

in order to avoid fees. For requests separated by a longer period, the NEH will aggregate them only when there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. The NEH will not aggregate multiple requests involving unrelated matters.

#### § 1171.12 Preservation of records.

NEH will preserve all correspondence pertaining to the requests that it receives as well as copies of all requested records, until disposition or destruction is authorized by the agency's General Records Schedule of the National Archives and Records Administration (NARA) or other NARA-approved records schedule. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the Act.

#### § 1171.13 Other rights and services.

Nothing in this part will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Michael P. McDonald,  
General Counsel.

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## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Institute of Museum and Library Services

#### 45 CFR Part 1184

RIN 3137-AA22

### Implementing the Freedom of Information Act

**AGENCY:** Institute of Museum and Library Services (IMLS), NFAH.

**ACTION:** Final rule.

**SUMMARY:** IMLS issues this final rule to implement the Freedom of Information Act (FOIA), as amended. The regulations both describe how IMLS processes requests for records under FOIA and reaffirm the agency's commitment to providing the fullest possible disclosure of records to the public. The agency is implementing the regulations to replace its existing joint regulations as part of the National Foundation on the Arts and the Humanities, and to update, clarify, and streamline the language of several procedural provisions, while incorporating changes brought about by amendments to the FOIA.

**DATES:** *Effective Date:* March 21, 2014.

#### FOR FURTHER INFORMATION CONTACT:

Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036. Email: [nweiss@imls.gov](mailto:nweiss@imls.gov). Telephone: (202) 653-4787. Facsimile: (202) 653-4625.

#### SUPPLEMENTARY INFORMATION:

IMLS operates as part of the National Foundation on the Arts and the Humanities under the National Foundation on the Arts and Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*). The corresponding regulations published at 45 CFR Chapter XI, Subchapter A apply to the entire Foundation, while the regulations published at 45 CFR Chapter XI, Subchapter E apply only to the institute.

This final rule implements IMLS' FOIA regulations in Subchapter E (45 CFR part 1184), replacing the existing regulations in Subchapter A (45 CFR part 1100) with regard to IMLS. The final rule provides additional detail concerning several provisions of the Freedom of Information Act, and is intended to increase understanding of IMLS' FOIA policies. IMLS is authorized to issue these regulations under 5 U.S.C. 552.

### I. Why We're Publishing This Rule and What It Does

#### A. Introduction

The Institute of Museum and Library Services (IMLS) is adopting regulations to implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. FOIA requires Federal agencies to make official documents and other records available to the public upon request, unless the material requested falls under one of several statutorily prescribed exemptions. FOIA also requires agencies to publish rules stating the time, place, fees, and procedures to apply in making such records available. Further, Section 1803 of the Freedom of Information Reform Act of 1986 requires each agency to establish a system for recovering costs associated with responding to requests for information under FOIA. The Office of Management and Budget (OMB) has issued guidelines that set standard government-wide definitions for assessing and collecting FOIA fees (OMB Fee Guidelines). These regulations describe the ways in which records may be requested by the public, and explain how IMLS will respond to such requests and assess fees in connection with the agency's response.

The regulations also incorporate the policies expressed in the President's January 21, 2009, Executive Memorandum on the Freedom of

Information Act, and the Attorney General's March 19, 2009, Memorandum for Heads of Executive Departments and Agencies. These policies, however, do not create any legally enforceable rights.

By implementing the provisions of the January 21, 2009, Executive Memorandum and Attorney General Holder's March 19, 2009, Memorandum to the Heads of Executive Departments and Agencies, these regulations will improve IMLS's FOIA-related service and performance, thereby strengthening the agency's compliance with the law. On April 16, 2013, IMLS published a proposed rule in the **Federal Register** (78 FR 22501) and requested public comments on the proposed rule.

#### B. Discussion of Comments

The comment period ended on May 16, 2013, and IMLS received comments from one commenter. This section of the preamble discusses issues raised in the comments.

