

DEPARTMENT OF EDUCATION

34 CFR Part 5

The Freedom of Information Act

AGENCY: Office of the Chief Information Officer, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Department's regulations that implement the Freedom of Information Act (FOIA). These amendments are needed to establish new provisions implementing the Electronic Freedom of Information Act Amendments of 1996. The regulations have been streamlined and condensed, with more user-friendly language wherever possible.

DATES: We must receive your comments on or before July 10, 2000.

ADDRESSES: Address all comments about these proposed regulations to John Tressler, U.S. Department of Education, 400 Maryland Avenue, SW., ROB3, Room 5640, Washington, DC 20202-4110. If you prefer to send your comments through the Internet use the following address: comments@ed.gov

You must include the term FOIA in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: John Tressler. Telephone: (202) 708-8900. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 5640, ROB3, Seventh and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid you may call (202) 205-8113 or (202) 260-9895. If you use a TDD, you may call the Federal Information Relay Service at 1-800-877-8339.

Background

The FOIA generally provides that any person has a right, enforceable in court, of access to Federal agency records. However, some records (or portions of those records) are protected from disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.

The FOIA was amended by the Electronic Freedom of Information Act Amendments of 1996 (Public Law 104-231, October 2, 1996). The amendments provided specifically for the disclosure of electronic records.

The proposed revisions of part 5 change the language and structure of the regulations and would implement the provisions of the Electronic Freedom of Information Act Amendments of 1996. The new provisions implementing the 1996 amendments are in § 5.11(a)(4) (electronic reading rooms) and § 5.20 (How do I make a FOIA request?). Proposed revisions of the Department's fee schedule are in § 5.30. Other changes would make the regulations easier to understand.

Clarity of the Regulations

Executive Order 12866 and the President's memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?

- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?

- Does the format of the proposed regulations (e.g., grouping and order of sections, use of headings, paragraphing) improve or reduce their clarity?

- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 5.30 *What is the schedule of fees?*)

- Could the description of the proposed regulations in the "Supplementary Information" section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

Send any comments concerning how the Department could make these proposed regulations easier to understand to the person listed in the ADDRESSES section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These proposed regulations involve procedural rights of individuals under the Freedom of Information Act. Individuals are not considered to be entities under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Electronic Access to This Document

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<http://ocfo.ed.gov/fedreg.htm>
<http://www.ed.gov/news.html>

To use the PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) at (202) 512-1530 or, toll free, at 1-888-293-6498.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 5

Freedom of Information.

Dated: June 2, 2000.

Richard W. Riley,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 5 to read as follows:

PART 5—THE FREEDOM OF INFORMATION ACT**Subpart A—General**

Sec.

- 5.1 What is the purpose of these regulations?
5.2 What definitions apply?

Subpart B—Records Available to the Public

- 5.10 What is the Department's general policy regarding disclosure of agency records?
5.11 How does the Department make agency records publicly available?
5.12 Does the FOIA require the Department to create new records?

Subpart C—Procedures for Requesting Access to Records

- 5.20 How do I make a FOIA request?
5.21 What procedures does the Department follow for requests for business information?
5.22 Who may deny a FOIA request?

Subpart D—Fees and Charges

- 5.30 What is the schedule of fees?
5.31 Will I be notified of my estimated fees?
5.32 How are fee payments made?
5.33 Under what circumstances must fees be paid in advance?
5.34 What happens if fees are not paid?
5.35 Under what circumstances may fees be waived?

Subpart E—Administrative Appeals

- 5.40 How do I appeal the denial of a FOIA request or an adverse fee determination?
5.41 Who decides administrative appeals?
5.42 What is the review process for appeals?

Appendix A to Part 5—Summary of Current U.S. Department of Education Fees for Processing FOIA Requests

Authority: 5 U.S.C. 552.

Subpart A—General**§ 5.1 What is the purpose of these regulations?**

This part contains the rules that the Department of Education (Department or "we") follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These regulations inform you of the Department's FOIA policies and procedures.

§ 5.2 What definitions apply?

As used in this part:

Act and *FOIA* mean the Freedom of Information Act, 5 U.S.C. 552.

