



U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

20020483 AID005

September 12, 2002

RECEIVED SEP 16 2002

William Ferroggiaro
The National Security Archive
The George Washington University
Gelman Library, Suite 701
2130 H Street, NW
Washington, DC 20037

FOI-192/02

Dear William Ferroggiaro:

We have received your September 03, 2002 Freedom of Information Act (FOIA) request.

The tracking number that has been assigned to your request is FOI-192/02. Please do use that number when corresponding with us. It is our access point to your request file.

Your request is being processed under the "News Media" The fees for that category are as follows:

Search: No Fee
Review: No Fee
Duplication: 20¢ per page after the first 100 pages

I have enclosed our fee schedule and some excerpts from our fees regulations.

Since you have provided a commitment to pay the processing fees associated with your request, we have begun the processing of your request. We will notify you if the cost exceeds \$100.00.

The FOIA Specialist who has been assigned to your request is Sylvia Lankford. Mrs. Lankford can be reached on 202-712-0879 and the fax number is 202-216-3070.

We look forward to working on this request with you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sylvia Lankford".

Joanne Paskar, Chief
Information and Records Division
Office of Administrative Services

Enclosure: a/s

TITLE 22 -- FOREIGN RELATIONS

CHAPTER II -- AGENCY FOR INTERNATIONAL DEVELOPMENT

[U.S.A.I.D. Reg. 12]

PART 212--PUBLIC INFORMATION

Section 212.35 - Schedule of fees and method of payment for services rendered.
[Rearranged and condensed for the purpose of this enclosure.]

The following specific fees shall be applicable with respect to services rendered:

(1) COMMERCIAL USE

Search: \$23.76 per hour

Search costs will be assessed even though no records may be found or even if, after review, there is no disclosure of records.

Review: \$40.98 per hour

Duplication: 20¢ per page

(2) EDUCATIONAL & NON-COMMERCIAL SCIENTIFIC INSTITUTIONS

Search: No fee

Review: No fee

Duplication: 20¢ per page after the first 100 pages

(3) NEWS MEDIA

Search: No fee

Review: No fee

Duplication: 20¢ per page after the first 100 pages

(4) ALL OTHERS

Search: Same as "Commercial User" except the first two hours shall be furnished without charge.

Review: No fee

Duplication: 20¢ per page after the first 100 pages

Definitions applicable to above:

(1) "Direct Costs" means those expenditures which the Agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents in order to respond to a FOIA request.

(2) "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. Line-by-line search will not be done when duplicating an entire document would prove the less expensive and quicker method of complying with a request.

(2) "REVIEW" is the process of examining documents located in response to a commercial use request 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 redact those documents of exempt material and otherwise preparing them for release. Review fees do not include time spent resolving general legal or policy issues regarding the application of exemptions.

1/2/2002

(3) "DUPLICATION" refers to the process of making a copy of a document available to the FOIA requester. Copies can take the form of paper copy, microfilm or audiovisual materials (among others) and will be in a form that is reasonably usable by requesters.

(4) "COMMERCIAL USE REQUEST" refers to a request from or on behalf of one who seeks information for a use or purpose that is related to commerce, trade, or the profit interest of the requester or of the person on whose behalf the request is made. In determining whether a request properly belongs in this category, the Agency will determine the use to which a requester will put the documents requested. Where the Agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Agency may seek additional clarification before assigning the request to a specific category.

(5) "EDUCATIONAL INSTITUTION" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of professional education, or an institution of vocational education which operates a program or programs of scholarly research.

(6) "NON-COMMERCIAL SCIENTIFIC INSTITUTION" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (b)(4) above 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.

(7) "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 telecommunication 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 sound basis for expecting publication through such an organization, even though not actually employed by it. A publication contract would be the clearest evidence, but the Agency may also look to the past publication record of the requester in making this determination.

Other provisions.

(1) ADVANCE PAYMENT OR CONFIRMATION: Where USAID estimates or determines that allowable charges to a requester are likely to exceed \$250.00, USAID will require a requester to make an advance payment of the entire estimated charges before continuing to process the request. Where the estimated charges are in the \$25.00 to \$250.00 range, then USAID in its discretion, before processing the request, may require either (a) an advance deposit of the entire estimated charges or (b) written confirmation of the requester's willingness, when billed, to pay such charges.

