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## Title 36 - Parks, Forests, and Public Property

### Chapter X - Presidio Trust

#### Part 1007 Requests Under the Freedom of Information Act

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## PART 1007 - REQUESTS UNDER THE FREEDOM OF INFORMATION ACT

**Authority:** Pub. L. 104-333, 110 Stat. 4097 (16 U.S.C. 460bb note); 5 U.S.C. 552; E.O. 12,600, 52 FR 23781, 3 CFR, 1988 Comp., p. 235.

**Source:** 63 FR 71774, Dec. 30, 1998, unless otherwise noted.

### § 1007.1 Purpose and scope.

- (a) This part contains the procedures for submission to and consideration by the Presidio Trust of requests for records under the FOIA. As used in this part, the term "FOIA" means the Freedom of Information Act, 5 U.S.C. 552. The regulations in this part should be read in conjunction with the text of the FOIA. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with the Presidio Trust's Privacy Act regulations as well as under this subpart.
- (b) Before invoking the formal procedures set out below, persons seeking records from the Presidio Trust may find it useful to consult with the Presidio Trust's FOIA Officer, who can be reached at The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052, Telephone: (415) 561-5300. As used in this part, the term "FOIA Officer" means the employee designated by the Executive Director to process FOIA requests and otherwise supervise the Presidio Trust's compliance with the FOIA, or the alternate employee so designated to perform these duties in the absence of the FOIA Officer.
- (c) The procedures in this part do not apply to:

- (1) Records published in the FEDERAL REGISTER, the Bylaws of the Presidio Trust, statements of policy and interpretations, and other materials that have been published by the Presidio Trust on its internet website (<http://www.presidiotrust.gov>) or are routinely made available for inspection and copying at the requester's expense.
- (2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 1007.2(c)(7) if:
  - (i) The investigation or proceeding involves a possible violation of criminal law; and
  - (ii) There is reason to believe that:
    - (A) The subject of the investigation or proceeding is not aware of its pendency; and
    - (B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.
- (3) Informant records maintained by the United States Park Police under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

[83 FR 50828, Oct. 10, 2018]

## § 1007.2 Records available.

- (a) **Policy.** It is the policy of the Presidio Trust to make its records available to the public to the greatest extent possible consistent with the purposes of the Presidio Trust Act and the FOIA. The Presidio Trust administers the FOIA with a presumption of openness. As a matter of policy, the Presidio Trust may make discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. This policy does not create any right enforceable in court.
- (b) **Statutory disclosure requirement.** The FOIA requires that the Presidio Trust, on a request from a member of the public submitted in accordance with the procedures in this part, make requested records available for inspection and copying.
- (c) **Statutory exemptions.** Exempted from the FOIA's statutory disclosure requirement are matters that are:
  - (1)
    - (i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and
    - (ii) Are in fact properly classified pursuant to such Executive order.
  - (2) Related solely to the internal personnel rules and practices of an agency;
  - (3) Specifically exempted from disclosure by statute (other than the Privacy Act), provided that such statute:
    - (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or
    - (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

- (4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;
  - (5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
  - (6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
  - (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 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.
  - (8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
  - (9) Geological and geophysical information and data, including maps, concerning wells.
- (d) **Decisions on requests.** It is the policy of the Presidio Trust to withhold information falling within an exemption only if:
- (1) Disclosure is prohibited by statute or Executive order; or
  - (2) Sound grounds exist for invocation of the exemption.
- (e) **Disclosure of reasonably segregable nonexempt material.** If a requested record contains material covered by an exemption and material that is not exempt, and it is determined under the procedures in this part to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material and released. In such circumstances, the records disclosed in part shall be marked or annotated to show both the amount and the location of the information deleted wherever practicable.

[83 FR 50829, Oct. 10, 2018]

### § 1007.3 Requests for records.

- (a) **Submission of requests.** A request to inspect or copy records shall be submitted to the Presidio Trust's FOIA Officer at P.O. Box 29052, San Francisco, CA 94129-0052.

