



NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Freedom of Information Act (FOIA) Federal Advisory Committee
Recommendation Memorandum

FOR: David S. Ferriero, Archivist of the United States, National Archives and Records Administration

FROM: James V.M.L. Holzer, FOIA Advisory Committee Chairman

SUBJECT: Freedom of Information Act (FOIA) Fees

DATE: XX X, 2016

PURPOSE: The FOIA Federal Advisory Committee established the FOIA Fees Subcommittee on June 24, 2014, to examine whether current guidance on FOIA fees is still relevant and represents the President’s policy that a “presumption of disclosure should be applied to all decisions involving the FOIA.”¹

BACKGROUND: The FOIA (5 U.S.C. § 552) establishes the basic statutory requirements for agencies to assess fees when processing FOIA requests. The Freedom of Information Reform Act of 1986 (Pub. L. 99-570), required the Office of Management and Budget (OMB) to promulgate guidelines containing a uniform schedule of FOIA fees applicable to all agencies that are subject to the FOIA and OMB published these guidelines on March 27, 1987. Congress subsequently amended the statute’s fee provisions in the OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524.

The majority of Advisory Committee members believe fees are a major source of contention between FOIA requesters and agencies and that fee categories and waivers are so subjective that there is little consistency in agency fee determinations. Additionally, this subjectivity adds to the time it takes agencies to process FOIA requests.

The Subcommittee polled 407 government FOIA professionals, asking 10 questions concerning agency application of the statutory and OMB FOIA fee guidelines. An analysis of the responses is attached, and it concludes that, in “general, it appears that most employees surveyed think that

¹ [Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 \(Jan. 21, 2009\).](#)

the current fee structure is unfair and time consuming, and prefer a flat fee structure, graduated based on volume of the records responsive to a request and category of the requester.”

In light of the survey findings, and the Advisory Committee’s strong belief that FOIA fee guidelines as currently written contribute to confusion and animosity between FOIA professionals and FOIA requesters, the full Advisory Committee proposes that the Archivist recommend that OMB revise its 1987 guidance.

Because much of the confusion surrounding fee issues is a result of the technological changes in the public’s ability to disseminate information, OMB should revise its guidance to reflect these changes. Updated guidance would incorporate Congressional intent, nearly 30 years of case law on the issue, and advances in technology to eliminate some of the subjectivity that agencies must exercise to make fee issue determinations. Additionally, the Subcommittee believes that a revision would clarify fee issues for requesters and agencies, provide a less subjective and more transparent fee assessment process and reduce the amount of time it takes agencies to assess fees. Attached are some of the recommendations the Subcommittee believes should be considered for inclusion in the new guidance.

Attachment