#### Expand Online Disclosures

The commenter suggested that IMLS revise the regulations to more fully embrace the use of online disclosure for public information under FOIA, including recommendations to: (1) Adopt a policy to establish categories of records that can be disclosed regularly and posted on the IMLS Web site; (2) to proactively identify and disclose additional records of interest to the public; (3) to publish all records released in response to FOIA requests; and (4) to publish online indexes of information made available under FOIA. IMLS has carefully considered these suggestions, and adopts the recommendations to adopt a policy to establish categories of records that can be disclosed regularly and to proactively identify and disclose additional records of interest to the public. IMLS is committed to continuing to find new ways of proactively disclosing records to the public, the agency declines to adopt the other recommendations into its regulations, because it believes the final rule provides the agency with the necessary flexibility to adopt innovative ways of providing useful information.

#### Improve the Acknowledgment of Requests

The commenter suggested that IMLS revise the regulations to adopt a policy to acknowledge requests as soon as practicable, and to provide information about the agency's FOIA Public Liaison. IMLS agrees and adopts these recommendations in the final rule.

### Clarify Fees and Fee Waivers

The commenter suggested that IMLS maintain a database of fee waivers granted by the agency to consult for future waiver requests, and revise the regulations to provide that it will not charge a fee if the total fee is \$50 or less. IMLS has carefully considered these suggestions, but declines to adopt them. IMLS declines to adopt the first suggestion into its regulations, because the agency believes the final rule ensures consistent agency practice with regard to fee waivers. With regard to the second suggestion, both the proposed and final rule reflect IMLS's policy decision to not charge a fee if the total fee is \$25 or less.

### Improve Communication With the Requester

The commenter suggested that IMLS improve communication with FOIA requesters by: (1) Adopting a policy that the agency will contact the requester to seek clarification if the agency is unclear as to the scope of the request; (2) providing an estimated time to complete the request and opportunities to reformulate; (3) informing requesters of status updates; (4) communicating with requesters by email where appropriate; (5) using plain language in all communications with requesters; and (6) notifying requesters when requests are referred. After careful consideration of these suggestions, IMLS has revised the final rule to clarify that IMLS will provide requesters with a tracking number and as appropriate, a brief description of the request, and relevant IMLS contact information. The final rule also has been revised to reflect that IMLS will communicate with requesters to clarify the scope of the request in the event of uncertainty and that the agency will notify requesters when a request is referred to another agency. IMLS notes that the final rule allows for the agency to communicate, where appropriate, with requesters by email, and that the agency is governed by the Plain Writing Act of 2010, which directs agencies to use plain language when communicating.

### Apply the Presumption of Openness

The commenter suggested that the agency revise the rule to reflect a presumption of openness. IMLS agrees and the final rule has been revised to adopt this suggestion.

### Improve Administrative Appeals

The commenter suggested that IMLS revise the proposed rule to: (1) Clarify that requesters may submit administrative appeals electronically; (2) notify requesters of dispute

resolution services in appeal determinations; and (3) provide a minimum of 60 days for requesters to submit administrative appeals.

IMLS has carefully considered these suggestions, and adopts the recommendations that the rule be revised to: (1) Clarify that requesters may submit appeals electronically; and (2) notify requesters of dispute resolution services in appeal determinations. IMLS declines to adopt the recommendation to extend the period of time available for a requester to submit an appeal to 60 days. The agency believes the final rule, which provides the requester with 30 days to file an administrative appeal, allows for sufficient time for a requester to gather all the facts relevant to the request and prepare any arguments they may wish to make in their appeal.

### Provide Information About Dispute Resolution Services

The commenter suggested that IMLS revise the proposed rule to add a new subsection describing how requesters can resolve disputes with regard to their request. IMLS agrees and the final rule has been revised to adopt this suggestion.

### Consultation With the National Archives and Records Administration

The National Archives and Records Administration's Office of Government Information Services (OGIS) reviewed IMLS's proposed regulations and made recommendations, which IMLS took into account in drafting this final rule.

## II. Compliance With Laws and Executive Orders

### *Regulatory Planning and Review* (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based

on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

### Paperwork Reduction Act

IMLS has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because these regulations do not contain any information collection requirements subject to approval by OMB.

### Civil Justice Reform (Executive Order 12988)

These regulations meet the applicable standards set forth in Executive Order 12988, Civil Justice Reform.

