



United States Department of State

Washington, D.C. 20520

September 11, 2002

Request Number: 200203010

NSA Control #: 20020515DOS133

RECEIVED SEP 16 2002

William Ferroggiaro  
The National Security Archive  
Gelman Library, Suite 701  
2130 H Street, N.W.  
Washington, D.C. 20037

Dear Mr. Ferraggiaro:

Thank you for your faxed letter of September 4, 2002 in which you requested records concerning the US Department of State's implementation of US Attorney General John Ashcroft's October 12, 2001 memorandum on the US Freedom of Information Act.

For your information, the following are conditions, which govern all Freedom of Information Act (FOIA) requests:

The cut-off date for retrieving records is the date that a search is initiated. Only existing records are subject to the Freedom of Information Act.

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.

Please review the fee information provided below.

**Fee Information:**

The Freedom of Information Act permits agencies to collect fees to recover the direct costs of processing requests, unless a fee waiver has been granted or the charges fall below a certain amount. These issues are addressed below:

You have stated your willingness to pay the fees associated with the processing of this request up to \$100.00.

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 22 C.F.R. Part 171.14 of the enclosed "Rules and Regulations".)

- ( ) commercial use requester (pays search, review & duplication costs)
- ( ) educational institutions (pays duplication costs after first 100 pages)
- ( ) non-commercial scientific institutions (pays duplication costs after first 100 pages)
- (x) representative of the news media (pays duplication costs after first 100 pages)
- ( ) all other requesters (pays search time after 2 hours/duplication costs after first 100 pages)

The Department's search and review fees are:

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

Copy costs are assessed at the rate of \$0.25 per page.

We will notify you of the costs incurred in processing your request as soon as the search and review actions have been completed.

Due to its central role in conducting U.S. foreign affairs and the significant public interest in access to its records, the Department receives requests of a number, range and complexity perhaps unparalleled among government agencies. Because of the large number of requests now pending with the Department, we anticipate that our response will be delayed.

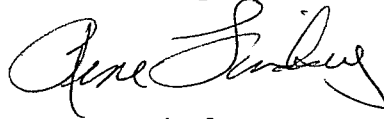
If you have any questions with respect to the processing of this request, you may write to:

Office of Information Programs and Services  
A/RPS/IPS/RL  
U.S. Department of State, SA-2  
Washington, D.C. 20522-6001

or telephone: (202) 261-8314 or fax: (202) 261-8579. Please

be sure to refer to your request number in all correspondence about this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rene Lindsey".

Rene Lindsey  
Requester Communication Branch

Enclosures: (1)  
As stated.

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.

[52 FR 32125, Aug. 26, 1987]

**§ 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

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## § 171.15

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.

[52 FR 32125, Aug. 26, 1987]

### § 171.15 Fee waivers and appeals.

(a) Waiver or reduction of any fee provided for in §§ 171.6 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