

at its discretion, may establish and charge an average rate for the range of grades typically involved.

(ii) *Computer searches for records.* The fee for searches of computerized records is the actual direct cost of the search, including computer time, computer runs, and the operator's time apportionable to the search. The fee for a computer printout is the actual cost. The fees for computer supplies are the actual costs. The FDIC may, at its discretion, establish and charge a fee for computer searches based upon a reasonable FDIC-wide average rate for central processing unit operating costs and the operator's basic rate of pay plus 16 percent to cover employee benefit costs.

(iii) *Duplication of records.* (A) The per-page fee for paper copy reproduction of documents is the average FDIC-wide cost based upon the reasonable direct costs of making such copies.

(B) For other methods of reproduction or duplication, the FDIC will charge the actual direct costs of reproducing or duplicating the documents.

(iv) *Review of records.* The FDIC will charge commercial use requesters for the review of records at the time of processing the initial request to determine whether they are exempt from mandatory disclosure at the basic rate of pay of the employee making the search plus 16 percent to cover employee benefit costs. Where a single class of personnel (e.g., all clerical, all professional, or all executive) is used exclusively, the FDIC, at its discretion, may establish and charge an average rate for the range of grades typically involved. The FDIC will not charge at the administrative appeal level for review of an exemption already applied. When records or portions of records are withheld in full under an exemption which is subsequently determined not to apply, the FDIC may charge for a subsequent review to determine the applicability of other exemptions not previously considered.

(v) *Other services.* Complying with requests for special services is at the FDIC's discretion. The FDIC may recover the full costs of providing such services to the extent it elects to provide them.

(d) *Exempt information.* A request for records may be denied if the requested record contains information which falls into one or more of the following categories.⁴ If the requested record

contains both exempt and nonexempt information, the nonexempt portions which may reasonably be segregated from the exempt portions will be released to the requester:

(1) Records which are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Records related solely to the internal personnel rules and practices of the FDIC;

(3) Records specifically exempted from disclosure by statute, 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 that is privileged or confidential;

(5) Interagency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the FDIC;

(6) Personnel, medical, and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial 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 records on a confidential basis;

(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) Records that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC or any agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(e) *Appeals.* (1) A person whose initial request for records under paragraph (a) of this section, or whose request for a waiver of fees under paragraph (c)(1)(ix) of this section, has been denied, either in part or in whole, has the right to appeal the denial to FDIC's General Counsel (or designee) within 30 business days after receipt of notification of the denial. Appeals of denials of initial requests or for a waiver of fees must be in writing and include any additional information relevant to consideration of the appeal. Appeals should be addressed to the Office of the Executive Secretary, FDIC, 550-17th Street, N.W., Washington, DC 20429.

(2) The FDIC will notify the appellant within 20 business days after receipt of the appeal whether it is granted or denied. Denials of appeals on initial requests for records will be based on the exemptions provided for in paragraph (c) of this section.

(3) Notifications of a denial of an appeal will be in writing and will state:

(i) Whether the denial is in part or in whole;

(ii) The name and title of each person responsible for the denial (if other than the person signing the notification);

(iii) The exemptions relied upon for the denial in the case of initial requests for records; and

(iv) The right to judicial review of the denial under the FOIA.

(f) *Extension of time.* (1) Under unusual circumstances the FDIC may require additional time, up to a maximum of 10 business days, to determine whether to grant or deny an initial request or to respond to an appeal of an initial denial. These circumstances would arise in cases where:

(i) The records are in facilities, such as field offices or storage centers, that are not part of the FDIC's Washington office;

(ii) The records requested are voluminous and are not in close proximity to one another; or

(iii) There is a need to consult with another agency or among two or more components of the FDIC having a substantial interest in the determination.

⁴ Classification of a record as exempt from disclosure under the provisions of § 309.5(d) shall not be construed as authority to withhold the record if it is otherwise subject to disclosure under the

Privacy Act of 1974 (5 U.S.C. 552a) or other federal statute, any applicable regulation of FDIC or any other federal agency having jurisdiction thereof, or any directive or order of any court of competent jurisdiction.