### Federalism (Executive Order 13132)

These regulations will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, IMLS has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### Regulatory Flexibility Act

IMLS, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed these regulations and certifies that they will not have a significant economic impact on a substantial number of small entities because they pertain to administrative matters affecting the agency.

### Unfunded Mandates Reform Act of 1995

These regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501, *et seq.*

### Small Business Regulatory Enforcement Fairness Act of 1996

These regulations are not major regulations as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. They will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment,

investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

#### National Environmental Policy Act of 1969

IMLS has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and has determined that this action will not have a significant effect on the human environment.

#### Takings (E.O. 21630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

#### Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This rule does not have tribal implications that impose substantial direct compliance costs on Indian Tribal governments.

#### Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This rule will not have a significant effect on the nation's energy supply, distribution, or use.

#### Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) Be logically organized; (b) use the active voice to address readers directly; (c) use clear language rather than jargon; (d) be divided into short sections and sentences; and (e) use lists and tables wherever possible.

#### List of Subjects in 45 CFR Part 1184

Administrative practice and procedure, Freedom of Information.

For the reasons stated in the preamble, IMLS amends 45 CFR chapter XI, subchapter E to add part 1184 as follows:

### PART 1184—IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT

#### Sec.

1184.1 What is the purpose and scope of these regulations?

1184.2 What are IMLS's general policies with respect to FOIA?

1184.3 How do I request records?

1184.4 When will I receive a response to my request?

1184.5 How will my request be processed?

1184.6 How can I appeal a denial of my request?

1184.7 How will fees be charged?

1184.8 How can I address concerns regarding my request?

1184.9 What are IMLS' policies regarding disclosure of confidential business information?

1184.10 Disclaimer

**Authority:** 5 U.S.C. 552.

#### § 1184.1 What is the purpose and scope of these regulations?

(a) The regulations in this part describe how the Institute of Museum and Library Services (IMLS) processes requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552 as amended. The regulations in this part apply only to records that are both:

(1) Created or obtained by IMLS; and

(2) Under the agency's control at the time of the FOIA request.

(b) The rules in this part should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Act Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (Mar. 27, 1987) (the "OMB Guidelines"). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under 45 CFR part 1182 as well as under this part.

#### § 1184.2 What are IMLS's general policies with respect to FOIA?

(a) *Non-exempt records available to the public.* Except for records exempt or excluded from disclosure by 5 U.S.C. 552 or published in the **Federal Register** under 5 U.S.C. 552(a)(1), IMLS records subject to the FOIA are available to any person who requests them in accordance with these regulations.

(b) *Records available at the IMLS FOIA Electronic Reading Room.* IMLS makes records available on its Web site in accordance with 5 U.S.C. 552(a)(2), as amended, and other documents that, because of the nature of their subject matter, are likely to be the subject of FOIA requests. IMLS establishes categories of records that can be disclosed regularly and proactively identifies and discloses additional records of interest to the public. To save time and money, IMLS strongly urges you to review documents available at the IMLS FOIA Electronic Reading Room before submitting a FOIA request.

(c) *Definitions.* For purposes of this part, all of the terms defined in the Freedom of Information Act, and the OMB Guidelines apply, unless otherwise defined in this part.

(1) *Commercial use request.* A request by or on behalf of anyone who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation.

(2) *Direct costs.* Those expenses that IMLS actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16.1 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication.* The making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others.

(4) *Educational institution.* Any school that operates a program of scholarly research. A requester in this category must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research.

(5) *Fee waiver.* The waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a commercial interest.

(6) *FOIA Public Liaison.* An IMLS official who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of FOIA requests, and assisting in the resolution of disputes.

(7) *Non-commercial scientific institution.* An institution that is not operated on a "commercial" basis, as defined in paragraph (c)(1) of this section, 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. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(8) *Representative of news media.* Any person or entity organized and operated to publish or broadcast news to the

public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn 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. 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. A request for records that supports 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 working for that entity. A publishing contract would provide the clearest evidence that publication is expected; however, IMLS will also consider a requester’s past publication record in making this determination.

