

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Office of the Chief Financial Officer**



**Office of the General Counsel**

**Office of the Chief Financial Officer**  
**Freedom of Information Act**  
**Fee Policy**

**November 21, 2019**

**I. Establishment of Fees**

The Office of the Chief Financial Officer (OCFO), an independent agency of the District of Columbia government (District),<sup>1</sup> may establish and collect fees for the direct costs it incurs to respond to a District of Columbia Freedom of Information Act (FOIA) request.<sup>2</sup> The amount of fees the OCFO may charge depends upon whether the D.C. FOIA requester (requester) intends to use the documents requested for a commercial or non-commercial use.<sup>3</sup> This OCFO FOIA Fee Policy (Policy) provides guidance on how to assess and apply D.C. FOIA fees for commercial and non-commercial use requests.<sup>4</sup>

**II. Type of Request**

The amount of fees that the OCFO may charge a requester depends on whether the request seeks information for a commercial or non-commercial use.

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<sup>1</sup> Home Rule Act 424; see D.C. Official Code § 1-204.24.

<sup>2</sup> D.C. Official Code § 2-532(b).

<sup>3</sup> *Id.*, and District of Columbia Municipal Regulation, Title 1 (1 DCMR) 408.1.

<sup>4</sup> The District's FOIA law is modeled upon the federal FOIA. See *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). If the federal FOIA defines a term that D.C. FOIA does not define but uses, this Policy relies on the federal definition as it appears in "Fees and Fee Waivers," posted October 2, 2019, in the Department of Justice Guide to the Freedom of Information Act (DOJ Guide).

*A Commercial Use Request* seeks information for a use that furthers a commercial purpose, trade, or for-profit interest, and can include furthering those interests through litigation.<sup>5</sup> The OCFO's decision to categorize a request as "commercial" should be made on a case-by-case basis and the requester's implied or explicit use of the information sought.<sup>6</sup> OCFO personnel shall seek additional information or clarification from the requester if the intended use of the information sought is not clear from the request itself.

For a commercial use request, the OCFO shall assess fees for the search, review, redacting, and duplication of records, except for the first search hour, which shall be free of charge.<sup>7</sup> A requestor may have to pay search and/or review fees even if the search does not locate any responsive records or if records are located but are withheld as exempt.<sup>8</sup>

*A Non-commercial Use Request* seeks information the requester will not use to further a commercial purpose, trade, or for-profit interest.<sup>9</sup> The OCFO may only charge duplication fees for all non-commercial use requests submitted by requesters that fall into one of three distinct subcategories:<sup>10</sup> those affiliated with an educational institution,<sup>11</sup> those who are part of a noncommercial scientific institution,<sup>12</sup> and those requested by the news media.<sup>13</sup>

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<sup>5</sup> DOJ Guide at 2, *citing* the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedule and Guidelines (OMB Fee Guidelines) 52 Fed. Reg. at 10,012, 10,017-18 (Mar. 27, 1987).

<sup>6</sup> *See id.*

<sup>7</sup> D.C. Official Code § 2-532(b); 1 DCMR § 408.

<sup>8</sup> 1 DCMR § 408. The fee covers the direct costs of the time expended to search and review documents. *See also*, OMB Fee Guideline, 54 Fed. Reg. at 10,019.

<sup>9</sup> *See*, D.C. Official Code § 2-532(b-1)(2).

<sup>10</sup> D.C. Official Code § 2-532(b-1)(2).

<sup>11</sup> An educational institution is any school or academic establishment that operates a program of scholarly research. DOJ Guide at 4, *citing* OMB Fee Guidelines, 52 Fed. Reg. at 10,018. A requester in this fee category must show that the request serves a scholarly research goal of the institution, not an individual goal. *Id.*, *citing* OMB Fee Guidelines, 52 Fed. Reg. at 10,014. OCFO personnel may seek assurance from the requester that the request is in furtherance of scholarly research if it is unclear from the request.