Agency records. (1) The term means documentary materials, regardless of physical form or characteristics, including those in electronic form, made or received by the Department under Federal law in connection with the transaction of public business and in the Department's possession and control at the time a FOIA request is received.

(2) These records include all documentary materials either preserved by the Department or appropriate for preservation as evidence of its organization, functions, policies, decisions, procedures and operations, or because of the informational value of the data contained in the records.

(3) Records do not include the following:

- (i) Tangible, evidentiary objects or equipment;
- (ii) Library or museum materials made or acquired and preserved solely for reference or exhibition purposes;
- (iii) Extra copies of documents preserved only for convenience of reference; and
- (iv) Stocks of publications.

FOIA request means a written request for agency records that reasonably describes the records sought, made by any individual, organization or business.

Subpart B—Records Available to the Public**§ 5.10 What is the Department's general policy regarding disclosure of agency records?**

The Department's policy is one of full disclosure limited only by the obligations of confidentiality and the administrative necessities recognized by the Act. Thus, the Department makes agency records available for public inspection and copying, subject to the exemptions in 5 U.S.C. 552 (b)(1)–(9). As a matter of policy, the Department makes discretionary disclosures of records exempt under the FOIA if it is not foreseeable that disclosure would harm an interest protected by the FOIA. This policy, however, does not create any right enforceable in court.

§ 5.11 How does the Department make agency records publicly available?

(a)(1) The Department maintains a FOIA Reading Room containing a wide variety of agency records, including Department publications, whether available for purchase or not.

(2) The FOIA Reading Room currently contains the following agency records:

- (i) All final opinions (including concurring and dissenting opinions) and all orders made in the adjudication of

cases (initial decisions and reconsiderations in matters that are not the result of administrative proceedings such as hearings or formal appeals are not opinions and orders in the adjudication of cases).

(ii) Those statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**.

(iii) Administrative staff manuals and instructions to staff that affect any member of the public.

(iv) Copies of all records that have been released to any person under 5 U.S.C. 552(a)(3) and that, because of the nature of their subject matter, the Department determines have become (or are likely to become) the subject of subsequent requests for substantially the same records.

(v) An index of the records referred to under paragraph (a)(2)(iv) of this section.

(3) The FOIA Reading Room is located at the National Library of Education, 400 Maryland Avenue, SW., Washington, DC, Levels B and SB, and is open to the public between 9 a.m. and 5 p.m., Eastern time, Monday through Friday, except Federal holidays.

(4) Reading room records created after November 1, 1996 are available on the Department's Web site at <http://www.ed.gov/offices/ocio/infocall/info9.html>

(b) The Department publishes the following records in the **Federal Register**:

(1) Descriptions of the Department's central and field organization and established locations, including Department contacts and methods by which the public can obtain information or decisions, or make submissions or requests.

(2) Statements of the general course and method the Department uses to channel and determine functions, including the nature and requirements of all formal and informal procedures available.

(3) Rules of procedures, descriptions of forms available and locations where forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Department.

(5) Every amendment, revision, or repeal of the materials described in paragraphs (b)(1) through (4) of this section.

(c)(1) You may seek access to agency records not available as described in

paragraphs (a) and (b) of this section by submitting a written request to the Department, in accordance with the procedures in § 5.20.

(2) The Department may deny access to agency records or portions of records under one or more of the FOIA exemptions listed at 5 U.S.C. 552(b)(1)–(9).

§ 5.12 Does the FOIA require the Department to create new records?

We are not required to create records by compiling selected items from the files, or by creating data such as ratios, proportions, percentages, per capita, frequency distributions, trends, correlations, and comparisons. If these data have been compiled and are available as an existing agency record, we make the record available as provided in § 5.11.

Subpart C—Procedures for Requesting Access to Records

§ 5.20 How do I make a FOIA request?

(a)(1) In order to seek access to agency records you must submit your request in writing by one of the following methods:

(i) U.S. mail or its equivalent to FOIA Officer, Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–4651.

(ii) Fax transmitted to FOIA Officer, Department of Education at (202) 708–9346.

(iii) An e-mail message submitted to OCIO.FOIA@ed.gov.

(2) Be sure to clearly mark your submission as a “FOIA Request” and include your name, address, and telephone number or numbers with your request.