(b) *Form of perfected requests.*

- (1) Requests under this part shall be in writing and should specifically invoke the FOIA.
- (2) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Presidio Trust familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it was made, the person or office that made it, the present custodian of the record, and any other information that will assist in locating the requested record. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case. If after receiving a request the FOIA Officer determines that the request does not reasonably describe the records sought, the FOIA Officer will inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the FOIA Officer. If a request does not reasonably describe the records sought, the Presidio Trust's response to the request may be delayed or an adverse determination under § 1007.5(e).
- (3)
  - (i) A perfected request shall:
    - (A) Specify the fee category (commercial use, educational institution, noncommercial scientific institution, news media, or other, as defined in § 1007.9) in which the requester claims the request falls and the basis of this claim;
    - (B) State the maximum amount of fees that the requester is willing to pay or include a request for a fee waiver; and
    - (C) Provide contact information for the requester, such as phone number, email address and/or mailing address, to assist the Presidio Trust in communicating with them and providing released records.
  - (ii) Requesters who make requests for records about themselves must verify their identity.
  - (iii) Where a request for records pertains to another individual, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (e.g., a copy of a death certificate or an obituary). As an exercise of administrative discretion, the Presidio Trust may require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.
  - (iv) Requesters are advised that, under § 1007.9 (f), (g) and (h), the time for responding to requests may be delayed:
    - (A) If a requester has not sufficiently identified the fee category applicable to the request;
    - (B) If a requester has not stated a willingness to pay fees as high as anticipated by the Presidio Trust; or
    - (C) If a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by the Presidio Trust.

- (4) A request seeking a fee waiver shall, to the extent possible, address why the requester believes that the criteria for fee waivers set out in § 1007.10 are met.
  - (5) To facilitate handling, both the envelope containing a request and the face of the request should bear the legend "FREEDOM OF INFORMATION REQUEST."
- (c) **Creation of records.** A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not require that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends or comparisons. In those instances where the Presidio Trust determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the Presidio Trust may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records.

[83 FR 50829, Oct. 10, 2018]

#### § 1007.4 Preliminary processing of requests.

- (a) **Scope of requests.** Unless a request clearly specifies otherwise, requests to the Presidio Trust may be presumed to seek only records of the Presidio Trust in possession of the Presidio Trust at the time the Presidio Trust begins its search. If any other date is used, the Presidio Trust will inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) is not considered responsive to a request.
- (b) **Records of other departments and agencies.**
  - (1) When reviewing records in response to a request, the Presidio Trust will determine whether another Federal department or agency is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the Presidio Trust will proceed in one of the following ways:
    - (i) **Consultation.** When records originating with the Presidio Trust, but contain within them information of interest to another Federal department or agency, the Presidio Trust will consult with that other entity prior to making a release determination; or
    - (ii) **Referral.**
      - (A) When the Presidio Trust believes that another department or agency is best able to determine whether to disclose the record, the Presidio Trust will refer the responsibility for responding to the request regarding the record to that department or agency. Ordinarily, the department or agency that originated the record is presumed to be the best entity to make the disclosure determination. However, if the Presidio Trust and the originating department or agency jointly agree that the Presidio Trust is in the best position to respond to the request, then the record may be handled as a consultation.
      - (B) If the Presidio Trust refers any part of the responsibility for responding to a request to another department or agency, the Presidio Trust will document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the department or agency to which the record was referred, including that entity's FOIA contact information.

- (2) Timing of responses to consultations and referrals. All consultations and referrals received by the Presidio Trust will be handled according to the date that the Presidio Trust received the perfected FOIA request.
- (3) A request for documents that were classified by another agency shall be referred to that agency.

(c) *Consultation with submitters of commercial and financial information.*

- (1) If a request seeks a record containing trade secrets or commercial or financial information submitted by any person or entity, including a corporation, State, Native American tribe or nation, or foreign government, but not including another Federal Government entity, the Presidio Trust shall provide the submitter with notice of the request whenever:
  - (i) The submitter has made a good faith designation of the information as commercially or financially sensitive; or
  - (ii) The Presidio Trust has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.
- (2) Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.
- (3) The notice to the submitter shall afford the submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The submitter's statement shall explain the basis on which the information is claimed to be exempt under the FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement shall also include a certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.
- (4) A submitter who fails to respond within the time period specified in the notice will be deemed to have no objection to disclosure of the information. The Presidio Trust shall not be required to consider any information received from the submitter after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.
- (5) The Presidio Trust will notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.
- (6) If a submitter's statement cannot be obtained within the time limit for processing the request under § 1007.6, the requester shall be notified of the delay as provided in § 1007.6(f).
- (7) Notification to a submitter is not required if:
  - (i) The Presidio Trust determines, prior to giving notice, that the request for the record should be denied;
  - (ii) The information has previously been lawfully published or officially made available to the public;
  - (iii) Disclosure is required by a statute (other than the FOIA) or regulation (other than this part);
  - (iv) Disclosure is clearly prohibited by a statute, as described in § 1007.2(c)(3);