<sup>12</sup> A non-commercial scientific institution does not operate on a "commercial" basis and is operated solely for the purpose of conducting scientific research the results of which are not intended to promote a product or industry. DOJ Guide at 4-5, *citing* OMB Fee Guidelines, 52 Fed. Reg. at 10,018. A requester in this category must show that the request is authorized by a qualifying institution and it is seeking records for scientific research, not a commercial use. *Id.*

<sup>13</sup> Representatives of the news media include "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience. 5 U.S.C. § 552(a)(4)(A)(ii). Freelance journalists are considered representatives of the news media if they can show a solid basis for expecting publication of their work through a news media entity, whether or not they are employed by that entity. *Id.*, and DOJ Guide at 5, *citing* OMB Fee Guidelines, 52 Fed. Reg. at 10,018. OMB Guidelines provide that a request from a representative of the news media that supports a news-dissemination function shall not be considered a request for a commercial use. DOJ Guide at 6, *citing* OMB Fee Guidelines, 52 Fed. Reg. at 10,019.

For all other non-commercial FOIA requests, including requests for information regarding oneself,<sup>14</sup> the OCFO shall limit fees to charges for search and duplication.<sup>15</sup>

### III. Types of Fees

The OCFO may assess fees based on the actual cost of searching for, reviewing, redacting and duplicating District records.<sup>16</sup> The fees listed below are based on the direct costs the OCFO incurs to respond to a FOIA request pursuant to the D.C. Official Code, section 2-532 and 1 DCMR 408.<sup>17</sup> The OCFO shall charge the direct costs of any service or material for which no statutory or regulatory fee has been established and must inform the requester of the fee amount before incurring the cost.<sup>18</sup>

- A. *Search.* The OCFO may charge for time spent locating responsive records to a FOIA request.<sup>19</sup> Even if a search does not uncover any responsive records or the OCFO determines all or part of the identified records are exempt from disclosure, the OCFO may assess search fees.<sup>20</sup> Search costs range from \$16.00 to \$40.00 per hour, based on the pay grade of the personnel who performs the search.<sup>21</sup> The first hour of a search is performed free of charge.<sup>22</sup> Fees may be generated even if the search does not locate any responsive records or if the records located are withheld as exempt.<sup>23</sup>
- B. *Review.* The review costs are those incurred during the initial examination of a record to determine the application of FOIA exemptions.<sup>24</sup> While the OCFO may not charge for the time it takes to resolve legal or policy questions regarding the applicability of exemptions,<sup>25</sup> it may charge for the time it takes to redact a record in accordance with a general legal or policy determination.<sup>26</sup>

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<sup>14</sup> When a requester seeks information regarding him/herself, he/she shall provide a certification of identity, such as a notarized statement or other statement signed under penalty of perjury stating the individual is who he/she purports to be. See <https://www.foia.gov/faq.html>. This certification is necessary to protect the individual's privacy and ensure the OCFO does not disclose private information inappropriately to someone else. *Id.*

<sup>15</sup> D.C. Official Code § 2-532(b-1)(3).

<sup>16</sup> D.C. Official Code § 2-532(b).

<sup>17</sup> 1 DCMR § 408.1; see D.C. Official Code § 2-532 (b-1)(4).

<sup>18</sup> 1 DCMR § 408.2.

<sup>19</sup> D.C. Official Code § 2-532(b-1)(4), and 1 DCMR § 408.1.

<sup>20</sup> 1 DCMR § 408.5; OMB Fee Guidelines, 52 Fed. Reg. at 10,019.

<sup>21</sup> 1 DCMR § 408.1. Search fees are assessed per quarter hour. OCFO attorneys currently bill at \$10 per quarter hour.

<sup>22</sup> *Id.*

<sup>23</sup> D.C. Official Code § 2-532 and 1 DCMR § 408.

<sup>24</sup> See D.C. Official Code § 2-532 (b-2).

<sup>25</sup> *Id.*

<sup>26</sup> D.C. Official Code § 2-532(b).

Reviews include *redaction*, the process of editing or revising a public record to remove information that is statutorily exempt from disclosure.<sup>27</sup> Review costs range from \$16.00 to \$40.00 per hour, based on the pay grade of the personnel who performs the review. The first hour of review is free of charge.<sup>28</sup> FOIA disclosure exemptions apply to all records provided by the District pursuant to a FOIA request,<sup>29</sup> including records the OCFO previously published but are no longer publicly accessible.

