

Dear Sir/Madam:

Thank you for your letter of January 30 in which you requested:

Copies of documents pertaining to the 107 U.S. Military helicopters shot down in Laos during U.S. Laos Operation "Lam Son 719" - 1970-71 as described in your letter.

The following information may explain certain boundaries of the Department's search for documents in response to Freedom of Information Act requests.

The cut-off date for retrieving documents is the date of the requester's letter. Accordingly, no documents which originated after the date of your letter will be retrieved.

Only existing documents are subject to the Freedom of Information Act. The Act does not provide for the creation of documents, compilation of data, preparation of lists, analyses of events, etc.

- [ ] We have begun to process your request based upon the information provided in your letter. As soon as responsive material has been retrieved and reviewed, we will notify you.
- [X] Before we can proceed, we need the additional information requested in the marked paragraph(s) in Section A and/or B. (We attempted to reach you by phone on \_\_\_\_\_ to discuss the need for this information). We will hold your request open for ninety (90) days from the date of this letter pending receipt of the requested information.
- [X] Please review the fee information provided in Section C.

[ ] We cannot proceed with processing your request for the reason marked below.

Some of

[ ] The material that you seek pre-dates 1954. Generally, Department of State documents which fall within this time period are in the custody of the National Archives and Records Administration. To request access to documents responsive to your request, please write to: The Diplomatic Branch, National Archives and Records Administration, Washington, D.C. 20408.

[ ] The material that you requested appears to have been originated by another agency. Please contact the Freedom of Information Staff of that agency:

---



---



---



---

[X] SECTION A

Please:

[ ] Narrow/Specify time frame

[ ] Identify specific subject matter, country, person or organization.

[ ] Specify a particular event, policy, or circumstance, rather than the effect a certain attitude or event had on another event.

[X] Please let us know if you are willing to pay the fees which will be incurred in the processing of your request. You may set a limit on the maximum amount that you wish to pay.

No fees are charged for the first 2 hours of search time or the first 100 pages photocopied. We do not know at this time how long it will take to search for responsive material or the amount of material that will be located. In all likelihood, a professional researcher will be conducting the search at the rate of \$17.00 per hour. After 100 pages have been supplied to you without charge, additional material will be provided at the rate of 25¢ per page.

[X] SECTION C

The Freedom of Information Act requires agencies to collect fees to recover the costs of processing requests, unless a fee waiver has been granted or the charges fall below a certain amount. The following marked paragraphs address these issues.

[ ] Your request for a fee waiver has been granted.

[X] Your request for a fee waiver has been denied. Should you wish to appeal this decision, you may write to: Peter Sheils, Acting Chief, Requests Management Division, at the address indicated below. Your appeal should address the points listed in the enclosed sheet entitled "Requests for Fee Waivers."

[ ] You have stated your willingness to pay the fees associated with the processing of this request.

[X] Based upon the information that you have provided, this request will be processed in accordance with the fee schedule designated for the following category of requesters. (See Subsection 171.14 of the enclosed Rules and Regulations).

- [ ] commercial use requesters
- [ ] educational institutions
- [ ] non-commercial scientific institutions
- [ ] representatives of the news media
- [X] all other requesters

The Department's search and review fees are:

|                         |              |
|-------------------------|--------------|
| Administrative/Clerical | \$8.00/hour  |
| Professional            | \$17.00/hour |
| Executive               | \$30.00/hour |

[ ] You have indicated your inclusion in a category different from the one above. Please provide the information asked for on the attached sheet entitled "Requester Categories" to substantiate your inclusion in a particular category of requester.

[ ] Before I can make a decision about your request for a fee waiver, I will need additional information as noted in the attached sheet entitled "Requests for Fee Waivers."

[ ] Your request for a fee waiver is being reviewed. We will notify you as soon as a decision has been made.

[4]

[ ] We cannot proceed with processing your request for the reason marked below.

[ ] The material that you seek pre-dates 1954. Generally, Department of State documents which fall within this time period are in the custody of the National Archives and Records Administration. To request access to documents responsive to your request, please write to: The Diplomatic Branch, National Archives and Records Administration, Washington, D.C. 20408.

