



Recommendation 81-1

Procedures for Assessing and Collecting Freedom of Information Act Fees

(Adopted December 10, 1981)

A decade has passed since the Administrative Conference of the United States last evaluated implementation of the Freedom of Information Act, 5 U.S.C. 552.¹ The goals of the Act have been widely accepted within the government and society, but the passage of time has revealed some discrete problems regarding the operation of the Act.

This recommendation was prompted by reports that implementation of the Freedom of Information Act is much more costly than originally expected and, more importantly, that many information requests are made in the context of private activity unrelated to the Act's goal of informing the public about the operation of government or matters of public interest. Therefore, the recommendation calls for amending the Freedom of Information Act to permit agencies to charge persons requesting records fees which reflect the cost of reviewing records and deleting exempt information from records, in addition to the direct costs of search and duplication now recoverable under the Act. This recommendation would not affect the rights of individuals under the Privacy Act, 5 U.S.C. 552a.

This recommendation also contains advice on appropriate procedures for assessing and collecting fees, and recommends that the Department of Justice be required to establish guidelines for agencies to follow when adopting fee schedules and rules for assessing and collecting fees. The Conference believes uniformity in agency practice should be encouraged whenever practical.

Recommendation

1. Congress should amend the Freedom of Information Act to:

(a) permit agencies to collect from persons requesting records fees that reflect the costs of routine review of records to determine whether an exemption should be asserted, and of

¹ See ACUS Recommendation 72-1, Principles and Guidelines for Implementation of the Freedom of Information Act (adopted May 7, 1971).



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deleting exempt information, in addition to the search and duplication costs now recoverable under the Act. However, fees charged for such requests should not include (1) the cost of agency review conducted on appeal of initial agency denials of Freedom of Information Act requests, or (2) the cost of review associated with development of general policy on releasing the type of information or records covered by the request;

(b) permit units within agencies to establish separate fee schedules where those units maintain separate FOIA operations and their costs are readily separable from other units of the agency;

(c) require that the Department of Justice, after allowing the agencies and the public the opportunity to comment, promulgate government-wide guidelines for agency fee schedules and for the assessment, collection and waiver of fees under the Freedom of Information Act. The guidelines should be consistent with the other sections of this recommendation, and should promote uniformity in agency regulations whenever practical.

2. Congress should retain the provision in 552(a)(4)(A) of the Freedom of Information Act, which provides that persons requesting records shall have fees waived or reduced where the agency determines that furnishing the information will primarily benefit the general public.

3. Congress should not amend the Freedom of Information Act to permit agencies to recover in fees the overhead costs occasioned by the Act.

4. Congress should consider collecting accurate and uniform data on the cost of the Freedom of Information Act, since existing data is unreliable.

5. Department of Justice guidelines or, in their absence, agency rules should provide that:

(a) agencies waive Freedom of Information Act fees whenever the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. The level of this waiver provision should be established by agency rule, and should be expressed in terms such as hours of staff time and pages furnished, rather than a fixed dollar amount;

(b) persons will ordinarily not be charged for the cost of search if no records are produced by the agency. However, with respect to a request not entitled to a fee waiver, an agency should be permitted to assess search fees if the requester insists on further search after



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being informed by the agency, based on a reasonable preliminary search, that the search is unlikely to be productive;

(c) agencies may by rule provide that the submission of a Freedom of Information Act request constitutes an agreement by the requester to pay an amount of fees specified in the rule, unless the requester is entitled to a fee waiver or specifies a different amount in the request;

(d) agencies should be required to notify requesters if fees are expected to exceed an amount fixed by rule or otherwise agreed to by the requester. If a requester does not agree to pay additional fees, the agency may suspend the search and processing of records;

(e) agencies may require advance payment of fees if a requester has failed to honor a previous commitment to pay fees that were owed an agency, or if the agency reasonably determines that the requester is likely to be unwilling or unable to pay the probable fees;

(f) agencies will provide an administrative appeal mechanism through which requesters may challenge fee and fee waiver decisions. Agency decisions on fee appeals should be maintained in a separate public file for use by requesters and agency employees.

Citations:

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Note:

This recommendation has been largely implemented by Pub. L. 99-570.