- (v) The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter, if the submitter was specifically afforded an opportunity to make such a designation; however, a submitter will be notified of a request for information that was not designated as confidential at the time of submission, or a reasonable time thereafter, if there is substantial reason to believe that disclosure of the information would result in competitive harm;
  - (vi) The designation of confidentiality made by the submitter is obviously frivolous; or
  - (vii) The information was submitted to the Presidio Trust more than ten years prior to the date of the request, unless the Presidio Trust has reason to believe that it continues to be confidential.
- (8) If a requester brings suit to compel disclosure of information, the submitter of the information will be promptly notified.

[83 FR 50830, Oct. 10, 2018]

### § 1007.5 Action on initial requests.

(a) **Authority.**

- (1) Requests shall be decided by the FOIA Officer.
- (2) A decision to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the General Counsel.

(b) **Acknowledgement of requests.**

- (1) The Presidio Trust shall send the requester a written acknowledgement of the receipt of the request, provide the requester with an individualized tracking number, and provide the requester with contact information for the FOIA Officer.
- (2) Requesters must include the individualized tracking number in all communications with the Presidio Trust regarding the request.

(c) **Estimated dates of completion and interim responses.** Upon request, the Presidio Trust will provide an estimated date by which the Presidio Trust expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the Presidio Trust may provide interim responses, releasing records on a rolling basis.

(d) **Form of grant.**

- (1) When a requested record has been determined to be available, the FOIA Officer shall notify the requester as to when and where the record is available for inspection or, as the case may be, when and how copies will be provided. If fees are due, the FOIA Officer shall state the amount of fees due and the procedures for payment, as described in § 1007.9.
- (2) The FOIA Officer shall honor a requester's specified preference of form or format of disclosure (e.g., paper, microform, audiovisual materials, or electronic records) if the record is readily available to the Presidio Trust in the requested form or format or if the record is reproducible by the Presidio Trust with reasonable efforts in the requested form or format.

- (3) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 1007.4(c), both the requester and the submitter shall be notified of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include:
    - (i) A statement of the reasons why the submitter's objections were not sustained;
    - (ii) A specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part; and
    - (iii) A specified disclosure date.
  - (4) If a claim of confidentiality has been found frivolous in accordance with § 1007.4(c)(7)(vi) and a determination is made to release the information without consultation with the submitter, the submitter of the information shall be notified of the decision and the reasons therefor a reasonable number of days prior to the date on which disclosure is to be made.
- (e) **Adverse determinations of requests.** Adverse determinations, or denials of requests, include decisions that:
- (1) The requester has not submitted a perfected request;
  - (2) The requested record is exempt, in whole or in part;
  - (3) The request does not reasonably describe the records sought;
  - (4) The information is not a record subject to the FOIA;
  - (5) The requested record does not exist, cannot be located, or has been destroyed; or
  - (6) The requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waivers or denials of requests for expedited processing.
- (f) **Form of denial.**
- (1) A decision withholding a requested record shall be in writing and shall include:
    - (i) A list of the names and titles or positions of each person responsible for the denial;
    - (ii) A reference to the specific exemption or exemptions authorizing the withholding;
    - (iii) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption;
    - (iv) A statement that the denial may be appealed and a reference to the procedures in § 1007.7 for appeal; and
    - (v) A statement notifying the requester of the dispute resolution services offered by the Office of Government Information Services.
  - (2) A decision denying a request for failure to reasonably describe requested records or for other procedural deficiency or because requested records cannot be located shall be in writing and shall include:

- (i) A description of the basis of the decision;
- (ii) A list of the names and titles or positions of each person responsible;
- (iii) A statement that the matter may be appealed and a reference to the procedures in § 1007.7 for appeal; and
- (iv) A statement notifying the requester of the dispute resolution services offered by the Office of Government Information Services.