[X] <sup>Some of</sup> The material that you requested appears to have been originated by another agency. Please contact the Freedom of Information Staff of that agency:

Charlie Y. Talbott, Chief

FOI Division, OASD(PA), Rm 2C757

The Pentagon

Washington, D.C. 20301

Should you have any questions with respect to the processing of your request, please write to the Office of Freedom of Information, Privacy and Classification Review, Room 1512, Department of State, 2201 C Street, N.W., Washington, D.C. 20520-1512 or telephone: (202) 647-6024. Please be sure to refer to your request number in all correspondence pertaining to this request.

Sincerely,

*Terry Smith*  
for Karla Kaplan, Chief (Acting)  
Initial Processing and Control Branch  
Office of Freedom of Information,  
Privacy and Classification Review

Enclosure(s):

X Rules and Regulations  
X Request for fee waivers  
\_\_\_\_ Requester categories

# DEPARTMENT OF STATE

## 22 CFR Part 171

### Freedom of Information; Revision of Fees, Fee Waiver Policy, and the Law Enforcement Exemption

AGENCY: Department of State.

ACTION: Final rule.

**SUMMARY:** This rule implements certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) regarding fees, fee waivers, and law enforcement records. It codifies the circumstances under which expeditious processing of FOIA requests will be provided. Expeditious processing has been recognized in custom and practice

since 1983 in accordance with Department of Justice guidance. The rule also revises the general fee schedule applicable to all requests under the FOIA, Privacy Act, Ethics in Government Act, and Executive Order 12356 as provided in Part 171.

**EFFECTIVE DATE:** September 23, 1987.

**FOR FURTHER INFORMATION CONTACT:** Frank M. Machak, Information and Privacy Coordinator, (202) 647-7740.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) amended the Freedom of Information Act (5 U.S.C. 552) by modifying the terms of exemption 7 and by supplying new provisions relating to the charging and waiving of fees. The Reform Act specifically required the Office of Management and Budget to develop and issue a schedule of fees and guidelines, pursuant to notice and comment, which OMB did on January 16. After consideration of comments received, OMB issued the final publication of fee schedule and guidelines implementing certain provisions of the Reform Act on March 27 (52 FR 10012). In addition to the OMB guidelines, the Department of Justice provided agencies with advisory fee waiver policy guidance regarding the Reform Act in keeping with its statutory responsibility to encourage compliance with the FOIA. This guidance was distributed to all agency heads in a memorandum from Assistant Attorney General Stephen J. Markman on April 2, 1987. Finally, based on administrative practice and judicial precedent, the Department of Justice developed guidelines for agencies to use in considering request for expedition of FOIA requests. Since this guidance reflects prior practice, the Department is codifying it in its rules at this time.

On April 20, 1987 (52 FR 12936) the Department published a proposed rule to implement the foregoing with an abbreviated comment period closing on April 23. In view of the considerable public interest and short public comment period, on April 29 (52 FR 15513) the Department issued an amendment to its notice of proposed rulemaking in order to extend the public comment period to May 20, thereby allowing a full thirty (30) days from the date of the original publication.

The Department received numerous comments regarding the proposed rules from the public including professional societies or public interest groups affiliated with the news media; a Member of Congress; and special interest groups or organizations. A variety of Department officials—attorneys, programs managers, and information officers—gave careful consideration to all comments submitted. Most of the commentators focused on the Department's reliance on OMB's implementing Fee Schedule and Guidelines and on Justice's guidance; the short public comment period (which subsequently was lengthened to a full thirty days); the definitions of the "commercial use request," "educational institution," "noncommercial scientific institution," and "representative of the news media," including "freelance" journalists; and certain paragraphs regarding administrative requirements within the section pertaining to "Categories of Requesters for Fee Purposes" (§ 171.14). The final rule incorporates the changes deemed appropriate as a result of extensive review and consideration of the public comments received. In addition to editorial changes, the substantive revisions have been made to the provisions regarding the definition of "commercial use request"; the requirement regarding the affiliation between "freelance" journalists and a news organization; and the deletion of requirements regarding requesters' providing extensive information concerning themselves vis a vis their eligibility for inclusion in non-commercial categories and the statement of verification (§ 171.14, proposed paragraphs (e) and (f)); and a change in the language regarding the impact on future requests (§ 171.14, proposed paragraph (g), revised paragraph (e)).