(9) *Requester Category.* One of the three categories that IMLS places requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication, and include commercial requesters; non-commercial scientific or educational institutions or news media requesters, and all other requesters.

(10) *Review.* 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 made by a confidential business information submitter under § 1184.8 but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(11) *Search.* The process of looking for and retrieving records or information responsive to a FOIA request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from electronic records.

(12) *Working day.* A regular Federal working day. It does not include Saturdays, Sundays, or legal Federal holidays.

#### **§ 1184.3 How do I request records?**

(a) *Where to send a request.* You may make a FOIA request for IMLS records by writing directly to the FOIA Officer, Institute of Museum and Library Services, 1800 M Street NW., 9th Floor, Washington, DC 20036–5802. Requests may also be sent by facsimile to the FOIA Officer at (202) 653–4625 or by email to [foia@imls.gov](mailto:foia@imls.gov). You may also submit your FOIA request online through the IMLS FOIA Request Form located at: [http://www.imls.gov/about/foia\\_request\\_form.aspx](http://www.imls.gov/about/foia_request_form.aspx).

(b) *Form of request.* Your FOIA request need not be in any particular format, but it must be in writing, include your name and mailing address, and should be clearly identified as a Freedom of Information Act or “FOIA” request. You must describe the records sought with sufficient specificity to enable the agency to identify and locate the records, including, if possible, dates, subjects, titles, or authors of the records requested. If IMLS determines that your request does not reasonably describe the requested records, the agency will advise you what additional information is required to perfect your request, or why your request is otherwise insufficient. You should also indicate if you have a preferred form or format in which you would like to receive the requested records.

(c) *Electronic format records.* IMLS will provide the responsive records in the form or format you request if the records are readily reproducible by IMLS in that form or format. IMLS will make reasonable efforts to maintain its records in forms or formats that are reproducible for the purpose of disclosure. IMLS may disclose records in electronic format if the records can be downloaded or transferred intact through electronic media currently in use by the agency. In responding to a request for records, IMLS will make reasonable efforts to search for the records in electronic form or format, except where such efforts would significantly interfere with the operation of the agency’s automated information system(s).

(d) *Date of receipt.* IMLS considers a request that complies with paragraphs (a) and (b) of this section to be a perfected request. The agency considers a request to be received on the date that the request is perfected.

#### **§ 1184.4 When will I receive a response to my request?**

(a) *Responses within 20 working days.* IMLS will ordinarily grant, partially grant, or deny your request for records within 20 working days after receiving a perfected request.

(b) *Extensions of response time in “unusual circumstances”.* (1) Where the time limits for processing a request cannot be met because of “unusual circumstances,” as defined in the FOIA, the FOIA Officer will notify you as soon as practicable in writing of the unusual circumstances and may extend the response period for up to ten (10) working days. (2) Where the extension is for more than ten (10) working days, the FOIA Officer will provide you with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an agreed upon alternative time period for processing the request or a modified request.

#### **§ 1184.5 How will my request be processed?**

(a) *Acknowledgment of requests.* IMLS will assign a tracking number to your request and will, as soon as practicable, advise you in writing of this tracking number, and, as appropriate, a brief description of the request, and relevant IMLS contact information, including the name and contact information of the FOIA Public Liaison.

(b) *Clarifications.* If there is any uncertainty, IMLS will attempt to communicate with you to clarify the scope of your request.

(c) *Referrals of requests.* Whenever IMLS refers all or any part of the responsibility for responding to a request to another agency, IMLS will notify you of the name of the agency to which the request has been referred.

(d) *Grants of requests.* When responsive records are located, IMLS will apply a presumption of disclosure and openness. If IMLS decides to grant your request in whole or in part, the agency will notify you in writing. The notice will include any applicable fee and the agency will disclose records to you promptly upon payment of applicable fees. IMLS will mark or annotate any records disclosed in part to show the amount, the location, and the FOIA exemptions under which the redaction is made, unless doing so would harm an interest protected by an applicable exemption.

