

## FOIA FEES POLL Analysis Report

The Freedom of Information Act Advisory Committee's Subcommittee on Fees is releasing the results of its poll to federal FOIA professionals about FOIA fees. The ten-question poll was submitted to and approved by the National Archives and Records Administration's Chief Operating Officer and completed by 407 federal FOIA professionals. The results of this poll, as well as a subsequent poll which will be presented to the requester community will be used to inform the subcommittee as it works to improve the issue of Freedom of Information Act fees. It is our hope that the public will also analyze these results so that the data can be as useful as possible. Accordingly, the poll results are available at <https://ogis.archives.gov/Assets/foia-public-liaison-survey-results.xls?method=1>. We welcome your comments, thoughts and ideas. For information on submitting comments to the Committee, visit <https://ogis.archives.gov/foia-advisory-committee/contact-us-submit-comments.htm>.

Q1: More than 75% of those surveyed worked in their agency/organization for at least 3 years (so the majority of the sample are most likely pretty experienced in the issue of collecting and assessing fees for information requests).

Q2: More than 55% of those surveyed work as "FOIA Processors" (those actually processing the requests).

Q3: Those surveyed work in organizations that receive a wide range of requests per year; from tens to several thousands requests per year (pretty evenly distributed).

Q4: Almost half of those surveyed spend less than one hour per week on average reviewing fee-related issues, but about 7% spend 10 hours or more per week.

Q5: On average, 20% of the requests result in charging fees; for the rest of the requests the assessable fees are waived or there are no assessable fees.

Q6: About 2/3 of those surveyed see advantages or disadvantages to eliminating fees. Of the 328 open text responses for question #6, 52 expressed advantages, 219 expressed disadvantages, 34 expressed both advantages along with disadvantages, and 23 expressed indifference. Those who expressed concerns with eliminating fees anticipated that requesters would no longer have an incentive to limit their requests and that the FOIA processors will be flooded with frivolous, lengthy, and unfocused requests. Processing would become backlogged and it would take longer to meet peoples' requests, most likely leading to frustration of both the processors and the requesters. In addition, FOIA processors feel that researching and duplicating (paper records) is very costly, and there *should* be a fee based on the volume of the request. On the other hand, some of the sample still felt that eliminating fees would be beneficial to the processors, as it would save time and effort in resolving fee discrepancies, reduce ambiguity of who receives fee waivers, and ultimately decrease paperwork and make it easier to process requests. In addition, they suggest that the current fee structure (that charges based on the time spent by the employee in processing the request and his/her rank) is not fair, that fees do not go back to the agency processing the request, and that most lengthy requests come from non-profit organizations who

usually qualify for preferred fee status that prohibits agencies from charging most FOIA fees anyway.

Q7: About 56% of those polled think that a small flat fee (\$5-10) for all requesters would reduce the time spent on assessing fees. Based on the open text responses, those who are in favor of the flat fee think it will be easy to administer, makes the fee more fair in that it is independent of the person's processing speed and rank, and that it makes sense in a digital age where processing is done electronically. Those who are against the (small) flat fee indicate that the amount is too small, that there is no way to differentiate requesters (commercial vs. non-commercial), and that it does not account for the processing time. The responses to the next question seems to indicate that many of those responders could support a flat fee that is graduated based on the processing volume (number of pages) and based on the category of the requester (with support for waivers).

Q8: This question asks for suggestions in how to change the FOIA fee structure to improve overall processing, if the sample believes there should be a change at all. Based on the open text responses, the opinions varied quite a bit. As mentioned in the Q7 analysis, some of the samples believe there should be a graduated flat fee based on volume or category of the request, but not on the time it takes to process the request or the rank of the processor. Others were in favor of the proposition in Q7 for a small flat fee. And some suggested no fees at all, or no change in the fee structure and to leave it as is. (Many were also unsure, or responded "N/A").

Q9: This question asks whether fees were an issue for withdrawing or narrowing the scope of requests. The majority of the open text responses were along the lines of "never" or "rarely". Those whose responses were more like "often" added that under those circumstances, processing was even more complicated and lengthy.

#### Conclusion:

In general, it appears that most employees surveyed think that the current fee structure is unfair and time consuming, and prefer a flat fee structure graduated based on volume of the request and category of the requester. This appears to be confirmed by Q6, Q8 and Q9. Most people see some advantage to collecting fees as an incentive to regulate requests and their volume (scope), but may also prefer a simpler graduated flat fee to the current fee structure.