

Freedom of Information Act (FOIA) Federal Advisory Committee Proposed Recommendations

The FOIA Advisory Committee recommends that the updated Office of Management and Budget fee guidance should:

1. Provide clarity by clearly differentiating between two separate yet related issues, fee waivers and requester fee category status. Agencies need unambiguous, uniform guidelines on the criteria that must be met for each fee category. These guidelines should reflect the President's and Attorney General's guidance on FOIA and relevant case law, including embracing members of the media who publish primarily through electronic means.
2. Provide agencies with additional guidance on what constitutes a "representative of the news media" that takes into account the changes in the journalism profession over the past 30 years due to technological advancements. These guidelines should be fair, balanced, and better enable agencies to make accurate fee category determinations. They should also clarify that fee categories are determined by the identity of the requester, not the particular request.
3. Incorporate statutory changes to the FOIA relating to when FOIA fees can be charged. This includes 5 U.S.C. § 552 4(A)(viii) , which states that certain fees cannot be charged when an agency fails to comply with any time limit, if no unusual or exceptional circumstances apply to the request. Clarification is also needed as to which fees may be charged if the twenty working-day statutory time limit is not met, because "unusual or exceptional circumstances" exist.
4. Provide guidance on fees associated with reproduction costs, including providing electronic copies via email, CD, or DVD. The guidance should also clarify the costs that may be charged for reproducing documents that are transferred from classified to unclassified systems so that they may be released electronically.
5. Explain that agencies may use their administrative discretion (rather than a formal fee waiver) to decide not to charge FOIA fees when the interest of the United States Government would be served.
6. Recognize that FOIA fees cover a very small percentage of FOIA costs (in FY 2014 agencies processed 647,142 FOIA requests at a cost of \$462 million dollars and recouped just \$4.2 million dollars from FOIA fees, less than one percent of the reported cost). Moreover, these fees are paid to the General Fund of the Treasury, not to the agencies' FOIA offices. The current OMB guidelines appear to be missing a word in Section 8 which adds ambiguity to this expectation.