



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

11.3.5

JANUARY 18, 2024

EFFECTIVE DATE

(01-18-2024)

PURPOSE

- (1) This transmits revised text for IRM 11.3.5, Disclosure of Official Information, Fees.

MATERIAL CHANGES

- (1) IRM 11.3.5.1.4, Program Management and Review - Added new Internal Control to provide information regarding reporting of the Disclosure program objectives.
- (2) IRM 11.3.5.1.5, Program Controls - Added new Internal Control to list program controls developed to oversee the Disclosure program.
- (3) IRM 11.3.5.2.2, Searches - Updated to incorporate Interim Guidance Memo PGLD 11-0122-0002. The Note in (2) was removed, as caseworkers will no longer round time up or down when processing a FOIA request. All language regarding rounding up was removed from (3).
- (4) IRM 11.3.5.2.2, Fees for Electronic Records - Updated to incorporate Interim Guidance Memo PGLD 11-0122-0003, with the subject line Interim Guidance for Charging Freedom of Information Act (FOIA) Fees for Federal Records Center Accessions. This IGM removes the exception provided in (3) to charge one half hour of search time when requesting records from the FRC.
- (5) IRM 11.3.5.2.3, Fees for Electronic Records - Updated to incorporate Interim Guidance Memo PGLD 11-0122-0002. Removed all language regarding rounding up from the note in (6). the Note was also updated to provide guidance to caseworkers that fees should be calculated based on the actual number of pages being released.
- (6) IRM 11.3.5.2.4, Review - Updated to incorporate Interim Guidance Memo PGLD 11-0122-0002. Removed the third note under (1), as caseworkers are no longer rounding up therefore will not be charging for "fractions of hours".
- (7) IRM 11.3.5.3.2.3, Requests Involving Extensive Efforts - Updated to incorporate Interim Guidance Memo PGLD 11-0122-0005. Updated (1) to include revised guidance that caseworkers should no longer charge requesters for estimated costs for duplication efforts, until or unless, they have calculated the final page count or a near approximation of the page count of final responsive records. Added a note to (2) to clarify steps to be taken when processing fees do not exceed or exceed \$250.
- (8) Reviewed and updated the IRM where necessary for the following types of editorial changes: legal citations, acronyms, published forms and documents and web addresses.

EFFECT ON OTHER DOCUMENTS

This revision supersedes IRM 11.3.5, Disclosure of Official Information, Fees, dated October 18, 2021.

AUDIENCE

All Operating Divisions and Functions

RELATED RESOURCES

- (1) The Disclosure and Privacy Knowledge Base can be found at: <https://portal.ds.irsnet.gov/sites/vl003/pages/default.aspx>.

Celia Y. Doggette
Director, Governmental Liaison, Disclosure and Safeguards

11.3.5

Fees

Table of Contents

11.3.5.1 Program Scope and Objectives

- 11.3.5.1.1 Background
- 11.3.5.1.2 Authority
- 11.3.5.1.3 Responsibilities
- 11.3.5.1.4 Program Management and Review
- 11.3.5.1.5 Program Controls
- 11.3.5.1.6 Terms/Definitions/Acronyms
- 11.3.5.1.7 Related Resources

11.3.5.2 Fee Provisions

- 11.3.5.2.1 Duplication
- 11.3.5.2.2 Searches
- 11.3.5.2.3 Fees for Electronic Records
- 11.3.5.2.4 Review
- 11.3.5.2.5 Other Costs

11.3.5.3 FOIA Fees

11.3.5.3.1 Categories of Users

- 11.3.5.3.1.1 Commercial Users
 - 11.3.5.3.1.1.1 Commercial User Service Fees
- 11.3.5.3.1.2 Educational or Noncommercial Scientific Institutions
 - 11.3.5.3.1.2.1 Educational or Noncommercial Scientific Institution Service Fees
- 11.3.5.3.1.3 News Media
 - 11.3.5.3.1.3.1 News Media Service Fees
- 11.3.5.3.1.4 All Other Requesters
 - 11.3.5.3.1.4.1 All Other Requesters Service Fees

11.3.5.3.2 General Fee Issues

- 11.3.5.3.2.1 Commitment to Pay
- 11.3.5.3.2.2 Requests Involving Late Payment or Nonpayment
- 11.3.5.3.2.3 Requests Involving Extensive Efforts
- 11.3.5.3.2.4 Processing Requests
- 11.3.5.3.2.5 FOIA Improvement Act of 2016
- 11.3.5.3.2.6 Inspection of Records

11.3.5.3.3 Fee Waivers

- 11.3.5.3.3.1 Requesting Waivers
 - 11.3.5.3.3.1.1 Public Interest and Humanitarian Purposes
 - 11.3.5.3.3.1.2 Indigence

-
- 11.3.5.3.3.1.3 Documentation
 - 11.3.5.3.4 Minimum Billing Amount
 - 11.3.5.3.5 Aggregating Requests
 - 11.3.5.4 Privacy Act Requests
 - 11.3.5.5 Requesting and Processing Payments
 - 11.3.5.5.1 Disclosure Payment Processing
 - 11.3.5.5.2 GLDS Support Services (GSS) Payment Processing
 - 11.3.5.6 Refunds

Exhibits

- 11.3.5-1 FOIA Requester Category Fees
- 11.3.5-2 Providing FOIA Fee Estimates and Commitments to Pay
- 11.3.5-3 Complete FOIA Searches

11.3.5.1
(10-18-2021)
Program Scope and Objectives

- (1) **Purpose:** This IRM section covers the application of fees to requests for disclosure of records under various statutory provisions, including the Freedom of Information Act (FOIA), the Privacy Act, IRC 6103 and IRC 6110.
- (2) **Audience:** These procedures apply to IRS personnel providing records under the provisions of IRM 11.3.
- (3) **Policy Owner:** The Director of Governmental Liaison, Disclosure and Safeguards (GLDS) is responsible for oversight of Disclosure policy.
- (4) **Program Owner:** The Disclosure office, under GLDS, is responsible for the Disclosure program and guidance. Each IRS organization is responsible for ensure its employees are aware of and follow Servicewide Disclosure policy.
- (5) **Primary Stakeholders:** The following offices have responsibility for collection of fees, pertaining to requests for IRS records:
 - Office of the Associate Chief Counsel (Procedure and Administration)
 - Office of the Chief Financial Officer
 - Office of the Commissioner, Tax Exempt and Government Entities Division

11.3.5.1.1
(10-18-2021)
Background

- (1) Internal Revenue Service employees receive requests for tax returns and return information in judicial or administrative proceedings. This section contains instructions for collecting authorized fees for providing copies of records and for related services such as record searches and reviews.
- (2) The fee structures established in this IRM are primarily for the use of employees in PGLD, Disclosure. Other business units attempting to establish new user fees for the disclosure of records applicable to their specific business unit needs may use the fee structures in this IRM as a basis for establishing user fees. The business units should consult with the Chief Financial Office, as well as their appropriate Chief Counsel contacts, prior to the creation of their own fee structures.

11.3.5.1.2
(10-18-2021)
Authority

- (1) *31 USC 9701* states that each service or item of value provided by an agency to a person must be self-sustaining to the extent possible. User charges must be fair and based upon the cost to the Government, the value of the service or item to the recipient, the public policy or interest served, and other relevant facts.
- (2) Generally, federal agencies must credit user fee collections to the general fund of the Treasury as miscellaneous receipts, as required by *31 USC 3302*, unless a statute provides otherwise. The Treasury, Postal Service, and General Government Appropriations Act of 1995 (Pub. L. 103–329), enacted on September 30, 1994, allowed the Service to spend up to \$119 million per fiscal year of new or increased user fee receipts, provided the fees were based on the cost of providing services. On January 4, 2005, the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and the Independent Agencies Appropriations Act of 2006 (Pub. L. 109–115) eliminated the \$119 million cap on annual spending. This effectively allows the Service to retain receipts from new user fees or increases to existing fees.
- (3) Statutory provisions that relate specifically to charges for the disclosure of records by the Internal Revenue Service include:

- a. 5 USC 552(a)(4)(A)
- b. 5 USC 552a(f)(5)
- c. IRC 6110(k)(1)
- d. IRC 6103(p)(2)

- (4) The Department of the Treasury issued regulations establishing fees for specific services in connection with the disclosure of records for the FOIA process at 31 CFR Part 1, Section 1.7 . The IRS has issued regulations at 26 CFR 601.702(f) to implement and enhance the Treasury regulations.
- (5) The FOIA provides that certain categories of requesters also receive a basic level of services without fees or at reduced fees.