(e) *Denials of requests.* Denials of your FOIA request, either whole or in part, will be made in writing by the FOIA Officer. IMLS will inform you of the reasons for the denial, including any FOIA exemption(s) applied by the agency in denying the request, and notify you of your right to appeal the determination as described in § 1184.6. IMLS will, as appropriate, provide a brief description of the information being withheld.

**§ 1184.6 How can I appeal a denial of my request?**

(a) *Submission of an appeal.* If your FOIA request has been denied in whole or in part, or if the agency has not found any records in response to your request, you may file an appeal no later than thirty (30) calendar days following the date of the notification of denial. Your appeal must include a description of the initial request, the reason for the appeal, and why you believe the agency's response was incorrect. Your appeal must be in writing, signed, and filed with the IMLS Director, c/o Office of the General Counsel, 1800 M Street NW., 9th Floor, Washington, DC 20036-5802. Appeals may also be sent by email to [foia@imls.gov](mailto:foia@imls.gov), or by facsimile to (202) 653-4625.

(b) *Decisions on appeal.* The Director of IMLS will make a determination with respect to your appeal within twenty (20) working days after the agency has received the appeal, except as provided in § 1184.4(b). If the decision on appeal is favorable to you, the Director of IMLS will take action to assure prompt dispatch of the records to you. If the decision on appeal is adverse to you, in whole or in part, you will be informed by the Director of IMLS of the reasons for the decision and of the provisions for judicial review set forth in the FOIA. As appropriate, IMLS will advise you in a response to an appeal that the 2007 FOIA amendments created the Office of Government Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation.

**§ 1184.7 How will fees be charged?**

(a) *In general.* IMLS will use the most efficient and least costly methods to comply with FOIA requests. IMLS will charge fees to recover all allowable direct costs incurred, and may charge fees for searching for and reviewing requested records even if the records are determined to be exempt from disclosure or cannot be located. IMLS will charge fees in accordance with the category of the FOIA requester.

(1) *Commercial use requests.* IMLS will assess charges to recover the full direct cost of searching for, reviewing and duplicating the requested records. IMLS may recover the cost of searching for and reviewing records even if there is ultimately no disclosure.

(2) *Requests from educational and non-commercial scientific institutions.* IMLS will charge for duplication costs.

(3) *Requests by representatives of the news media.* IMLS will charge for duplication costs.

(4) *All other requests.* IMLS will assess charges to recover the full direct cost for searching for and duplicating the requested records.

(5) *Status of Requester.* IMLS' decision regarding the categorization of a requester will be made on a case-by-case basis based upon the requester's intended use of the requested records.

(b) *General fee schedule.* The following fees will be charged in accordance with paragraph (a) of this section.

(1) *Manual search fee.* The fee charged will be the salary rate(s) (i.e., basic pay plus 16.1 percent) of the employee(s) conducting the search.

(2) *Computer search fee.* The fee charged will be the actual direct cost of providing the service including the cost of operating the central processing unit for the operating time that is directly attributed to searching for records responsive to a request and the operator/programmer salary apportionable to the search.

(3) *Review fee.* The fee charged will equal the salary rate(s) (i.e., basic pay plus 16.1 percent) of the employee(s) conducting the review.

(4) *Duplication fee.* Copies of records photocopied on an 8½ x 11 inch sheet of paper will be provided at \$.10 per page. For duplication of other materials, the charge will be the direct cost of duplication.

(c) *Restrictions on charging fees.* (1) Except for records provided in response to a commercial use request, the first 100 pages of duplication and the first two (2) hours of search time will be provided at no charge.

(2) Fees will not be charged to any requester, including commercial use requesters, if the total amount calculated under this section is less than \$25.

(d) *Fees likely to exceed \$25.* If the total fee charges are likely to exceed \$25, IMLS will notify you of the estimated amount of the charges, including a breakdown of the fees for search, review and/or duplication, unless you have indicated in advance that you are willing to pay higher fees and will offer you an opportunity to confer with the FOIA Public Liaison to revise the request to meet your needs at a lower cost.

(e) *Waiver or reduction of fees.* (1) IMLS will disclose records without charge or at a reduced charge if the agency determines 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.