C. *Duplication.* The cost to copy or reproduce a record may be charged to the requester. The OCFO shall seek to provide a requester's preference for receiving a record in a particular form or format when the form or format requested is readily reproducible and does not threaten to reveal information exempt from disclosure, pursuant to D.C. Official Code, section 2-534.<sup>30</sup> The most common types of duplication are:

- *Photocopies:* for photocopies of a record, the OCFO shall provide one copy per request at a cost of \$0.25 per page.<sup>31</sup>
- *Mixed media:* for copies of records produced on tapes, disks, or other media, the requester shall pay the direct costs operator time (\$16.00 to \$40.00 per hour based on the pay grade of the personnel performing the duplication) plus the cost of the media provided.<sup>32</sup> The requester must be informed of the price of the medium before the request is fulfilled.<sup>33</sup>
- *Scans:* for documents requested in an electronic format, the requester shall pay the direct costs of scanning those materials, including operator time.<sup>34</sup>
- *Re-formatting of a Record:* for records a requester asks the OCFO to re-format or tailor to suit the requester's commercial use/purpose, the requester must pay the direct costs of reformatting/tailoring a record, including operator time,<sup>35</sup> even if the OCFO is ultimately unable to achieve the requester's preference.

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<sup>27</sup> <https://thelawdictionary.org/redacted-document/>.

<sup>28</sup> 1 DCMR § 408.1(d).

<sup>29</sup> See D.C. Official Code § 2-534.

<sup>30</sup> D.C. Official Code § 2-532(a-1). Requestors may be able to manipulate certain software programs to reveal information that the OCFO has redacted in accordance with D.C. FOIA exemptions or other law. For example, a requester may ask for a list of unclaimed property as an excel file (.xls). To prevent the manipulation of an excel file to reveal exempt information, the OCFO may provide the redacted record as an immutable pdf. file.

<sup>31</sup> 1 DCMR § 408.1(c).

<sup>32</sup> 1 DCMR § 408.2.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See 28 C.F.R § 16.10(b)(3).

The OCFO is not required to spend more than 8 hours of personnel time to reprogram or reformat records.<sup>36</sup>

- D. *Document certification.* Though not a service required by FOIA, a requestor shall pay a \$1.00 fee per document for a certified copy of an agency record.<sup>37</sup>
- E. *No Charge for Referrals.* When the OCFO resolves a FOIA request by either directing the requester to publicly accessible information (such as a website) or to another District agency that maintains the records requested, no search or review costs are incurred so no FOIA-related fees apply.

If the website no longer contains the information sought, the OCFO will provide any responsive records it has subject to current FOIA exemptions.

#### **IV. Estimated Fees and Waivers**

If the OCFO can estimate the direct costs of responding to a request and the requester has not stated a fee limit, or if the estimated fees are higher than the requester's fee limit, the OCFO shall notify the requester.

- A. *Notice of Estimated Fees (NEF).* If the requester fails to state a fee limit and the OCFO estimates fees equal to or in excess of \$25.00, or if the OCFO's estimated costs are higher than the requester's stated fee limit, the OCFO shall immediately provide written notice to the requester of the estimated fees. The NEF shall include a breakdown of the fees for search, review, duplication,<sup>38</sup> all other costs that the OCFO anticipates it will incur but for which no statutory or regulatory fee has been established,<sup>39</sup> and notify the requester if advance payment is required.

The notice shall instruct the requester to provide the OCFO with a written response, stating whether he/she will: accept the estimated fees; modify the initial request; or withdraw the request. The notice shall also state that if the OCFO does not receive a response from the requester within 30 business days, it may deny the FOIA request for lack of sufficient information to proceed.<sup>40</sup>

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<sup>36</sup> D.C. Official Code § 2-532(f)(1).

<sup>37</sup> 1 DCMR § 408.4.

<sup>38</sup> See 1 DCMR § 408.3.

<sup>39</sup> 1 DCMR § 408.2.

<sup>40</sup> This 30-business day limit is recommended in order to close out requests containing insufficient information.