11.3.5.1.3
(10-18-2021)
Responsibilities

- (1) The Director, Governmental Liaison, Disclosure and Safeguards (GLDS) is the executive responsible for the Disclosure program.
- (2) The Associate Director, Disclosure is the program manager for Disclosure.
- (3) Disclosure managers are responsible for assessing, implementing and communicating the application of fees for Disclosure casework.
- (4) Non-Disclosure management officials are responsible for assessing, implementing and communicating the application of fees for requests for IRS records applicable to their specific business operations.
- (5) Per IRM 1.35.17.1.3.3, the Cost Accounting (CA) and User Fees Office, within CFO, is responsible for establishing, maintaining, interpreting, and ensuring compliance with policies and procedures for cost accounting, user fees and trust fund administrative costs.
- (6) IRS employees with responsibilities to process requests for IRS records pursuant to various disclosure laws are responsible for assessing and collecting appropriate fees.

11.3.5.1.4
(01-18-2024)
Program Management and Review

- (1) Disclosure inventory management and case processing is facilitated within FOIAXpress (FX), which is monitored and maintained by the GLDS Data Services office. FX allows management to validate program compliance through generating reports and requiring inventory to be processed under IRC 6103 statutory authority.

11.3.5.1.5
(01-18-2024)
Program Controls

- (1) Disclosure program oversight also includes participation in operational and quality reviews. The Disclosure Office uses the Embedded Quality Review System (EQRS) to perform quality review on Disclosure specific casework.

11.3.5.1.6
(01-18-2024)
Terms/Definitions/ Acronyms

- (1) **OPEN Government Act** refers to a United States statute enacted in 2007 that modified the FOIA and affected how Federal Agencies may assess and collect fees related to FOIA activities.
- (2) **Federal Records Center (FRC)** is the facility under the administration of National Archives and Records Administration (NARA) to control federal agency records that have been scheduled for archive. Agencies may access records following prescribed procedures.
- (3) **User Fees** are charges levied by a federal agency on individuals or entities directly benefiting from a service provided by a government program or activity.

User fees are charged for federal activities that provide recipients with benefits greater than those provided to the general public.

- (4) **Direct Costs** are those expenses that a component expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (i.e., the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photo-copiers and scanners. Direct costs do not include overhead expenses such as the costs of space and of heating or lighting a facility.
- (5) The following table is a list of acronyms that are used in this IRM section:

Acronym	Definition
AIMS	Audit Information Management System
CFR	Code of Federal Regulations
EQRS	Embedded Quality Review System
FOIA	Freedom of Information Act
FX	FOIAXpress
FRC	Federal Records Center
GCM	General Counsel Memorandum
GSS	GLDS Support Services
IPAC	Intra-Governmental Payment and Collection
MFT	Master File Transaction
OMB	Office of Management and Budget
OPM	Office of Personnel Management
PII	Personally Identifiable Information
RAIVS	Return and Income Verification Services
RTR	Remittance Transaction Register
TC	Transaction Code
SBU	Sensitive but Unclassified
TDA	Taxpayer Delinquent Account
USC	United States Code

11.3.5.1.7
(05-12-2017)

Related Resources

- (1) The following table lists other sources of guidance on fees for agency records:

IRM Number	Title	Procedure
IRM 1.1.21	Chief Financial Officer	Information about the Chief Financial Officer and the associated offices responsible for establishing, maintaining, and interpreting fee guidance
IRM 1.35.19	User Fees	Provides information for implementing user fees and reviewing user fee activities, rates and reports

- (2) Additional information on FOIA fees may also be found at this related resource:

- Department of Justice Guide to the Freedom of Information Act at: <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>
- OMB Fee Guidelines at: https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/foia_fee_schedule_1987.pdf

11.3.5.2
(10-18-2021)

Fee Provisions

- (1) The fees addressed in this text apply to requests for the disclosure of records, including those authorized by the Freedom of Information Act, IRC 6103(c) and IRC 6103(e).
- (2) In the absence of any special provisions, Disclosure caseworkers should resolve any doubts concerning fee computations by assuming that Freedom of Information Act fee provisions apply unless Disclosure Managers determine that a lower fee is appropriate.

Note: The FOIA fee provisions below apply to the initial request seeking copies of IRS records. Subsequent requests (not necessarily from the same requester) seeking copies of records that have previously been searched for, reviewed and duplicated will only be responsible for any incremental and additional search, review and duplication fees required to respond to the request.

- (3) FOIA requesters will not be charged fees unless the total amount of fees is \$25.00 or more.

11.3.5.2.1
(10-18-2021)

Duplication

- (1) Duplication is the process of making a copy of a document necessary to respond to a request. Copies can take the form of paper, microfilm, audio-visual materials or machine readable documentation (disks).

Note: “Making a copy” may include literally copying a paper document to provide a paper version of the original record or converting a document from one format to another, such as scanning paper records to electronic media, to provide a requester a copy of the original record.

- (2) The fee for paper copies is \$0.20 per copy of each page up to 8 1/2” x 14”.

Note: If both front and back sides of a paper copy are necessary to respond to a request, each side is considered 1 page when calculating fees.

- (3) Charge fees for copies exceeding 8 1/2" x 14" in multiples of \$0.20 for each additional 119 square inches or fraction thereof, unless the equipment used to produce the copies is known to involve an actual cost exceeding that rate.
- (4) Charge the actual, direct cost required to duplicate photographs, films, and other similar materials.
- (5) The fee for copies is the same regardless of whether copies are produced in response to a request at hand or are drawn from existing stocks including, but not limited to, at the convenience of the IRS, original materials or surplus printed materials. See IRM 11.3.13, Freedom of Information Act, regarding FOIA requests that involve the release of free IRS publications.
- (6) Copy fees apply to records produced by word processing equipment and computer printouts. Additional charges may apply for searching data processing or word processing equipment in order to produce copies.
- (7) See IRM 11.3.5.2.3, Fees for Electronic Records, for procedures on fees for records produced on electronic media. See IRM 11.3.5.3.2.4, Processing Requests, for procedures relating to limitations on the assessment of duplication fees when certain response deadlines are not met.
- (8) Even though a FOIA requester specifies inspection rather than a request for copies, duplication fees apply when it is necessary to produce a copy to permit inspection. Examples of duplicating records to permit inspection are:
 - a. Original documents requiring redactions of exempt material prior to inspection
 - b. The storage medium does not allow visual inspection
 - c. Equipment needed for inspection is not available at the inspection site
 - d. Transfer of an open case file would disrupt tax administration
- (9) It is standard practice that duplication charges are assessed only for those copies that are released, not for any responsive record withheld in its entirety.

11.3.5.2.2
(01-18-2024)
Searches

- (1) Search time includes all the time spent looking for responsive material, including page-by-page or line-by-line identification of material within documents. This can include, but is not limited to:
 - planning and managing the search
 - preparing memorandums or making phone calls to the offices that actually perform the search activity
 - reporting on the results of the search and/or restoring any documents to their proper place in the file
 - any analysis necessary to determine that a record is subject to the request and any time spent examining a file to identify individual records subject to the request

Note: Agencies may charge for search time even if they fail to locate any records responsive to the request or if records located are subsequently determined to be exempt from disclosure.

Caution: Search time does **not** include the “gathering” of records when searching employees know where the records are located and simply need to compile the records together in order to provide them to a requesting employee.

- (2) The regulations at 26 CFR 601.702(f) provide for search fees at the salary rate of the person making the search. The regulations also permit the Service to establish an average rate in lieu of doing a computation for each search. The average fee for services of clerical, professional, and supervisory personnel involved in locating records is \$50.00 for each hour.
- (3) Portions of less than one hour should be aggregated before “rounding up” when multiple searches are conducted.

Example: If two functions report 20 minutes of search time each, the total billed should be aggregated to one hour.

