

processing the requester's remittance). The requester must agree in writing to pay the costs of search, duplication and review prior to the FDIC initiating any records search.

(v) If the FDIC estimates that its search, duplication and review costs will exceed \$250.00, the requester must pay an amount equal to 20 percent of the estimated costs prior to the FDIC initiating any records search.

(vi) The FDIC may require any requester who has previously failed to pay the charges under this section within 30 days of mailing of the invoice to pay in advance the total estimated costs of search, duplication and review. The FDIC may also require a requester who has any charges outstanding in excess of 30 days following mailing of the invoice to pay the full amount due, or demonstrate that the fee has been paid in full, prior to the FDIC initiating any additional records search.

(vii) The FDIC may begin assessing interest charges on unpaid bills on the 31st day following the day on which the notice was sent. Interest will be at the rate prescribed in section 3717 of title 31 of the United States Code and will accrue from the date of the invoice.

(viii) The time limit for FDIC to respond to a request will not begin to run until the FDIC has received the requester's written agreement under paragraph (c)(1)(iv) of this section, and advance payment under paragraph (c)(1)(v) or (vi) of this section, or outstanding charge under paragraph (c)(1)(vi) of this section.

(ix) As part of the initial request, a requester may ask that the FDIC waive or reduce fees if disclosure of the records 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. Determinations as to a waiver or reduction of fees will be made by the Executive Secretary (or designee) and the requester will be notified in writing of his/her determination. A determination not to grant a request for a waiver or reduction of fees under this paragraph may be appealed to the FDIC's General Counsel (or designee) pursuant to the procedure set forth in paragraph (e) of this section.

(2) *Chargeable fees by category of requester.* (i) Commercial use requesters shall be charged search, duplication and review costs.

(ii) Educational institutions, non-commercial scientific institutions and news media representatives shall be charged duplication costs, except for the first 100 pages.

(iii) Requesters not within the scope of paragraph (c)(2) (i) or (ii) of this section shall be charged the full reasonable direct cost of search and duplication, except for the first two hours of search time and first 100 pages of duplication.

(3) *Fee schedule.* The dollar amount of fees which the FDIC may charge to records requesters will be established by the Chief Financial Officer of the FDIC (or designee), and will be set forth in the "Notice of Federal Deposit Insurance Corporation Records Fees" issued in December of each year or in such "Interim Notice of Federal Deposit Insurance Corporation Records Fees" as may be issued. Copies of such notices may be obtained at no charge from the FDIC's Office of the Executive Secretary, FOIA Unit, 550 17th Street NW., Washington, DC 20429. The fees implemented in the December or Interim Notice will be effective 30 days after issuance. The FDIC may charge fees that recoup the full allowable direct costs it incurs. The FDIC may contract with independent contractors to locate, reproduce, and/or disseminate records; provided however, that the FDIC has determined that the ultimate cost to the requester will be no greater than it would be if the FDIC performed these tasks itself. In no case will the FDIC contract out responsibilities which the Freedom of Information Act (FOIA) (5 U.S.C. 552) provides that the FDIC alone may discharge, such as determining the applicability of an exemption or whether to waive or reduce fees. Fees are subject to change as costs change.

(i) *Manual searches for records.* The FDIC will charge for manual searches for records 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.

(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.<sup>4</sup> 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;

<sup>4</sup> 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.