(g) ***Expedited processing.***

- (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined by the FOIA Officer that they involve:
  - (i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
  - (ii) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person primarily engaged in disseminating information;
  - (iii) The loss of substantial due process rights; or
  - (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.
- (2) A request for expedited processing may be made at the time of the initial request for records or at any later time.
- (3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.
- (4) Within ten calendar days of receiving of a request for expedited processing, the FOIA Officer shall decide whether to grant the request for expedited processing and shall notify the requester of the decision. If a request for expedited processing is granted, the underlying FOIA request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

[83 FR 50831, Oct. 10, 2018]

## § 1007.6 Time limits for processing initial requests.

- (a) ***Basic limit.*** Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within 20 working days after receipt of a request. This determination shall be communicated immediately to the requester.
- (b) ***Running of basic time limit.***
  - (1) The 20 working day time limit begins to run when a perfected request meeting the requirements of § 1007.3(b) is received at the Presidio Trust.
  - (2) The running of the basic time limit may be delayed or tolled as explained in § 1007.9(f), (g) and (h) if a requester:

- (i) Has not stated a willingness to pay fees as high as are anticipated and has not sought and been granted a full fee waiver; or
  - (ii) Has not made a required advance payment.
- (c) **Extensions of time.** In the following unusual circumstances, the time limit for acting on an initial request may be extended to the extent reasonably necessary to the proper processing of the request, but in no case may the time limit be extended by more than 20 working days:
- (1) The need to search for and collect the requested records from facilities or other establishments that are separate from the main office of the Presidio Trust;
  - (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or
  - (3) The need for consultation, which shall be conducted with all practicable speed, with another department or agency having a substantial interest in the determination of the request.
- (d) **Notice of extension.** A requester shall be notified in writing of an extension under paragraph (c) of this section. The notice shall state the reason for the extension and the date on which a determination on the request is expected to be made. When the extension exceeds ten working days, the requester shall be provided with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. The requester shall also be notified of the dispute resolution services offered by the Office of Government Information Services.
- (e) **Treatment of delay as denial.** If no determination has been reached at the end of the 20 working day period for deciding an initial request, or an extension thereof under paragraph (c) of this section, the requester may deem the request denied and may exercise a right of appeal in accordance with § 1007.7.
- (f) **Notice of delay.** When a determination cannot be reached within the time limit, or extension thereof, the requester shall be notified of the reason for the delay, of the date on which a determination may be expected, and of the right to treat the delay as a denial for purposes of appeal, including a reference to the procedures for filing an appeal in § 1007.7.

[83 FR 50832, Oct. 10, 2018]

## § 1007.7 Appeals.

- (a) **Right of appeal.** A requester may appeal to the Executive Director when:
- (1) Records have been withheld;
  - (2) A request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located;
  - (3) A fee waiver has been denied;
  - (4) A request has not been decided within the time limits provided in § 1007.6; or
  - (5) A request for expedited processing under § 1007.5(g) has been denied.
- (b) **Time for appeal.** An appeal must be received at the office of the Presidio Trust no later than 90 calendar days after the date of the initial denial, in the case of a denial of an entire request, or 90 calendar days after records have been made available, in the case of a partial denial.

(c) **Form of appeal.**

- (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appellate process and give the requester an opportunity to present his or her arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.
- (2) The appeal shall be addressed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129-0052.
- (3) To facilitate handling, both the envelope containing a notice of appeal and the face of the notice should bear the legend "FREEDOM OF INFORMATION APPEAL."

(d) **Appeal required.** Before seeking review by a court of an adverse determination by the Presidio Trust, a requester must first submit a timely administrative appeal.

[83 FR 50832, Oct. 10, 2018]

**§ 1007.8 Action on appeals.**

(a) **Authority.** Appeals shall be decided by the Executive Director after consultation with the FOIA Officer and the General Counsel.

(b) **Time limit.** A final determination shall be made within 20 working days after receipt of an appeal meeting the requirements of § 1007.7(c).