- B. *Advance Payments.* The OCFO may require a requester to make a full advance payment: i.e., payment before work is begun or continued on a request, when it estimates the assessable fees are likely to exceed \$250, or if the requester has previously failed to pay a properly assessed fee within 30 business days of the billing date.<sup>41</sup>

If the OCFO does not receive requester's payment within 30 business days of requesting an advance payment, the OCFO may deny the FOIA request.<sup>42</sup>

- C. *Lack of Response from Requester.* When the requester fails to respond to the OCFO's Notice of Estimated Fees, and the estimated fees do not require advance payment, the OCFO shall fulfill the FOIA request and inform requester in the OCFO's response that his/her failure to pay the related fee invoice may result in the OCFO requiring advance payments from him/her for future requests.<sup>43</sup>
- D. *Serial Requests.* Three (3) or more FOIA requests submitted by or on behalf of an individual/entity and received by the OCFO within a period of ten business days shall be considered in the aggregate (as one FOIA request) for the purpose of search, review, and duplication fees.<sup>44</sup>
- E. *Aggregate Requests.* When the OCFO reasonably believes a requester, or a group of requesters acting in concert, is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the OCFO may aggregate those requests and charge accordingly.<sup>45</sup> The OCFO may presume such requests made within a 30-business day period have been made in order to avoid fees. The OCFO will only aggregate requests separated by more than 10-business days if there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances. The OCFO will not aggregate multiple requests involving unrelated matters.
- F. *Fees Chargeable Under Another Statute.* When a FOIA request seeks responsive records from OCFO that are maintained and distributed by another District agency according to a statutorily based fee schedule, requesters should obtain and pay the applicable fees in accordance with the fee schedule of the other statute.<sup>46</sup> This may result in the assessment

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<sup>41</sup> See D.C. Official Code § 2-532(b-3); 1 DCMR § 408.6; see also DOJ Guide at 14, *citing* 5 U.S.C. § 552 (a)(4)(A)(v) and OMB Fee Guidelines, 52 Fed. Reg. at 10,020.

<sup>42</sup> A 30-business day limit is recommended in order to close out requests timely.

<sup>43</sup> *Id.*

<sup>44</sup> Aggregation is recommended to lessen burden of processing commercial requests from the same requester.

<sup>45</sup> See DOJ Guide at 15, *citing* OMB Fee Guidelines, 52 Fed. Reg. at 10,019-20.

<sup>46</sup> See 5 U.S.C. § 552(a)(4)(A)(vi) and DOJ Guide at 16, *citing* OMB Fee Guidelines 52 Fed. Reg. at 10,012 – 13, 10,017-18.

of fees higher than those that would otherwise be chargeable under FOIA, but it ensures that such fees are properly borne by the requester and not by the general public.<sup>47</sup>

- G. *Waivers of Fees.* To receive a full or partial waiver of fees, the requester must provide a written document demonstrating how he/she will use the requested records to benefit the general public.<sup>48</sup> If the OCFO determines disclosure of the information is in the public's interests, because it is likely to contribute significantly to public understanding of the operations or activities of the District and is not primarily in the commercial interest of the requester, it may reduce or eliminate the fees accordingly.<sup>49</sup>

## V. Payments

Requesters are to follow the District's published rules for making FOIA requests, including those pertaining to the payment of authorized fees. Remittances shall be in the form of a personal check, bank draft on a bank in the United States, or a postal money order<sup>50</sup> made payable to the order of the D.C. Treasurer, and sent to the attention of the OCFO's FOIA Officer.<sup>51</sup>

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## VI. Appeals or Judicial Review Based on Fees

Pursuant to D.C. Official Code, section 2-537 and 1 DCMR, section 412, a requester may appeal the OCFO's decision to deny a request for failure to pay fees to the Mayor or the Superior Court for the District of Columbia. Neither the D.C. FOIA nor the federal FOIA explicitly provide for administrative appeals of denials of requests for fee waivers or assessment of fees.

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<sup>47</sup> See DOJ Guide at 16 and OMB Fee Guidelines 52 Fed. Reg. at 10,017.

<sup>48</sup> 1 DCMR § 408.10

<sup>49</sup> D.C. Official Code § 2-532(b); 1 DCMR § 408.9.

<sup>50</sup> 1 DCMR § 408.7

<sup>51</sup> *Id.*