

FREEDOM OF INFORMATION ACT

Commercial Requester Review Fees

You have asked about the scope of Freedom of Information (FOIA) “review” fees the Air Force can charge a commercial requester, specifically whether a commercial requester can be charged the time it takes to apply the physical redactions to each redacted piece of information in a document, using an electronic redaction tool such as Redact Xpress. In our opinion, these direct costs can be charged.

DoD 5400.7-R_AFMAN 33-302, *Freedom of Information Act Program*, paragraph C6.1.5.3, states fees may be charged to commercial requesters for search, review and duplication costs. Paragraph C6.1.5.3.2 notes that the Agency should assess charges from commercial requesters which recover “full *direct costs*” (emphasis added). DoD has historically interpreted this guidance to include not only the time it takes to read/review a document to determine which FOIA exemptions, if any, apply, but also to then physically redact the information from the document.

Case law also lends credence to this broad interpretation of “direct costs.” In *OSHA Data/C.I.H., Inc. v. United States Dep’t of Labor*, 220 F.3d 153, 168 (3d Cir. 2000) the court concluded that appropriate commercial requester review costs also include seeking the submitter’s opinion as to what information should be held and interpreting/reviewing submitter inputs.

Accordingly, all direct costs involved in searching for and reviewing documents requested by a commercial requester can properly be charged (as well as duplication costs, when paper records are provided).