(b) Your request must reasonably describe the records sought and may include additional information that would assist the Department in locating the responsive records. In some instances, we may require you to submit additional information in order to clarify the nature of your request. In those situations, your request is not considered to be received for the purposes of 5 U.S.C. 552(a)(6) until we have received the necessary information from you.

(c) Your request may also specify that the records be provided in a specific form or format. We make reasonable efforts to comply with those requests.

(d) We process requests for electronic records and retrieve those records if retrieval can be achieved through reasonable efforts (in terms of both time and resources), and these efforts would not significantly interfere with the operation of an automated information system.

(e) Your request must also indicate whether you are willing to pay the fees associated with processing the request or if you are seeking a fee waiver.

(f) Once the office that maintains the records sought in your request has received your request, and you have provided us with any necessary clarifications, we make every reasonable effort to process your request within the twenty working day statutory requirement. Where unusual circumstances arise as defined in 5 U.S.C. 552(a)(6)(B)(iii), the Department may grant an extension of up to ten (10) additional working days.

§ 5.21 What procedures does the Department follow for requests for business information?

(a) Definitions. For purposes of this section:

(1) *Business information* means commercial or financial information obtained by the Department from a submitter that may be protected from disclosure under 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity from whom the Department obtains business information, directly or indirectly. The term includes corporations and state, local, tribal, and foreign governments.

(b) *Designation of business information*. A submitter of business information must use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable later time, any portions of its submission that it considers to be protected from disclosure under 5 U.S.C. 552(b)(4). These designations expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Notice to submitters*. The Department provides a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information if required under paragraph (d) of this section, except as provided in paragraph (g) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (e) of this section. If the Department must notify a voluminous number of submitters, we may post or publish the notice in a place reasonably likely to accomplish notification.

(d) *If notice is required*. The Department notifies a submitter if—

(1) The submitter in good faith has designated the information as information considered protected from disclosure under 5 U.S.C. 552(b)(4); or

(2) The Department has reason to believe that the information may be protected from disclosure under 5 U.S.C. 552(b)(4).

(e) *Opportunity to object to disclosure*. We allow a submitter a reasonable time to respond to the notice described in paragraph (c) of this section and specify that time period within the notice. If a submitter has any objection to disclosure, it must submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of objecting to disclosure under 5 U.S.C. 552(b)(4), it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified in it, the submitter may not object to disclosure of the information. The Department only considers information provided by the submitter that we receive before we make a disclosure decision. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose*. We consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. If we decide to disclose business information over the objection of a submitter, we give the submitter written notice, which includes the following:

(1) A statement of the reason or reasons why each of the submitter's disclosure objections was not sustained.

(2) A description of the business information to be disclosed.

(3) A specified disclosure date that is a reasonable time after the notice of intent to disclose.

(g) *Exceptions to notice requirements*. The notice requirements of paragraphs (c) and (f) of this section do not apply if—

(1) The Department determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous—except that, in such a case, the Department, within a reasonable time before a specified disclosure date, gives

the submitter written notice of any final decision to disclose the information.

(h) *Notice of FOIA lawsuit.* If a requester files a lawsuit seeking to compel the disclosure of business information, we promptly notify the submitter.

(i) *Corresponding notice to requesters.* If we provide a submitter with notice and an opportunity to object to disclosure under paragraph (c) of this section, we also notify the requester or requesters. If we notify a submitter of our intent to disclose requested information under paragraph (f) of this section, we also notify the requester or requesters. If a submitter files a lawsuit seeking to prevent the disclosure of business information, we notify the requester or requesters.

§ 5.22 Who may deny a FOIA request?

The Department's FOIA Officer, the Inspector General or designee, and the Regional FOIA Review Officers may deny a FOIA request. Denials of requests—

- (a) Are in writing;
- (b) Contain a statement of the reasons for the denial and information on how to file an appeal under subpart E of this part; and
- (c) Identify the person to whom an appeal should be submitted.

Subpart D—Fees and Charges

§ 5.30 What is the schedule of fees?