- (4) The fee for searches of computerized records is the actual direct cost of the search, including computer search time, runs, tape duplication, other operations, computer programming costs for data base extraction and similar programs, and the operator’s salary. Computer costs are described in IRM 11.3.5.2.3, Fees for Electronic Records.
- (5) See IRM 11.3.5.3.2.4, Processing Requests, for procedures relating to limitations on the assessment of search fees when certain response deadlines are not met.

11.3.5.2.3 (01-18-2024) Fees for Electronic Records

- (1) Fees for the use of computers and related data processing equipment are based on actual costs to the Service.
- (2) Fees apply to all data processing operations required by the request, regardless of whether they are characterized as conversion to electronic format, searches, runs, matches, analyses, or other terms.
- (3) Variations in equipment and operations necessary to service a request preclude establishing a standard fee in many cases. Base actual costs on information provided by employees performing the services.
- (4) In addition to fees based on the equipment used, computer costs may include employee salary. For non-commercial requesters, the charges begin when the cost exceeds the equivalent dollar amount of any free services allowed for the requester’s fee category type. See 26 CFR 601.702(f)(5)(i)(B).
- (5) Because inquiries using IDRS incur minimal computer time costs, only charge for applicable review time and copies of records that must be duplicated in the format asked for by the requester.

Example: A request is received seeking examination administrative files. Command codes such as AMDIS, IMFOL/BMFOL and TXMOD may be used to quickly locate potentially responsive records and contact. Search fees should not be charged to research IDRS when attempting to locate record holders.

- (6) If records available in one format require conversion to another format (i.e. paper records requiring scanning to be provided on electronic media) in order

to provide records in the format sought by the requester, charge for direct costs related to converting (scanning, etc.) records to facilitate delivery of the records. The current direct cost of duplicating records for electronic media is \$30 per hour. Preferred requesters and Other requesters receive 1,000 pages free of charge when converting original paper copies to electronic media. Commercial User requesters receive no free allowance for duplication efforts.

Note: When calculating costs for duplication of records only available in paper which must then be scanned to electronic media, FOIA caseworkers will charge \$30 per hour for each 1,000 pages, (\$0.03 per page/hour), that were required to be scanned and are provided to the requester. The inventory management system will calculate the exact fees due based on the actual number of pages being released.

Caution: Do not charge fees if you photocopy or scan paper files to facilitate the needs of the IRS. For example, if records are needed from the Federal Records Center where they are unable to provide an estimate of pages for paper files before scanning them, contact should be made with the requester to potentially re-scope the records that the FRC scanned prior to conducting a review or charging the requester for duplication efforts. If they agree to re-scope the request, only charge duplication costs for the records that were scanned and will be provided. Do not charge for the remaining records that were scanned, but are no longer responsive to the request, since the records were scanned solely to allow the IRS to have appropriate discussions of the records with the requester.

Example: A request seeks records which were located at a Federal Records Center (FRC) and the records are only available in paper format. The FRC scans 5,000 pages which are provided to the FOIA caseworker. When calculating duplication costs, the caseworker will provide 1,000 pages free of charge so the cost of duplication would be 4 hours (1 hour for each 1,000 pages) at \$30 per hour, or \$120. The FOIA caseworker should discuss any necessary re-scoping with the requester in order to remove unnecessary records prior to using time reviewing the files or possibly reducing the \$120 charge if records are not needed by the requester.

- (7) If requesters do not agree to pay for the duplication efforts, FOIA caseworkers must document case notes with all requester discussions and calculations of charges. If the requester attempts to request the same records in the future, they will either need to re-scope their request to reduce the charges or agree to pay the costs incurred for duplicating the records in the original request.
- (8) Requesters will pay fees for electronic services based on their requester category and the category of the service provided (Duplication, Searches, Review), after taking into account the \$25.00 minimum billing amount when computing fees.

11.3.5.2.4
(01-18-2024)
Review

- (1) Review is 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. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Note: Review charges only apply to Commercial Use requesters.

Note: Secondary case reviews done by Disclosure Managers or assigned case reviewers to determine if exemptions were applied to documents by FOIA caseworkers should not charge review time for these secondary case reviews.

- (2) Charge review fees only for the initial determination to apply FOIA exemptions to requested records. Do not charge the same fees again after appeal of withheld records. However, review charges may be appropriate when exemptions are considered for the first time subsequent to an appeal, such as in the case of a total denial where no review charges were assessed initially.
- (3) The regulations at 26 CFR 601.702(f) provide for review fees at the salary rate of the person performing the review. The regulations also permit the Service to establish an average rate in lieu of individual computations each time records are reviewed. The average fee for services of clerical, professional and supervisory personnel involved in reviewing records is currently \$50.00 for each hour. The provisions for review activities taking less than one hour are identical to those found in IRM 11.3.5.2.2, Searches.

11.3.5.2.5
(10-18-2021)
Other Costs

- (1) Provide other services and materials not specifically identified elsewhere at actual cost.
- (2) Bill actual shipping charges for moving records from one location to another or for an employee's travel to the site of requested records. When shipping records using a shipping service, use the current version of Form 9814, Request for Mail/Shipping Service.
- (3) The IRS may, at its discretion, provide, and charge fees for services not generally required by the IRS such as:
 - Certifying that records are true copies
 - Sending records using special methods such as express mail

11.3.5.3
(10-18-2021)
FOIA Fees

- (1) This section covers all fee provisions specific to FOIA such as categories of users and special fee provisions such as fee waiver requests.

11.3.5.3.1
(10-18-2021)
Categories of Users

- (1) Under the FOIA, requesters fall into one of four different user categories. The category of user determines the range of fees an agency may charge for FOIA services.

Note: A requester, even if making a statement under penalty of perjury to what they believe their fee category should be, does not ultimately provide the final determination of their true category. The final determination of a re-

requester's appropriate fee category is made by the caseworker in coordination with discussions with the requester as well as the Disclosure Manager, as necessary. If a requester does not agree with a determination to change their stated fee category, caseworkers should send an appropriate FOIA response letter and provide appeal rights with Notice 393. If the requester agrees to pay appropriate fees in their request based on their determined category, even if their requester category is changed and they do not agree with the new category, the caseworker should continue processing the request as appropriate.

11.3.5.3.1.1
(10-18-2021)
Commercial Users

- (1) A commercial use request is one that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

Note: Designation of a requester as a Commercial User will turn on the use to which the requested information will be put, rather than on the identity of the requester. The fact that a request is submitted by an commercial entity does not, by itself, indicate the request is for a commercial purpose. The OMB Fee Guidelines encourage agencies to seek additional information or clarification from the requester when the intended "use is not clear from the request itself"

- (2) Factors that may help identify commercial use include:

- The intended use of the information
- The identity of the requester in the absence of any acceptable explanation to the contrary
- The nature of the records requested
- Any previous experience with the requester or type of request

- (3) Commercial use may include the resale of the information or any other purpose that is related to commerce, trade or profit. Certain requesters who seek access to information for the purpose of resale, but by so doing, facilitate the Internal Revenue Service's dissemination of information to a significant segment of the public (e.g., taxpayers, tax practitioners, legislators), may be considered either "media requesters" or "all other requesters."

Caution: Take care to differentiate commercial users intending to offer general information for resale (including those who represent trade journals of limited circulation) from news media serving the general public who would not be considered commercial users. Seek advice from Media Relations if an apparent commercial user claims to represent the news media.

- (4) By their nature, some types of records suggest a commercial interest, unless the requester cites unusual circumstances.

Example: You may infer that information requests from a competitor or a competitor's representative for records relating to software or other technical data, or to the acquisition of equipment, facilities, supplies, or services are by their nature commercial requests.

- (5) Although commercial users may use business letterhead stationery, a business title, an address known to be a business location, or you may find other evidence of commercial status contained within the request, do not base a commercial use determination solely on these criteria. Requests from

attorneys, accountants or other representatives may be commercial use requests if the requesters are known to represent principals who would otherwise be considered commercial users. Do not make a commercial use determination simply because the requester generates a large volume of FOIA/Privacy Act cases on behalf of clients. Commercial user determinations must be made on the basis of the information requested and its intended use, not the requester themselves.

- (6) Any requester described as an “all other requester” whom you determine to be a “commercial use requester” must be given an opportunity to submit evidence refuting that determination. Because you must contact the requester to ask whether the requester will agree to pay review fees, take that opportunity to allow the requester to submit additional information that may alter your determination. Questions to ask a requester for clarification could include, but are not limited to:

- Do you have any commercial interests that are furthered by receiving the requested records? If so, describe the magnitude of that interest.
- How do you plan to convey the information you are requesting to the general public?
- How does the magnitude of your commercial interest in the requested records compare to the general public’s interest?