(c) **Extensions of time.**

- (1) If the time limit for responding to the initial request for a record was not extended under the provisions of § 1007.6(c) or was extended for fewer than ten working days, the time for processing of the appeal may be extended to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than ten working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 1007.6(c) requires an extension.
- (2) The appellant shall be advised in writing of the reasons for the extension and the date on which a final determination on the appeal is expected to be dispatched.
- (3) If no determination on the appeal has been reached at the end of the 20 working day period, or the extension thereof, the requester is deemed to have exhausted administrative remedies, giving rise to a right of review in the United States District Court for the Northern District of California, as specified in 5 U.S.C. 552(a)(4).
- (4) When no determination can be reached within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be reached to be dispatched, of the dispute resolution services offered by the Office of Government Information Services, and of the right to seek judicial review.
- (5) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(d) **Form of decision.**

- (1) The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the FOIA Officer shall immediately make the records available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of the right to obtain judicial review in the U.S. District Court for the Northern District of California and shall set forth the names and titles or positions of each person responsible for the denial. The determination shall also inform the requester of the dispute resolution services offered by the Office of Government Information Services. Dispute resolution is a voluntary process. If the Presidio Trust agrees to participate in the dispute resolution services offered by the Office of Government Information Services, it will actively engage as a partner to the process in an attempt to resolve the dispute.
- (2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 1007.4(c), the submitter shall be provided notice as described in § 1007.5(b)(3).

[83 FR 50832, Oct. 10, 2018]

## § 1007.9 Fees.

### (a) Policy.

- (1) Unless waived pursuant to the provisions of § 1007.10, fees for responding to FOIA requests shall be charged in accordance with the provisions of this section and the current schedule of charges determined by the Executive Director and published on the Presidio Trust's website. Such charges shall be set at the level necessary to recoup the full allowable direct costs to the Presidio Trust.
- (2) Fees shall not be charged if the total amount chargeable does not exceed the costs of routine collection and processing of the fee. The Presidio Trust shall periodically determine the cost of routine collection and processing of a fee and publish such amount on its website.
- (3) Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.
- (4) Fees shall be charged to recover the full costs of providing such services as certifying that records are true copies or sending records by a method other than regular mail, when the Presidio Trust elects to provide such services.
- (5) The following definitions shall apply to this part:
  - (i) A *commercial use request* is a request from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interest through litigation. The intended use of records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.
  - (ii) The term *direct costs* refers to those expenses the Presidio Trust incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.*, the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits)

and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

- (iii) The term *duplication* refers to the process of making a copy of a record 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. The copy provided shall be in a form that is reasonably usable by requesters.
- (iv) An *educational institution* is 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, or an institution of vocational education, which operates a program or programs of scholarly research.
- (v) A *noncommercial scientific institution* is an institution that is not operated for commerce, trade or profit and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.
- (vi) A *representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Non-exhaustive examples of news media entities include television or radio stations that broadcast "news" to the public at large and publishers of periodicals that disseminate "news" and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. "Freelance" journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Presidio Trust can also consider a requester's past publication record in making this determination. The Presidio Trust will advise requesters of their placement in this category.
- (vii) The term *review* refers to the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure under § 1007.4(c) made by a submitter of confidential commercial information, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.
- (viii) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents, databases and information in other electronic records. Searches shall be undertaken in the most efficient and least expensive manner possible, consistent with the Presidio Trust's obligations under the FOIA and other applicable laws.

(b) *Commercial use requests.*

- (1) A requester seeking records for commercial use shall be charged fees for direct costs incurred in document search and review (even if the search and review fails to locate records that are not exempt from disclosure) and duplication.
- (2) A commercial use requester may not be charged fees for time spent resolving legal and policy issues affecting access to requested records.

(c) ***Educational and noncommercial scientific institution requests.***

- (1) A requester seeking records under the auspices of an educational institution in furtherance of scholarly research or a noncommercial scientific institution in furtherance of scientific research shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.
- (2) Such requesters may not be charged fees for costs incurred in:
  - (i) Searching for requested records;
  - (ii) Examining requested records to determine whether they are exempt from mandatory disclosure;
  - (iii) Deleting reasonably segregable exempt matter;
  - (iv) Monitoring the requester's inspection of agency records; or
  - (v) Resolving legal and policy issues affecting access to requested records.