(a) Fees under this part are assessed in accordance with the Office of Management and Budget's "Uniform FOIA Fee Schedule and Guidelines," 52 FR 10012 (March 27, 1987), as follows:

(1) *Search for records—(i) General.* We charge full search fees for records requested for commercial use. We do not charge a search fee for requests made by representatives of the news media or by educational or noncommercial scientific institutions whose purpose is scholarly or scientific research and whose request is not for commercial use. For any other non-commercial requests, we provide the first two hours of search time without charge, except as provided in paragraph (a)(1)(iii) of this section. We calculate and assess search fees to the nearest quarter hour.

(ii) *Manual search.* We calculate the charge for a manual search by multiplying the search time (to the nearest quarter hour) by the sum of the basic rate of pay per hour of the employee conducting the search plus 16 percent of that rate.

(iii) *Computer search.* The charge for a computer search is the actual direct cost of providing the service, including

the cost of operating the central processing unit (CPU) for the operating time that is directly attributable to searching for records responsive to a FOIA request, and the operator's or programmer's salary apportionable to the search.

(2) *Review of records.* If records are requested for commercial use, we charge fees for the initial examination of a record to determine whether it should be disclosed. We calculate review fees by multiplying the review time (to the nearest quarter hour) by the sum of the basic rate of pay per hour of the employee conducting the review plus 16 percent of that rate. If you request records that are stored outside Washington, DC, we add the mailing and handling costs of transporting records for review.

(3) *Duplication of records.* We do not charge a duplication fee for the first 100 pages, except in the case of commercial use requests. Duplication charges for paper copy reproduction of documents on photocopy machines is 15 cents per page.

(4) *Certification of records.* The charge for certifying records is \$5 per record certified.

(5) *Other.* If we have not established a specific fee for a service, or you request a service that does not fall under one of the categories in paragraphs (a)(1) through (a)(4) of this section, the FOIA Officer may establish an appropriate fee, based on direct costs, on a case-by-case basis.

(b) If we award a contract for the search or duplication of records responsive to FOIA requests, the fees charged are the actual costs under the contract.

(c) We do not charge a fee if the total amount of the fee would be less than \$10. If the total amount of the fee is \$10 or more, we charge applicable search and review costs even if no records are located or disclosed.

(d) If the Department determines that a requester, or a group of requesters, is attempting to break down a request into multiple requests for the purpose of avoiding fee assessment, we combine the requests for the purposes of charging fees.

§ 5.31 Will I be notified of my estimated fees?

If the estimated fees total more than \$25, or more than the amount specified in the request if that amount exceeds \$25, we—

- (a) Promptly notify you of the amount of the estimated fee or that portion of the fee that can readily be estimated; and

(b) Offer you the opportunity to modify your request.

§ 5.32 How are fee payments made?

You must make fee payments by personal check or bank draft drawn on a bank in the United States, postal money order, or credit card (once necessary procedures are established). You must make fee payments payable to the U.S. Department of Education, and mail your payment to the FOIA Officer, Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-4651. On request, we give you a receipt for fees paid.

§ 5.33 Under what circumstances must fees be paid in advance?

(a) If the estimated fee for processing a request exceeds \$250, the FOIA Officer—

- (1) Notifies you of anticipated fees and obtains satisfactory assurance of payment; or
- (2) Requires advance payment before records are released.

(b) If you have previously failed to pay a fee, we require that the previous charges plus any accrued interest be paid before we process any subsequent requests. In addition, we require advance payment of estimated fees for your current request.

(c) Requests under this part are not deemed to have been received for purposes of 5 U.S.C. 552(a)(6) until we receive satisfactory assurance of payment or advance payment.

§ 5.34 What happens if fees are not paid?

If you do not pay a fee within 30 days after we send you a bill, we charge you interest at the rate designated at 31 U.S.C. 3717. The FOIA Officer may take other steps permitted by Federal debt collection statutes, including the use of collection agencies or disclosure to consumer-reporting organizations.

§ 5.35 Under what circumstances may fees be waived?

(a) The FOIA provides for a fee waiver if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(b)(1) You must apply to the FOIA Officer for a fee waiver and address in detail each of the factors in paragraphs (b)(2)(i) through (b)(2)(vi) of this section. Simply stating that the fee waiver criteria have been satisfied is insufficient for a fee waiver. In evaluating the fee waiver request, the FOIA Officer may ask for clarification or additional information.