11.3.5.3.1.1.1

(10-18-2021)

Commercial User Service Fees

- (1) Charge commercial users fees for record searches, reviews and duplication. See IRM 11.3.5.2.3, Fees for Electronic Records, for more information on fees for records produced on electronic media.
- (2) Commercial users may not make requests for the reduction or waiver of fees. Do not honor any such requests. They are responsible for paying any appropriate FOIA fees that become due.

11.3.5.3.1.2

(10-18-2021)

Educational or Noncommercial Scientific Institutions

- (1) This category refers to institutions whose purpose is to conduct scholarly or scientific research.
- (2) Educational institutions refer to:
- Preschools
 - Public or private elementary or secondary schools
 - Institutions of undergraduate higher education
 - Institutions of graduate higher education or
 - Institutions of vocational education that operate a program or programs of scholarly research
- (3) Preschool, elementary, secondary and vocational schools rarely qualify as “educational” institutions for fee purposes because they don’t generally conduct programs of scholarly research. However, they may qualify as a component of local government and, as such, be eligible for a fee waiver. See 26 CFR 601.702(f)(2)(F)(iv) and IRM 11.3.5.3.3, Fee Waivers, below.
- (4) Evaluate each request individually. Ensure the request is from an institution that has a scholarly research program and the requested documents serve a scholarly research goal of the institution rather than an individual goal. This “institution” versus “individual” test also applies to requests from students of a

scholarly institution. See *Sack v. DOD*, No. 14-5039, 2016 WL 2941942 (D.C. Cir. 2016), (finding a student could qualify under the educational institution category).

- (5) Noncommercial scientific institution refers to an independent nonprofit institution whose purpose is to conduct noncommercial scientific research, and whose results are not intended to promote any particular product or industry.
- (6) In some cases, educational or noncommercial scientific institutions may perform work under contract for the specific benefit of commercial entities and warrant treatment as commercial users. As stated above, evaluate each request individually based on the stated use of the documents as well as any other available information to determine the appropriate category of the requester.

11.3.5.3.1.2.1
(10-18-2021)
**Educational or
Noncommercial
Scientific Institution
Service Fees**

- (1) Educational or noncommercial scientific institutions whose purpose is scholarly or noncommercial scientific research only incur duplication fees. There is no fee for the first one hundred pages copied, if producing records in paper form. See IRM 11.3.5.2.3, Fees for Electronic Records, for more information on fees for records produced on electronic media.

Caution: Do not charge these users search or review fees.

- (2) In addition to the fee limitations stated above, you may consider requests from educational and noncommercial scientific institutions for fee reductions or the waiver of all fees.
- (3) Prior to performing extensive computer or manual research in response to a request from an educational or noncommercial scientific institution, confirm the request is actually under the auspices of the qualifying institution rather than simply representing the interests of the requesting staff member.

11.3.5.3.1.3
(10-18-2021)
News Media

- (1) The OPEN Government Act of 2007, amending section (a)(4)(A)(ii) of the FOIA, defines representatives of the media to include "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." The term "news" as defined by the Act means "information that is about current events or that would be of current interest to the public." The Act also addresses the evolution of news delivery methods and allows for consideration of alternative media as news media entities.
- (2) "News" is further defined to mean information about current events or that would be of current interest to the public.
- (3) The news media may include freelance journalists if they can demonstrate a solid basis for expected publication, such as a publication contract or by demonstrating a history of publication, whether or not the freelance journalist is actually employed by the entity.
- (4) Representatives of narrowly focused publications such as house journals, trade journals or organizational newsletters that are not designed for ordinary circulation to the general public are not considered news media for this purpose. However, if publications are available by public subscription or on news stands, the representatives may be considered news media.

- (5) To meet the criteria above to be considered a representative of the news media, a requester must satisfy five items:
 - a. gather information of potential interest
 - b. to a segment of the public
 - c. use its editorial skills to turn the raw materials into a distinct work
 - d. distribute that work
 - e. there must be an audience for the distribution
- (6) Unlike a Commercial Use requester where focus is on the stated use for the requested information, the FOIA statute requires that the request be “made by” a representative of the news media so it is important to focus on the nature of the requester and not the request itself when attempting to analyze the appropriate requester category.

11.3.5.3.1.3.1
(10-18-2021)
News Media Service Fees

- (1) Representatives of the news media only incur duplication fees. There is no fee for the first one hundred pages copied, if producing records in paper form. See IRM 11.3.5.2.3, Fees for Electronic Records, for more information on fees for records produced on electronic media.

Caution: Do not charge these users search or review fees.

- (2) In addition to the fee limitations stated above, you may consider requests from news media requesters for fee reductions or the waiver of all fees.
- (3) Prior to performing extensive computer or manual research in response to a request from a representative of the news media, confirm that the request is actually under the auspices of the employing news organization, rather than simply representing the interests of the requesting staff member.

11.3.5.3.1.4
(03-10-2016)
All Other Requesters

- (1) Consider any person who does not fit into one of the three categories described above as an “all other requester.”

11.3.5.3.1.4.1
(10-18-2021)
All Other Requesters Service Fees

- (1) “All other requesters” are subject to fees for record searches and duplication. These requesters are entitled to two hours of free search time. They also receive the first one hundred pages copied without charge, if producing the records in paper form. See IRM 11.3.5.2.3, Fees for Electronic Records, for more information on fees for records produced on electronic media.

Caution: Do not charge these users review fees.

- (2) For requests where the records would otherwise be available under the Privacy Act (i.e. personnel records of employees requesting their own files), charge fees under the Privacy Act instead of the FOIA. This means that first party requesters would only incur duplication fees and no search fees if requesting records that are not exempt under the Privacy Act. See IRM 11.3.5.4, Privacy Act Requests, for additional information about fees relating to Privacy Act requests.

Exception: This provision is only for first party, individual requesters or the representatives of those individuals. It does not pertain to records requested on behalf of a business or third parties requesting records in regards to another individual. Businesses and third-party requesters can incur

record search and duplication fees, after the allowance of two hours of free search time and/or 100 free duplicated pages (or its equivalent for paper records being converted to electronic media).

Example: An employee seeking access to their own personnel records would be charged fees in accordance with the Privacy Act. A first party requester seeking access to their Examination administrative file, which is exempt from 5 USC 552a(d), the requester would be charged duplication fees and search fees after the standard two hours of search time free of charge.

11.3.5.3.2
(03-10-2016)
General Fee Issues

- (1) Depending on the nature of the request, the fee category of the requester, the requester's past payment history and other issues, requests generally require a commitment to pay and may require pre-payment and the resolution of past debts in some instances.

11.3.5.3.2.1
(10-18-2021)
Commitment to Pay

- (1) In accordance with 26 CFR 601.702(c)(4)(H), FOIA requests must, in general, include a commitment to pay fees. The commitment may be a statement expressing a willingness to pay any appropriate and/or reasonable fees due, it may contain an agreement to pay the applicable fees that would be due for their requester category, it may contain a specific, maximum amount the requester is willing to pay and/or it may contain a request for a fee waiver. See IRM 11.3.5.3.3.1, Requesting Waivers, if the request contains both a firm commitment to pay and a request for a fee waiver. See IRM 11.3.5.3.2.3, Requests Involving Extensive Efforts, when the fee exceeds the commitment to pay.
- (2) The IRS rejects FOIA requests as improper if they do not contain a commitment to pay fees unless the request has no anticipated fees that would become due. A FOIA requester should make a firm commitment to pay unless the request does not generate fees as in the following examples:
 - Fee would be less than the \$25.00 minimum billing amount
 - Valid fee waivers are approved
 - 100 or fewer printed pages from an "Educational, Noncommercial Scientific Institution or News Media Requestor" and/or no fees for records duplicated for electronic media
 - No search fee and 100 or fewer printed pages from an "all other requester" and/or no fees for records duplicated for electronic media
- (3) Ensure requesters are aware of what fees they are committing to pay. When requesters claim a requester category that would subject them to lower fees than the facts merit, ensure their commitment reflects the correct requester category classification.

