ 0.461(g)(1)(i) through (iii)) apply to the processing of the request.

(3) *All other requesters.* (i) The Commission shall charge requesters who do not fit into any of the categories above fees which cover the full, reasonable direct cost of searching for and reproducing records that are responsive to the request, pursuant to § 0.465 and § 0.467, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

(ii) All other requesters shall not be assessed search fees if the Commission fails to comply with the time limits under § 0.461(g)(1), if no unusual or exceptional circumstances (§ 0.461(g)(1)(i) through (iii)) apply to the processing of the request.

(b)(1) The 100 page restriction on assessment of reproduction fees in paragraphs (a)(2) and (3) of this section refers to 100 paper copies of a standard