(2) WAIVING OR REDUCING FEE: In accordance with section (4)(A)(ii) of the FOIA, the Agency will furnish documents without charge or at reduced charges if disclosure of the information is "in the public interest" in that such disclosure 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.

(3) **AGGREGATING REQUESTERS:** When the Agency reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Agency will aggregate any such requesters and charge accordingly.

(4) **REMITTANCES:** (a) Remittances will be in U.S. Dollars in the form of either a personal check or bank draft drawn on a bank in the United States or a money order. (b) Remittances shall be made payable to the order of the U.S. Treasury and mailed to the Chief, Information and Records Division, U.S. Agency for International Development, Room 2.7C, Ronald Reagan Building, Washington, D.C. 20523-2701.*

(5) **NONPAYMENT OF FEES:** (a) The Agency will begin assessing interest charges on the thirty-first day following the day on which the requester is advised of the fee charge. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(b) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e. within thirty days of the billing date), the Agency will require the requester to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the remaining estimated fee before the Agency begins to process a new request or continues processing a then-pending request from the requester.

(c) When the Agency acts under paragraph (5)(a) or (b) of this section the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., ten working days from receipt of initial request and twenty working days from receipt of appeals from initial denial plus permissible extensions of these time limits) will begin only after the Agency has received fee payments described in this section.

(6) **EFFECT OF THE DEBT COLLECTION ACT OF 1982 (PUB. L. 97-365):** The Agency will use the authorities the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

SECTION 212.36 - DENIAL OF REQUEST FOR ACCESS TO RECORDS

(a) If it is determined that the Agency cannot comply with all or part of a request for records, the person making the request shall be immediately notified on the determination, the reasons for the determination, the name and title of each officer responsible for the denial, and the right of the person to appeal the adverse determination.

(b) The denial of a request for records may be made, initially, only by the Chief, Information and Records Division, or his/her designee. *

(c) (1) Any person who has been denied access to records pursuant to this section may appeal the relevant decision not later than thirty (30) days after the date of the notification of denial or, in the case of a partial denial, not later than thirty days after the date the releasable documents are actually furnished to the person making the request, whichever is later. The appeal shall be in writing addressed to the Agency's FOIA Appeals Officer, who is: The Director, Office of Administrative Services, Bureau for Management, U.S. Agency for International Development, Room 4.6B, Ronald Reagan Building, Washington, D.C. 20523-4601.*

(2) In order for the Agency to make a timely response to the appeal, both the text of the appeal and its envelope must be plainly marked "FOIA Appeal." The appeal must contain a reasonable description of the record sought and withheld, a copy of the initial decision to deny access and any other information that will enable the Appeals Officer to make the final decision.

SECTION 212.37 - PROCEDURES FOR AGENCY CONSIDERATION OF APPEALS.

(a) Upon receipt of the appeal by the Appeals Officer, a maximum of twenty (20) working days will normally be taken to decide the appeal. In unusual circumstances, as defined in §212.34, the twenty working days may be extended by ten (10) working days or by the number of days not used in the original denial of the request.

(b) If the appeal is granted, the person making the appeal shall be immediately notified and copies of the releasable documents shall be made available promptly thereafter upon receipt of appropriate fees as set forth in §212.35. If the appeal is denied in whole or part, the person making the request shall be immediately notified of the decisions and of the provisions for judicial review of the Agency's denial of the request.

(c) In the event a determination is not issued within the applicable time limit and the person making the request therefore chooses to sue the Agency, the Agency-level determination process shall nonetheless continue.

(d) If an appeal not properly marked "FOIA Appeal" on the text of the appeal and/or envelope is thereby delayed in reaching the Appeals Officer, it will not be deemed received by the Appeals Officer until actually received by him/her. In such event, the person making the appeal will be furnished notice of the effective date of receipt.

* This passage represents recent organizational and/or locational changes which have not yet been published and finalized in the Federal Register. We are currently in the process of preparing a public notice for the Federal Register.