Example: An attorney making a request on behalf of a client may anticipate fees that a student engaged in an educational research project might not expect.

Example: A requester asking for statistical records, and stating themselves to be an "other" requester in the request, is determined by the caseworker and Disclosure Manager to actually be a "commercial use" requester based on various factors found during initial analysis. The requester should be made aware that they would now be subject to all search, review and

duplication fees when they originally believed they would only be subject to search and duplication fees, with allowances for free search time and free page amounts. The requester should be given an opportunity to provide information as to why they are not a commercial use requester and commit to paying any and all fees that are, and may become, due for search, review and duplication efforts.

- (4) When requesters indicate an upper limit to the fees they are willing to pay, and the fee estimate goes beyond that amount, contact the requester to re-scope the request in a way that

- a. May reduce fees at, or below, their stated limit or
- b. Adjust the limit to a higher amount

prior to closing the case for Fee Related reasons Get commitments to pay higher fees and/or re-scoping agreements in writing, whenever possible.

Reminder: Ensure the discussions contain an agreement to pay any and all fees that may become due (search, review, duplication or any other fees necessary to respond to the requester) in case there is a change to their requester category or any other issues that may arise.

- (5) When addressing fee issues with requesters, also address any other perfection issues that prevent request processing at the same time.

11.3.5.3.2.2 (10-18-2021)

Requests Involving Late Payment or Nonpayment

- (1) Request payment of fees prior to performing services beyond the minimal effort needed to estimate the fees whenever:

- a. the requester has a history of late payments (2 or more payments not made within 30 days of notification that fees were due) within the preceding six years,

Caution: When applying these guidelines for advanced payment requests, remember that a “history of late payment” is not the same as “nonpayment”. A history of late payment does not allow the IRS to refuse services when no FOIA fees would be anticipated to be due. It only permits a demand for advance payment when an actual fee is anticipated. Only unpaid fees will preclude processing of subsequent requests.

- b. the requester has failed to pay prior fees within the preceding six years,
- c. the estimated fees due will be \$250 or more (IRM 11.3.5.3.2.3, Requests Involving Extensive Efforts), or
- d. the requester is a minor, an incompetent or other person not capable of making the required commitment to pay fees.

- (2) For purposes of nonpayment, both the person signing the request and the individual or business in whose name a request is made are held responsible. Where a request is made on behalf of another individual and previous fees have not been paid within the designated time period by either the requester or the individual or business on whose behalf the request is made, IRS will require full payment of all outstanding fees and any estimated fees before processing a new request.

Example: A request is received from a Power of Attorney on behalf of their client seeking individual tax records. After completing the case, there are fees

due for duplication efforts. Both the Power of Attorney as the requester, as well as the client on whose behalf the request were made, are responsible for timely paying the fees that are due.

- (3) “Failure to pay prior fees” means the IRS actually worked a case and requested payment in connection with a response that was provided to a requester or a response that the Service was prepared to make after work was completed. There is no failure to pay fees if the Service merely provides an estimate of potential fees to the requester or if the requester fails to respond to a request for pre-payment of estimated fees. Subsequent requests do not continue to create additional failures to pay when the IRS refuses to work a case because of a prior failure to pay. However, unpaid fees for completed work by any IRS Disclosure office will prohibit processing in all other offices.
- (4) Document all fees and payments owed by the requester in the appropriate inventory management system. Research the requester’s payment history to determine instances of nonpayment prior to processing the request.
- (5) Estimated fees and requests for advance payment should only be documented in case history notes in the inventory management system. Do not include estimates in the sections of the inventory management system dealing specifically with fees that are owed by the requester. The fee sections are used to records fees for work actually completed by the IRS.

Caution: Inputting estimated and advance fees into the fee sections of the inventory management system could lead to confusion and inappropriate “failure to pay fees” case closures. If it is necessary to generate an invoice in an inventory management system for advance payment of fees, remove the invoice prior to closing the request if advance payment is not received to avoid confusion in the system reporting those invoices as “unpaid fees”.

- (6) If authorized by a Disclosure Manager, caseworkers may ignore failure to pay prior fees if the requester expresses an interest in withdrawing their request and processing the request would otherwise be burdensome to the Service.

Note: A decision not to request a prior fee in that instance does not preclude the use of nonpayment, or an incident of late payment, as the basis for demanding advanced payment of current fees or fees in future requests.

- (7) Document case notes with the reasons for requesting advance payment, or not processing a case for failure to pay, before processing the case.

11.3.5.3.2.3 (01-18-2024) Requests Involving Extensive Efforts

- (1) When anticipated fees will equal, or exceed, \$250.00 due to extensive search or review request payment in writing and obtain payment prior to performing search or review work on the request.

Caution: Caseworkers should not charge requesters estimated costs for duplication efforts, **until and unless**, they have calculated the final page count, or a near approximation, of responsive paper records which must be scanned in order to provide the records on electronic media.

Note: If a search request was sent to an IRS business function, suspend the search until payment has been received. No search, review, or duplication

efforts should take place until the payment is received. If no payment is received, caseworkers should rescind any search and/or review requests sent to business function contacts.

- (2) The estimate of anticipated fees must be reliable and based on a realistic and factual appraisal of cost as indicated below:
- a. The request must clearly show that the extent of the search, review and/or the volume of records justify a fee estimate of at least \$250.00. If not immediately apparent, continue processing to the extent necessary to estimate the fee.
 - b. When requesters ask for their own tax records, it is appropriate to make a preliminary search of appropriate databases such as IDRS or AIMS to verify the extent of responsive records to determine the possible need for pre-billing.

Note: Individuals seeking access to their own tax records, and classified as “Other” requesters, are processed according to the provisions of the Privacy Act. They are not subject to search fees. They would only be subject to fees for duplication efforts.

- c. Caseworkers must document the basis for a fee estimate of \$250.00 or more in the case history.

Note: Any estimated duplication costs must be provided to the requester during initial conversations (i.e., after search efforts provide the approximate or total number of potentially responsive pages) to determine if the requester will withdraw or rescope the request, if they do not wish to pay the fees that may become due. Caseworkers should also secure an agreement to pay fees that are estimated to exceed the requester’s existing fee limit for the case. After search and review efforts are completed, and final duplication costs are determined, caseworkers will request advance payment if processing fees exceeded \$250 prior to sending records to the requester, or complete the request using normal procedures if fees do not exceed \$250.

- (3) The estimate of \$250.00 or more represents the amount due after allowances for free search time or free duplication costs to which the requester is entitled based on their appropriate requester category.
- (4) Advise the requester, in accordance with 26 CFR 601.702(f)(4)(ii):
- a. how search, review and/or duplication fees were calculated and the estimated amount for each,
 - b. that additional fees may become due if the actual search time, review time or duplication efforts exceed the estimate,
 - c. that if the fee estimate exceeds the commitment to pay, the requester may discuss re-scoping the request with the caseworker and/or FOIA Public Liaison in order to reduce fees, and
 - d. that a refund may be made if the estimate paid is greater than the actual costs for search, review or duplication efforts.

Note: Do not refund search fees if an executed search does not locate, or result in the release of, records. Do not refund review fees after completing a review that does not result in the release of records. A requester is still responsible for fees resulting from actual work

conducted by the IRS regardless if the search and/or review efforts are fruitful in providing documents to the requester.

- (5) To minimize the need for refunds, Disclosure personnel must develop expertise at estimating fees realistically. A conservative estimate resulting in additional fees or waiving an additional fee under the minimum billing amount is preferable to creating the potential expense of processing a refund.

Note: Disclosure expertise in estimating fees includes assisting business unit record holders with an explanation, and expectation, of FOIA fees. Business units should do their best to estimate fees due and provide them to the caseworker before spending time and resources on searching, reviewing or duplicating records.

11.3.5.3.2.4
(10-18-2021)
Processing Requests

- (1) Process all requests stating an adequate commitment to pay or where you anticipate no fees would be due unless the requests:
- a. require pre-payment. See IRM 11.3.5.3.2.2, Requests Involving Late Payment or Nonpayment, and IRM 11.3.5.3.2.3, Requests Involving Extensive Efforts, for additional information on fee issues.
 - b. are otherwise imperfect.