(d) ***News media requests.***

- (1) A representative of the news media shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.
- (2) Representatives of the news media may not be charged fees for costs incurred in:
  - (i) Searching for requested records;
  - (ii) Examining requested records to determine whether they are exempt from mandatory disclosure;
  - (iii) Deleting reasonably segregable exempt matter;
  - (iv) Monitoring the requester's inspection of agency records; or
  - (v) Resolving legal and policy issues affecting access to requested records.

(e) ***Other requests.***

- (1) A requester not covered by paragraphs (b), (c), or (d) of this section shall be charged fees for the direct costs for document search (even if the search fails to locate records that are not exempt from disclosure) and duplication, except that the first two hours of search time and the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.
- (2) Such requesters may not be charged for costs incurred in:
  - (i) Examining requested records to determine whether they are exempt from disclosure;

- (ii) Deleting reasonably segregable exempt matter;
  - (iii) Monitoring the requester's inspection of agency records; or
  - (iv) Resolving legal and policy issues affecting access to requested records.
- (f) **Requests for clarification.** Where a request does not provide sufficient information to determine whether it is covered by paragraph (b), (c), (d), or (e) of this section, the requester should be asked to provide additional clarification. If it is necessary to seek such clarification, the request may be deemed to have not been received for purposes of the time limits established in § 1007.6 until the clarification is received. Requests to requesters for clarification shall be made promptly.
- (g) **Notice of anticipated fees.** Where a request does not state a willingness to pay fees as high as anticipated by the Presidio Trust, and the requester has not sought and been granted a full waiver of fees under § 1007.10, the request may be deemed to have not been received for purposes of the time limits established in § 1007.6 until the requester has been notified of and agrees to pay the anticipated fee. Advice to requesters with respect to anticipated fees shall be provided promptly.
- (h) **Advance payment.**
- (1) Where it is anticipated that allowable fees are likely to exceed \$250.00, the requester may be required to make an advance payment of the entire fee before processing of his or her request.
  - (2) Where a requester has previously failed to pay a fee within 30 days of the date of billing, processing of any request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees anticipated in connection with the request.
  - (3) Advance payment of fees may not be required except as described in paragraphs (h) (1) and (2) of this section.
  - (4) Issuance of a notice requiring payment of overdue fees or advance payment shall toll the time limit in § 1007.6 until receipt of payment.
- (i) **Form of payment.** Payment of fees should be made by check or money order payable to the Presidio Trust. Where appropriate, the official responsible for handling a request may require that payment by check be made in the form of a certified check.
- (j) **Billing procedures.** A bill for collection shall be prepared for each request that requires collection of fees.
- (k) **Collection of fees.** The bill for collection or an accompanying letter to the requester shall include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations, 4 CFR 102.13, if the fees are not paid within 30 days of the date of the bill for collection is mailed or hand-delivered to the requester. This requirement does not apply if the requester is a unit of State or local government. Other authorities of the Debt Collection Act of 1982 shall be used, as appropriate, to collect the fees.

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### § 1007.10 Waiver of fees.

- (a) **Statutory fee waiver.** Documents shall be furnished without charge or at a charge reduced below the fees chargeable under § 1007.9 if disclosure of the information is in the public interest because it:

- (1) Is likely to contribute significantly to public understanding of the operations or activities of the government and
  - (2) Is not primarily in the commercial interest of the requester.
- (b) ***Elimination or reduction of fees.*** Ordinarily, in the circumstances where the criteria of paragraph (a) of this section are met, fees will be reduced by twenty-five percent from the fees otherwise chargeable to the requester. In exceptional circumstances, and with the approval of the Executive Director, fees may be reduced below this level or waived entirely.
- (c) ***Notice of denial.*** If a requested statutory fee waiver or reduction is denied, the requester shall be notified in writing. The notice shall include:
- (1) A statement of the basis on which the waiver or reduction has been denied;
  - (2) A listing of the names and titles or positions of each person responsible for the denial; and
  - (3) A statement that the denial may be appealed to the Executive Director and a description of the procedures in § 1007.7 for appeal.