This rule does not constitute a "major rule" within the meaning of executive Order 12291. This rule is not subject to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 611) since it will not exert a significant economic impact on a substantial number of small entities. This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Donald J. Bouchard,

Assistant Secretary, Bureau of Administration.

## List of Subjects in 22 CFR Part 171

Administrative practice and procedure. Classified information. Freedom of Information. Privacy.

For the reasons set forth in the preamble, portions of Title 22, Chapter I, Subchapter R of the Code of Federal Regulations, are amended as set forth below:

## PART 171—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

1. The authority citation of Part 171 is revised to read as follows and the authority citations following the sections in Part 171 are removed:

Authority: Sec. 3, Administrative Procedure Act, as amended (Pub. L. 80-478, Stat. 2501); The Freedom of Information Act, as amended (5 U.S.C. 552); the Privacy Act (5 U.S.C. 552a); E.O. 12356; the Ethics in Government Act of 1978 (Pub. L. 95-521); 22 U.S.C. 265a and 2926; and the Freedom of Information Reform Act of 1986 (Pub. L. 99-570).

2. Section 171-6 is revised to read as follows:

### § 171.6 Fees—General.

(a) The Department will charge a duplication fee of \$.25 per page for copies of documents which are identified and made available to an individual pursuant to a request except that there will be no charge for requests involving costs of \$10.00 or less.

(b) The Department will charge the actual cost of production for copies prepared by computer (such as tapes or printouts), including operator time.

(c) The Department will charge the actual direct costs of producing the document(s) for methods of reproduction or duplication other than those described in paragraphs (a) and (b) of this section.

(d) In those cases when estimated duplication charges are likely to exceed \$25, the Department shall notify requesters of the estimated amount of fees, unless they have indicated in advance their willingness to pay fees as high as those anticipated. Such notice shall offer requesters the opportunity to confer with Department personnel with the objective of reformulating requests to meet their needs at lower costs.

(e) Certification under the official seal that a copy or extract made from an official document is a true copy; the fee for certifying each copy of each page is \$2.00.

(f) The Department shall charge the actual costs for sending documents by special methods such as express mails, etc. when such is requested.

(g) Remittances shall be in the form of either a personal check or bank draft drawn on a bank in the United States, a postal money order, or cash. Remittance shall be made payable to the order of the Treasurer of the United States and delivered or mailed to the Information and Privacy Coordinator, Foreign Affairs Information Management Center, Room 1239, Department of State, 2201 C Street, NW., Washington, DC, 20520. The

Department will assume no responsibility for cash sent by mail.

(h) Fees must be paid in full prior to release of requested documents and/or provision of service described above.

(i) A receipt for fees paid will be given only upon request.

(j) See § 171.13 for additional fees chargeable for Freedom of Information requests.

3. Section 171.10 is amended by adding paragraphs (d), (e), (f), (g), (h), (i), and (k) to read as follows:

#### § 171.10 Definitions.

(d) The term "direct costs" means those expenditures which the Department actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(e) The term "search" includes all time spent looking for identifying and retrieving material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The Department will attempt to ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the Department and the requester. For example, the Department will not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" should be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (g) of this section). Searches may be done manually or by computer using existing programming.

(f) The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(g) The term "review" refers to the process of examining documents located to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all

that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general, legal or policy issues regarding the application of exemptions.

(h) The term "commercial use request" refers to a request from or on behalf of one who requests for information for a use or purpose that furthers the commercial, trade or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester belongs within this category, the Department will look at the use to which the requester will make of the documents requested.

(i) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(j) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (h) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(k) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a likelihood of publication through that organization, even though not actually employed by it. Likelihood of publication can be demonstrated through, for example, a publication contract or past publication record.

Similarly, the absence of a publication record, especially where the requester has previously received records from the Department as a "representative of the news media" will be taken into account in determining the likelihood of publication.

4. Section 171.11 is amended by revising paragraph (a)(7) to read as follows:

#### § 171.11 Exemptions.

(a) \* \* \*

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

5. Section 171.12 is revised to read as follows:

**§ 171.12 Time limits.**

(a) Whenever possible, the Department will furnish the requested records within 10 days (excluding Saturdays, Sundays, and legal public holidays) of receipt of the request by the Information and Privacy Coordinator, except as cited in § 171.4 of this subchapter.