(2) IMLS will use the following factors to determine whether a fee will be waived or reduced:

(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";

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

(v) *The existence and magnitude of a commercial interest.* Whether you have a commercial interest that would be furthered by the disclosure; and if so

(vi) *The primary interest in disclosure.* Whether the magnitude of your commercial interest is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the your commercial interest.

(f) *Assessment and collection of fees.*

(1) If you fail to pay your bill within thirty (30) days, interest will accrue from the date the bill was mailed, and will be assessed at the rate prescribed in 31 U.S.C. 3717.

(2) If IMLS reasonably believes that you are attempting to divide a request into a series of requests to avoid the assessment of fees, the agency may aggregate such requests and charge accordingly.

(3) *Advance payment.* (i) Advance payment of fees will generally not be required. IMLS may request an advance payment of the fee, however, if:

(A) The charges are likely to exceed \$250; or

(B) You have failed previously to pay a fee in a timely fashion.

(ii) When IMLS requests an advance payment, the time limits described in section (a)(6) of the FOIA will begin only after IMLS has received full payment.

(g) *Failure to comply.* In the absence of unusual or exceptional circumstances, IMLS will not assess fees if the agency fails to comply with any time limit set forth in these regulations.

(h) *Waivers.* IMLS may waive fees in other circumstances solely at its discretion, consistent with 5 U.S.C. 552.

**§ 1184.8 How can I address concerns regarding my request?**

(a) *FOIA Public Liaison.* If you have questions or concerns regarding your request, your first point of contact should be the FOIA Public Liaison, who is responsible for reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(b) *Additional resource.* The National Archives and Records Administration (NARA), Office of Government Information Services (OGIS) offers non-compulsory, non-binding mediation services to help resolve FOIA disputes. If you seek information regarding OGIS and/or the services it offers, please contact OGIS directly at Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001, Email: [ogis@nara.gov](mailto:ogis@nara.gov), Phone: (301) 837-1996, Fax: (301) 837-0348. This information is provided as a public service only. By providing this information, IMLS does not commit to refer disputes to OGIS, or to defer to OGIS' mediation decision in particular cases.

**§ 1184.9 What are IMLS' policies regarding disclosure of confidential business information?**

(a) *In general.* Confidential business information obtained by IMLS from a submitter will be disclosed under FOIA only under this section.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Confidential business information.* Commercial or financial information obtained by IMLS from a submitter that may be protected from disclosure under Exemption 4 of FOIA.

(2) *Submitter.* Any person or entity from whom IMLS obtains confidential business information, directly or indirectly. The term includes corporations; state, local and tribal governments; and foreign governments.

(c) *Designation of confidential business information.* A submitter of confidential business information will use good-faith efforts to designate, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* When required under paragraph (e) of this section, subject to the exceptions in

paragraph (h) of this section, IMLS will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its confidential business information, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information. The notice will either describe the confidential business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* IMLS will give notice to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) IMLS has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* IMLS will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, it must submit a detailed written statement to IMLS. The statement must specify all grounds for withholding any portion of the information under any exemption of FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information.

Information provided by the submitter that is not received by IMLS until after the agency's disclosure decision has been made will not be considered by IMLS. Information provided by a submitter under this paragraph may itself be subject to disclosure under FOIA.

(g) *Notice of intent to disclose.* IMLS will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose confidential business information. If IMLS decides to disclose confidential business information over the objection of a submitter, IMLS will give the submitter written notice, which will include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the confidential business information to be disclosed; and

(3) A specified disclosure date, which will be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section will not apply if:

(1) IMLS determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, IMLS will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* If a requester files a lawsuit seeking to compel the disclosure of confidential business information, IMLS will promptly notify the submitter of the filing of the lawsuit.

(j) *Corresponding notice to requesters.* If IMLS provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, IMLS will also notify the requester(s). If IMLS notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, IMLS will also notify the requester(s). If a submitter files a lawsuit seeking to prevent the disclosure of confidential business information, IMLS will notify the requester(s) of the filing of the lawsuit.

**§ 1184.10 Disclaimer.**

Nothing in the regulations in this part will be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under FOIA.

Signed: February 12, 2014.

**Nancy E. Weiss.**

*General Counsel.*

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