- (2) When computing fees:

- a. See IRM 11.3.5.3.2.3, Requests Involving Extensive Efforts, if the cost is anticipated to exceed \$250.00.

Note: As per 5 USC 552(a)(4)(A)(v), do not pre-bill or require advance payments unless the requester has previously failed to pay fees timely or it is determined that fees will exceed \$250.00.

- b. Do not bill for fees totalling less than \$25.00.
- c. Requesters are liable for efforts taken to search for, and/or review, records even if no records are ultimately located or released.

Note: This does not apply to estimates of search and/or review fees. Requesters are liable only for fees of actual searches completed and/or documents reviewed.

- (3) In situations where fees exceed the requester's commitment to pay, contact the requester by telephone or by mail for agreement to pay the higher fee or to reformulate the request.

Note: When requesting a commitment to pay fees, it is important, whenever possible, to secure these commitments in writing.

- (4) Generally, if the total fees due exceed those services provided free to the requester (2 hours of free search time and 100 duplicated pages free (or their equivalent for electronic media)), provide a final response which contains an appropriate invoice and/or fee payment stub along with the responsive documents.

Note: If the total fees are less than \$250, do not send a request for payment with an interim response. Agencies can only require advance payment of fees if they are \$250 or more.

- (5) Your final response letter must include the following:
 - a. A description of the computation for applicable search, review and duplication fees, allowing for any free services and any fees waived, reduced or previously paid,
 - b. A statement to make checks or money orders payable to United States Treasury,
 - c. A statement that fees paid are reimbursement for services performed and are not refundable, and
 - d. An explanation that IRS will not process future requests until all fees are paid in full.
- (6) Caseworkers must document in case notes how fees were computed. This is especially important when fees exceed the minimum charge amount and include search, review and duplication efforts performed by other business units. Include the identity of the person reporting the search, review and duplication efforts along with a short statement describing what was done.
- (7) If the response involves both free and charged services, include a statement describing:
 - the type of service that was free
 - the type of service incurring charges and
 - the amount due for services.

11.3.5.3.2.5
(10-18-2021)
**FOIA Improvement Act
of 2016**

- (1) The FOIA Improvement Act of 2016 restricts the ability of federal agencies to assess search fees and/or duplication fees for FOIA requests in some instances.
- (2) Because preferred requesters (news media, educational and non-commercial scientific requesters) are not charged for search fees when processing FOIA requests, the provisions below must be followed or caseworkers may not assess duplication fees. If the provisions below are not followed, Commercial requesters and Other requesters may not be charged search fees but they are still charged duplication fees.
- (3) In order to assess search and/or duplication fees, agencies must either
 - a. Process the FOIA request within the allowed 20-day statutory timeframe **or**
 - b. Have unusual circumstances (See IRM 11.3.13.6.2, Extension Letters, paragraph (1) for more information) and need additional time to process the FOIA request
- (4) If unusual circumstances are presented when processing a FOIA request, there are two scenarios where search and/or duplication fees may be charged:
 - a. If the request contains 5,000 or less pages that need to be reviewed, caseworkers must provide timely, written notice (i.e. sent within the 20-business days) to request the allowed 10-day extension **AND** process the request within those 10 additional days **or**
 - b. If the request contains more than 5,000 pages that need to be reviewed, caseworkers must provide the requester (by phone, email and/or letter) with an opportunity to limit the scope of the request or arrange an alternative time for processing if re-scoping is not possible **or** make three

good-faith attempts to do so **AND** provide timely, written notice (i.e. sent within the 20-business days) to request the allowed 10-day extension.

Note: Caseworkers must document all communications with requesters, or their three good-faith attempts, to discuss re-scoping or alternative time frames with the requester.

- (5) Attempts to discuss re-scoping or arranging alternative times for processing should be made as soon as practicable when working a FOIA request to ensure appropriate fees may be charged.

Note: When attempting to re-scope to reduce search fees, ensure the attempts are related to actual search efforts (i.e. needing to locate records potentially responsive to the request) and not just removing records from files which have already been located. For example, when working a FOIA request asking for examination records where the Revenue Agent knows where all the files are located, caseworkers can discuss removing taxpayer provided records and copies of large tax returns with the requester but this will only reduce the time needed to review records, not locate them. Actual search time, such as needing to search for hundreds of responsive email records which are not located within the examination files, would still be applicable and charged if requests for email records are not re-scoped.

11.3.5.3.2.6 (10-18-2021) Inspection of Records

- (1) While physical inspection of records at an IRS Disclosure Office should be a very rare occurrence, if it does occur, you may collect any applicable fees before providing copies or permitting inspection of records.

Note: Fees for individual requesters or their representatives are limited to duplication.

11.3.5.3.3 (03-10-2016) Fee Waivers

- (1) The FOIA allows agencies to furnish records without charge, or at a reduced charge, when the agency determines that waiver or reduction fees is in the public interest and is not primarily in the commercial interest of the requester. See IRM 11.3.5.3.3.1.1, Public Interest and Humanitarian Purposes, for additional information.
- (2) The application of various disclosure statutes may sometimes overlap. Requests made pursuant to Privacy Act or Internal Revenue Code provisions may also appear to have FOIA aspects. Waive fees regardless of the statute cited in the disclosure request or the procedure under which the case is controlled and processed if the services provided are substantially similar to those performed in response to FOIA requests.
- (3) Apply the most appropriate fees for any services provided. If varying fees appear to be equally applicable to a situation, Disclosure Managers may exercise discretion to apply the lowest appropriate fee.
- (4) Nothing in this IRM prevents IRS employees from providing copies of tax administration records without charge while performing assigned tax administration duties. For example, compliance employees may provide copies of returns or work papers without charge to taxpayers and their representatives as needed to facilitate the examination of returns or collection of taxes due.

11.3.5.3.3.1
(10-18-2021)
Requesting Waivers

- (1) IRS will only consider written fee waiver or reduction requests.
- (2) The requester must provide the rationale and any required evidence to support a fee waiver or reduction request.

Caution: If fees are applicable to the request and the requester asks for a fee waiver, the fee waiver must be addressed even if they do not provide a support or rationale for the fee waiver request. The fee waiver should not be considered “invalid” if they do not provide the support statement or evidence. If they fail to provide evidence or support for their fee waiver request, the fee waiver should be denied.

- (3) Under some circumstances, the appropriateness of waiving fees may be obvious and the Disclosure Manager may authorize a fee waiver even in the absence of a written request for a waiver. Disclosure Managers may also waive fees when the requester demonstrates that release of the records serves a humanitarian purpose or that a waiver of fees is equitable and contributes to efficient government operations.

Example: Requests from charitable organizations, educational institutions and news media organizations where releasing the records would obviously benefit the general public do not generally incur fees even though the requester did not specifically ask for a waiver.

- (4) Where a request contains both a firm commitment to pay fees and a request for a fee waiver, consider both statements and interpret the request to be a firm promise to pay fees if the fee waiver is not granted. Send a letter acknowledging the fee waiver request according to the appropriate scenario below:
 - a. If granting the fee waiver, process the request and indicate in the response letter, or initial extension letter, that the waiver was granted.
 - b. If no fees accrue or are applicable to the FOIA request, there is no need to make a fee waiver determination. Process the FOIA request and state in the response letter that a fee waiver was not considered because there were no applicable fees.
 - c. If denying the fee waiver, and fees are expected, the requester must be provided written notification, with appeal rights, advising them of the denial for a fee waiver. If they agreed to pay fees appropriate to the request, send the fee waiver denial letter, with appeal rights, and continue processing the request. If they did not provide an agreement to pay fees appropriate to the request: send the fee waiver denial letter, with appeal rights, along with a request to agree to pay any and all fees that are, or may become, due for the request and toll the request for 35 calendar days to get the agreement to pay before closing the request.
- (5) If the fee waiver denial is reversed and the requester has not yet paid the fee, remove the fee from the inventory management system and notify the requester to ignore any invoice that may have been issued. If the requester has paid the invoice, issue a refund following standard protocol.
- (6) If the fee waiver denial is reversed on appeal and the case was closed, the Service will open a case and process the request. The 20-workday period begins to run from the date listed on the Appeals determination letter received by the Disclosure office.