(b) The Department will consider requests for expeditious handling whenever the requester can demonstrate one of the following:

(1) An individual's life or personal safety would be jeopardized by the failure to process a request immediately, or

(2) Substantial due process rights of the requester would be impaired by the failure to process immediately, and the information sought is not otherwise available.

6. Section 171.13 is revised to read as follows:

**§ 171.13 Fees.**

(a) In addition to fees cited in § 171.2, the following shall be applicable with respect to services rendered to members of the public under this subpart:

(1) The following is the range of categories and average grade levels for employees within each category who perform the search and review functions involved in responding to a FOIA request:

(i) Administrative/clerical (to include GS-1 through GS-6 or FS-9): GS-3/3 or FS-9/1.

(ii) Professional (to include GS-9 through GS-13 or FS-3 through FS-2): GS-11/3 or FS-4/4.

(iii) Executive (to include GS-14 through SES or FS-2 through SPS): GS-15/1 or FS-1/1.

(2) The salary rates for these categories will be calculated based on the rates published on the "Department of State Salary Chart" effective at the time that the function was actually performed; copies of this chart are available in the Public Reading Room. The actual fee schedule for each category will be included in the Department's acknowledgment letter.

(3) The costs for manual search include the salary of the category of the employee who actually performed the search function (as provided in paragraph (a)(1) of this section) above plus an additional 16 percent of that rate to cover benefits.

(4) The cost for computer searches will be calculated based on the salary of the category of the employee who actually performed the computer search (as provided in paragraph (a)(1) of this section) plus 16 percent of that rate to cover benefits, in addition to the direct costs of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

(5) Only requesters who are seeking documents for commercial use will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. The cost for review will be calculated based on the salary of the category of the employee who actually performed the review (as provided in paragraph (a)(1) of this section) plus 16 percent of the rate to cover benefits. Charges will be assessed only for the initial review (i.e., review undertaken the first time in order to analyze the applicability of specific exemption(s) to a particular record or portion of a record) and not for review at the administrative appeal level of the exemption(s) already applied.

(6) If records requested under this subpart are stored elsewhere than the headquarters of the Department of State at 2201 C Street, NW., Washington, DC, the special cost of returning such records to the headquarters shall be included in the search costs. These costs will be computed at the actual costs of transportation of either a person or the requested record between the place where the record is stored and Department headquarters when, for time or other reasons, it is not feasible to rely on Government mail service or diplomatic pouch.

(7) When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the amount or size or type thereof, the Information and Privacy Coordinator is authorized to establish an appropriate fee, pursuant to the criteria established in Office of Management and Budget Circular No. A-25, entitled "User Charges."

(b) Where it is anticipated that the fees chargeable under this subpart will amount to more than \$25 and the requester has not indicated in advance her/his willingness to pay fees as high as anticipated, the requester shall be promptly notified of the amount of the anticipated fees or such portion thereof as can readily be estimated. The notice or request for an advance deposit shall extend an offer to the requester to confer with knowledgeable Departmental personnel in an attempt to reformulate the request in a manner which will reduce the fees and meet the needs of the requester. Dispatch of such a notice or request shall suspend the running of the period for response by the Department until a reply is received from the requester.

(c) Search costs are due and payable even if the record which was requested cannot be located after all reasonable efforts have been made, or if the Department determines that a record which has been requested, but which is exempt from disclosure under this subpart, is to be withheld.

(d) The Department will begin assessing interest charges on an unpaid bill starting the 31st day following the day on which the billing was sent. The accrual of interest will be stayed upon receipt of the fee, rather than upon its processing by the Department. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.

(e) A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Department reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Department will aggregate any such requests and charge accordingly.

(f) The Department will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The Department estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then, the Department will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) Requesters who have previously failed to pay fees charged in a timely fashion (i.e., within 30 days of the date of the billing), the Department will require such requesters to pay the full amount owed plus any applicable interest as provided above or demonstrate that they have, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process new requests or pending requests from such requesters.

When the Department acts under paragraph (f)(1) or (2) of this section, the administrative time limit prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests plus permissible extensions of that time limit) will begin only after the Department has received payments described above.