(2) The FOIA Officer will grant a fee waiver only if each of the following six fee waiver criteria have been met:

(i) The subject of the requested records concerns the operations or activities of the Government.

(ii) The disclosure is likely to contribute to an understanding of government operations or activities.

(iii) The disclosure of the requested information will contribute to the understanding of the public at large, as opposed to an individual's understanding of government operations or activities.

(iv) The disclosure is likely to contribute significantly to public understanding of government operations or activities.

(v) The requester either does not have a commercial interest that would be furthered by the requested disclosure.

(vi) Any commercial interest of the requester is outweighed by the public interest in disclosure.

(c) You must ask for a fee waiver for each request to which the waiver may apply. We do not grant a standing fee waiver. We consider the merit of each fee waiver request.

Subpart E—Administrative Appeals

§ 5.40 How do I appeal the denial of a FOIA request or an adverse fee determination?

(a) *Appeal of denials.* If we deny your FOIA request in whole or in part under § 5.21, or when we advise you that we are unable to locate responsive records, you may file an appeal seeking administrative review of the denial, within 30 calendar days of your receipt of the denial letter.

(b) *Appeal of adverse fee determinations.* If we issue an adverse fee determination, you may file an appeal seeking administrative review of the adverse determination, within 30 calendar days from receipt of the denial letter. You may appeal any of the following:

(1) Our estimate of fees to be charged.

(2) Our calculation of fees.

(3) Our denial of a request for a fee waiver, in whole or in part.

(c) *Contents of an appeal letter.* Your appeal must be in writing and must include—

(1) Copies of the request and the denial;

(2) A statement of all legal and factual bases for the appeal; and

(3) Any evidence or argument you wish us to consider in deciding the appeal.

§ 5.41 Who decides administrative appeals?

The Secretary delegates authority to serve as the Department's FOIA Appeals Officer to a specific position or person. We provide the name and address of that person to the requester in a denial issued under § 5.21.

§ 5.42 What is the review process for appeals?

(a) An appeal determination is in writing. A determination denying an appeal in whole or in part states the reasons for the adverse decision, and advises you of the right to judicial review of the decision.

(b) Once the FOIA Appeals Officer has received your appeal for a denial of a FOIA request, we make every reasonable effort to process it within the twenty working day statutory requirement. Where unusual circumstances arise as defined in 5 U.S.C. 552(a)(6)(B)(iii), the Department may grant an extension of up to ten (10) additional working days.

(c) Failure to comply with time limits stated in 5 U.S.C. 552(a)(6) constitutes an exhaustion of your administrative remedies.

BILLING CODE 4000-01-P

Appendix A

Summary of Current U.S. Department of Education Fees for Processing FOIA Requests¹

TYPE OF REQUESTER	TYPE OF SERVICE				
	Manual Searches	Computer Searches	Review of Records ²	Photocopying	Certification
CATEGORY I (Commercial Businesses)	³ Employee's or employees' actual rate of pay plus a 16% administrative charge	Actual direct cost of providing the service (incl. portion of the programmer's or operator's time and CPU usage)	Employee's or employees'; actual rate of pay plus a 16% administrative charge	15 cents per photocopied page (no free pages)	\$5.00 per record certified
CATEGORY II (Educational Institutions or Scientific Research Organizations or the News Media)	No Charge	No Charge	No Charge	15 cents per photocopied page (with 100 Pages free)	\$5.00 per record certified
CATEGORY III (All Others, including individuals and non-profit organizations)	³ Employee's or employees' actual rate of pay plus 16%	Actual direct cost of providing the service (incl. the portion of the programmer's or operator's time and CPU usage)	No Charge	15 cents per photocopied page (with 100 Pages free)	\$5.00 per record certified
	A <i>Total</i> of Two Hours of Search Time (including Manual and/or Computer Search Activities) is Free				

¹Note that the minimum fee that the Department will charge is \$10.00;²If records are stored outside of Washington, DC, the costs of mailing and handling to transport the records for review must be included; and³If any portion of fulfilling the request is performed by a contractor, his/her hourly rate on the contract -- plus 16% -- shall be used in determining charges.