11.3.5.3.3.1.1
(10-18-2021)

**Public Interest and
Humanitarian Purposes**

- (1) Fees may be waived or reduced at the discretion of the Disclosure Manager when:
- it is in the public interest because furnishing the information is likely to contribute significantly to public understanding of IRS operations or activities and is not primarily in the commercial interests of the requester or
 - the requester has demonstrated that the request primarily serves a humanitarian purpose intended to benefit a person other than the requester or
 - fee waivers contribute to the efficient performance of Government business.

Note: Normally, charge no fees for providing records to Federal, state, local, or foreign governments, to agencies or offices thereof, or to international governmental organizations.

- (2) The determination to waive fees in the general public's interest is based on an evaluation of the information involved, its value to the public and the intent and capability of the requester.
- (3) Consider the degree to which release of the records will inform public understanding of IRS operations. Use the following criteria to inform your decision-making process:
- Is the information of current significance?
 - Does the information carry historical, scientific, or economic significance?
 - Is the information otherwise available to the public?
 - Are the records of interest to a broad segment of the population?
 - Is requester able and likely to convey significant information that will increase public understanding of IRS operations?
 - Could release of the information reduce government costs by eliminating the need for other forms of distribution or by reducing the future volume of FOIA requests for the same information?

Also weigh the commercial interest of the requester against the significance of increased public understanding of IRS operations or activities. Note that information concerning the requester alone is unlikely to contribute to the public understanding of IRS operations or activities.

- (4) The following attributes of a requester could be relevant to a determination to waive fees:
- a. Recognition as a scholar, researcher or authority in a field related to the material requested
 - b. Association with a university, laboratory, or bona fide research activity related to the material requested
 - c. Membership in relevant professional associations
 - d. An established record of publication or dissertation on related subjects
 - e. A reputation for impartiality appropriate to scholarly, scientific or journalistic endeavors
 - f. A demonstrated capability to publish, reprint or disseminate information
 - g. A demonstrated capability to preserve records in a library, archives, museum, or other publicly accessible location

- h. Makes a cogent proposal for utilizing the material requested in a manner primarily benefitting the general public
- (5) The following factors weigh against granting a fee waiver:
 - a. The information is of limited interest to the public
 - b. The requested information is clearly exempt, so there is nothing to disclose and, therefore, no benefit to public understanding of the operations or activities of IRS. An example would be a request for third-party returns or return information where the requester has not shown a material interest or produced a consent to authorize disclosure
 - c. The requester is unlikely to disseminate the information because much of it is personal to the requester
 - d. A considerable portion of the requested information relates to the requester's own affairs or involves an administrative or judicial proceeding between the requester and the Government
 - e. The basis for the request relates to a hobby or a personal purpose such as genealogical research
 - f. The information is for use in the requester's entrepreneurial or commercial enterprise or may be offered for sale and the release of the information does not reduce Government costs by eliminating the need for other forms of distribution or reducing the anticipated volume of further FOIA requests for identical information
 - g. The request is one of a number of other requests from the same requester seeking the same or similar information

11.3.5.3.3.1.2
(10-18-2021)
Indigence

- (1) A written declaration of indigence, even under penalty of perjury, does not entitle a requester to a waiver of fees.
- (2) If a requester claiming indigence falls into the "all other requester" FOIA category, they receive two hours of search time free and the first one hundred printed pages (or the equivalent for electronic media), as well as any free services, up to the \$25.00 minimum payment amount. See IRM 11.3.5.3.4(2), Minimum Billing Amount, for additional information.

11.3.5.3.3.1.3
(10-18-2021)
Documentation

- (1) Denials of fee waivers are subject to administrative appeal and judicial review which require appropriate documentation to adjudicate.
- (2) Because caseworkers should be prepared to submit declarations to Counsel attorneys justifying adverse determinations, caseworkers must document all fee waiver decisions in a manner that enables subsequent reviewers to understand the rationale for the determination. The case record (i.e., the administrative record) is the only information used in judicial reviews of fee waiver denials.

11.3.5.3.4
(03-10-2016)
Minimum Billing Amount

- (1) If the costs of routine collection and processing of a fee are likely to equal or exceed the amount of the fee, the FOIA requires agencies to forego collection of that fee.
- (2) In order to comply with this provision, IRS will charge no fee in any FOIA case unless the fee (after accounting for any free search, review or duplication efforts) is equal to, or exceeds, \$25.00.

- (3) You may combine fees outstanding from prior requests with current charges to meet the \$25.00 minimum for billing.

11.3.5.3.5
(10-18-2021)
Aggregating Requests

- (1) When there is reasonable evidence that a requester, or group of requesters, has broken down a single request into a series of FOIA requests in an attempt to evade search, review and/or duplication fees, aggregate the requests and apply the appropriate fees for the aggregated request.

Example: An attorney, claiming to be an Other requester, submits six, very similar FOIA requests seeking related business records that must be ordered from the FRC's. These six requests may be aggregated for the purposes of charging appropriate search fees (six requests, with .5 hours of search time for each FRC search, is three hours of search time.)

Example: A requester who asks for a single year audit file in one request but follows that closely with similar requests for additional years. It may be appropriate to aggregate these requests if they are submitted to avoid search and/or duplication fees.

Caution: Aggregation of requests means to combine requests for the purposes of charging appropriate fees or allowing unusual circumstances for valid case extensions. It **does not allow** an agency to close requests, and combine them into a single case, without approval from the requester to withdraw the multiple requests.

- (2) Requests may only be aggregated if they are for clearly related records. If requests are received for unrelated matters, charge appropriate search, review and/or duplication fees for each request separately. Some examples of unrelated requests:
 - a. Audit records and contract files
 - b. A Taxpayer Delinquent Account (TDA) file and collection delegation orders
 - c. General Counsel Memorandum (GCM) background files and various IRM sections
- (3) Notification that requests are being aggregated must be provided to the requester(s) to make them aware of potential fees that are, or may become, due.

Note: Ensure the requester(s) provide confirmation that they are willing to pay any and all fees due, or provide an upper limit for fees. If the requests do not state an agreement to pay appropriate fees in the submitted requests, toll the requests for 35 calendar days to get an agreement to pay before closing the request. See IRM 11.3.5.3.2.4, Processing Requests, for additional information.

- (4) While requests may be aggregated if circumstances are appropriate, it is not appropriate to advise a requester that "in the future, we will aggregate any requests you submit." Aggregation should be used on a case-by-case basis.

11.3.5.4
(10-18-2021)
Privacy Act Requests

- (1) The Privacy Act of 1974 allows collection of fees for duplicating records but does not make any allowance for search or review fees.
- (2) Duplication fees for Privacy Act requests are the same as those for Freedom of Information Act requests and the same allowances for free copying apply.
- (3) Process FOIA and Privacy Act requests from individuals seeking records about themselves under the fee provisions of the Privacy Act.

11.3.5.5
(10-18-2021)
Requesting and Processing Payments

- (1) When payments are requested from, and received from, requesters, required actions must be taken by both Disclosure employees and GLDS Support Services (GSS) employees.

11.3.5.5.1
(10-18-2021)
Disclosure Payment Processing

- (1) As a part of closing and responding on a processed case, caseworkers must:
 - a. determine any appropriate fees,
 - b. update the inventory management system with all fees owed by the requester, and
 - c. prepare fee payment stubs and invoices for billing.

Note: Caseworkers must document all fees due, along with a breakdown for different fees charged to requesters (i.e. separate search, review and duplication fee calculations) in case notes.

Reminder: If a requester has previously failed to pay a fee in a timely fashion (i.e., within 35 calendar days of the billing date), you may require the requester to pay the full amount owed for unpaid balances and to make an advance payment of the full amount of estimated fees before beginning to process a new request or pending request. See IRM 11.3.5.3.2.2, Requests Involving Late Payment or Nonpayment, for more information.

- (2) Caseworkers request payments using appropriate pattern correspondence that identifies the payment amount, a breakdown of fees owed, payment types accepted, an address for mailing the payment to the Department of the Treasury and a payment due date.
- (3) If GSS is in possession of a held payment (i.e. a payment received with a request or an unsolicited payment regarding a closed request that GSS holds locally while awaiting a determination from Disclosure on what to do with the payment), caseworkers must:
 - a. determine the status of the payment within 20 working days based on the determination of fees being due for a request,
 - b. advise GSS to send the payment to Beckley or return the voided payment instrument to the requester, as appropriate to the situation and
 - c. prepare any fee payment stubs, invoices, refund memos, response letters, etc. to ensure the payment is processed or returned in accordance with any fees that ultimately become due for a request.