(g) In accordance with the provisions and authorities of the Debt Collection Act of 1982 (Pub. L. 97-365), the Department reserves the right to disclose information to consumer reporting agencies and to use collection agencies, where appropriate, to encourage repayment.

7. Section 171.14 is added to read as follows:

**§ 171.14 Categories of requesters for fee purposes.**

There are four categories of requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of

the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories. The Department will take into account information provided by requesters in determining their eligibility for inclusion in one of these categories as defined in § 171.10. It is in the requester's best interest to provide as much information as possible to demonstrate inclusion within a non-commercial category of fee treatment.

(a) The Department will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought for commercial use. Commercial use requesters are entitled to neither two hours of free search time nor 100 free pages of reproduction of documents.

(b) The Department will provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request being made is authorized by, and under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(c) The Department will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 171.10(k), and the request must not be made for a commercial use. In reference to this class of requesters, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(d) The Department will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(e) In making determinations under this section, the Department may take into account whether requesters who previously were granted (b), (c), or (d) status did in fact use the requested records for purposes compatible with the status accorded them.

8. Section 171.15 is added to read as follows:

**§ 171.15 Fee waivers and appeals.**

(a) Waiver or reduction of any fee provided for in § 171.8 and 171.13 may be made upon a determination by the Chief of the Request Processing Section, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520. The Department shall furnish documents without charge or at a reduced charge provided that: 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. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(1) In order to determine whether 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, the Department will consider the following four factors:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Department will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that

disclosure is primarily in the commercial interest of the requester.

(b) The Department will not consider waiver or reduction of fees for requesters (persons or organizations) from whom unpaid fees remain due to the Department for another information access request.

(c) (1) The Department's decision to refuse to waive or reduce fees as requested under paragraph (a) of this section may be appealed to the Chief of the Information Access Branch, Room 1239, Department of State, 2201 C Street, NW., Washington, DC 20520. Appeals should contain as much information and documentation as possible to support the request for a waiver or reduction of fees.

(2) Appeals will be reviewed by the Information Access Branch Chief who may consult with other officials of the Department as appropriate. The requester will be notified within thirty working days from the date on which the Department received the appeal.

(FR Doc. 87-19308 Filed 8-25-87; 8:45 AM)

BILLING CODE 4710-26-01



## REQUESTS FOR FEE WAIVER

It is the Department's policy to treat each request for a fee waiver on a case-by-case basis. As noted in our letter which acknowledges receipt of your FOIA request, before I can make a decision about your request for a fee waiver, I will need additional information concerning you and your organization. Please provide the following:

1. State why you believe the subject matter of your request concerns the operations or activities of the federal government.
2. From what other sources have you attempted to obtain this information? Have you tried to obtain this information from the Foreign Relations of the United States, the National Archives and Records Administration, or public libraries? Demonstrate the absence of the requested information from the public domain.
3. Provide a summary of your educational background and work experience, particularly in the field of foreign affairs, and your expertise in the subject area of your request.
4. Expand on your ability and intention to disseminate the information requested. (e.g. Have you published or disseminated information in this or related fields in the past? Is the information requested to be used in a specific article or paper currently being prepared? When is the article to be published or the program to be aired? To what audience is the article or program aimed?)
5. Identify the particular person who will actually use the requested information in scholarly or other analytic work and then disseminate it.
6. Describe any commercial interest which would be furthered by the disclosure of the requested information. (e.g. Will you be paid for the publication or dissemination of the requested information? If so, how much will you be paid and in what manner will you receive payment? Will you receive any other type of commercial benefit due to your dissemination of the requested information?) A "commercial interest" is one that furthers a commercial, trade, or profit interest as those terms are commonly understood.
7. If your request for a fee waiver is not granted, we need your assurance that you are willing to pay the fees associated with the processing of your request. (You may limit the amount you are willing to pay.) In some cases, we will not be able to make a determination on your fee waiver request until the processing of the request has been completed, at which time an independent evaluation will be made of the releasable material. Please understand that our request for your willingness to pay cost is not a denial of your request for a waiver at this time.

This additional information should be sent to the Office of Freedom of Information, Privacy and Classification Review, IS/FPC/RD/CM, Room 1512, Department of State, 2201 C Street, N.W., Washington, D.C. 20520-1512. Refer to the case number written on the acknowledgment letter in your correspondence with us.