Note: Caseworkers must document all actions taken and communications with GSS, regarding the status of held payments in case notes.

Caution: Cases with held payments **must not** be closed locally by caseworkers. Cases with held payments **must** be closed by GSS as appropriate.

- (4) If a request requires advance payment, because a fee of \$250 or more is estimated to be due or because of a requester's previous payment history, the caseworker:
- a. estimates the fee as accurately as possible while, to the extent practicable, avoids overbilling which results in the later issuance of a refund and,

Note: When estimating fees, caseworkers should use the lower end of estimations (i.e. a search memo response estimates between 3 and 8 hours of search time, caseworkers should use 3 hours to estimate search fees) when calculating potential fees for advance payments. This reduces the need to complete refunds, which can be costly to the service and allows any additional fees to be billed to the requester if the estimate is below final fee amounts that become due.

- b. prepares a fee payment stub and invoice for pre-payment.

Note: After advance payment is received, and after completion of case processing, the caseworker calculates and updates the final fee amounts due in the inventory management system. Caseworkers should apply the payment to the case in the inventory management system and prepare a fee payment stub and/or invoice if additional fees became due or initiates the refund process, as appropriate.

Caution: If an advance payment is not received within 35 calendar days of the date of notification, caseworkers **must** remove any invoices in the inventory management system prior to closing the case to ensure future requests from the requester are not inappropriately closed for failure to pay fees. Requesters are only responsible to pay fees on closed cases for FOIA searches, reviews and duplication efforts actually completed.

Note: If advance payment is received after the 35 days provided to the requester, and GSS creates a new request, caseworkers should create a new invoice in the new request and apply any payments received to the appropriate advance fee payment amounts.

- (5) Upon learning that a FOIA payment was misapplied to a taxpayer's account, unidentified remittance account or an account other than the appropriate IRS FOIA fee account, the caseworker:
- a. prints the IDRS transcript that shows where the payment was applied, if applicable,
 - b. prints a copy of the payment from the remittance transaction register (RTR)
 - c. completes the debit section of Form 2424, Account Adjustment Voucher with the name, address, Master File Tax (MFT) code, period, transaction date (Transaction Code (TC) 670 date), 1st transaction (Transaction Code (TC) 672), and the debit amount (amount of the total payment misapplied)
 - d. completes the credit section by entering 5100 in the Name and address section, recording the transaction date (TC 670 date), 1st transaction (TC 670), and the credit amount (must be the same as debit amount)

- e. completes the explanation with the following language - "FOIA payment for case [enter complete case number] misapplied. Must be credited to Beckley for FOIA Acct. – 3223. Please IPAC"
- f. Mail all three documents (IDRS print, RTR print and Form 2424 as appropriate) to:

Internal Revenue Service
 Attn: RACS - Team 104, Mail Stop 6261
 333 W Pershing
 Kansas City, MO 64108

Note: See IRM 10.5.1.6.9.3, Shipping, for information on proper shipping procedures for materials containing SBU information or PII. Also see Document 13144, Proper PII Shipping Procedures, and Document 13056, Shipping Procedures for Personally Identifiable Information (PII), for more information on shipping procedures

- g. adds the fee to the inventory management system for the case if not already applied there
- h. posts payment and applies it to the case if it is not already posted there

Note: If the misapplied payment is located during the processing of a case and is the result of FOIA fees for another case, the caseworker advises their Disclosure Manager who will notify original caseworker's manager. The original caseworker is responsible for taking all applicable corrective actions in (a) through (h) above.

11.3.5.5.2 (10-18-2021) GLDS Support Services (GSS) Payment Processing

- (1) When the GSS receives a payment associated with an open or closed case with a fee due on the inventory management system (usually with a fee payment stub), GSS:
 - a. scans an image of the check and imports it into the closed case,
 - b. posts the payment to the inventory management system,
 - c. notifies the caseworker, and
 - d. forwards the payment to Beckley following instructions in (5), below.
- (2) When the GSS receives an unsolicited payment with an original request, GSS:
 - a. scans the request and payment
 - b. indexes the request as a new case
 - c. suspends the payment by recording receipt of, and retaining, the payment securely
 - d. does not post the payment to the inventory management system
 - e. follows caseworker instructions to send the payment to Beckley or return the voided payment instrument to the requester using appropriate pattern letter language

Note: GSS will review the held payments log periodically and initiate contact with Disclosure Managers to address payments held beyond 20 work days, as necessary.

- (3) When the GSS receives an advance payment (with an advance fee payment stub) on an open request, GSS:
 - a. scans a copy of the advance fee payment stub, the payment, as well as any correspondence received, and imports them into the appropriate case

- b. posts the payment to the inventory management system
 - c. forwards payment to Beckley Finance Center following instructions in (5) below
- (4) When the GSS receives an advance payment (with an advance fee payment stub) on a closed request (i.e. the requester did not make an advance payment within 35 days of notification), GSS:
- a. scans a copy of the advance fee payment stub, the payment, as well any correspondence received to reference the original request, and creates a new request in the inventory management system
 - b. posts the payment to the new request
 - c. forwards payment to Beckley Finance Center following instructions in (5) below
- (5) GSS prepares Form 3210, Document Transmittal, listing all payments received and not suspended, the requester name, payment amount, the check or money order number and date along with the account number for depositing the funds, as follows:
- a. Account 3223 – FOIA requests, PA requests, and miscellaneous. (See IRM 11.3.5.1.2(2) , Authority, for additional information)
 - b. Account 20X6877 – Returns and return information (IRC 6103)
- (6) GSS forwards Form 3210 and payments to the Beckley Accounting section at:

Internal Revenue Service - Beckley
 Attn: DCU
 PO Box 9002
 Beckley, WV 25802-9002

If using UPS for shipping, forward Form 3210 and payments to:
 Internal Revenue Service - Beckley
 Attn: DCU
 110 N. Heber St.
 Beckley, WV 25801

Note: See IRM 10.5.1.6.9.3, Shipping, for information on proper shipping procedures for materials containing SBU information or PII. Also see Document 13144, Proper PII Shipping Procedures and Document 13056, Shipping Procedures for Personally Identifiable Information (PII), for more information on shipping procedures.

Note: The Accounting Section will deposit the payments to the appropriate account in accordance with its procedures.

11.3.5.6 (10-18-2021) Refunds

- (1) Disclosure Managers and Disclosure Area Managers (or their designees) may authorize refunds of money paid in response to a written request to Disclosure offices whenever:
- a. The Service erred in computing the fees
 - b. The Service provided the wrong materials
 - c. The Service failed to provide material paid for

Note: See IRM 11.3.5.3.2.1, Commitment to Pay, for additional information.

- d. An advance payment resulted in an overpayment
- e. Unusual circumstances make issuance of a refund appear equitable and the requester would not enjoy free access to records that would normally incur a fee

- (2) Request refunds by issuing a pattern memorandum, along with any approved memo attachments, from the appropriate designee to the Accounting Section listing the date of the original transaction.

Note: Refund memorandums, any applicable attachments, and any appropriate instructions on completing the attachments are available on the Disclosure SharePoint site.

- (3) The FOIA Refund Request memorandum must be completed and digitally signed (using the signers name and not SEID) by an authorized Disclosure Manager. If an acting Disclosure Manager is signing the memorandum, they must notate on whose behalf they are signing.
- (4) Requests for FOIA refunds sent to the Accounting Section designee should contain the following information:
 - a. Amount to be refunded
 - b. First and Last Name of the person receiving the refund
 - c. Second name line, if applicable
 - d. Street Address, City, State, Zip Code and Country of the person receiving the refund
- (5) The Accounting Section will process requests for refunds in accordance with its procedures.

Exhibit 11.3.5-1 (10-18-2021)
FOIA Requester Category Fees

Commercial Use Requesters	“All Other ” Requesters	Representatives of the News Media, Noncommercial Scientific & Educational Institutions
<p>Responsible for the following fees, subject to the provisions of the FOIA Improvement Act of 2016:</p> <ul style="list-style-type: none"> • Review • Search • Duplication <p>Commercial Use requesters are not generally allowed fee waivers or reductions of fees.</p>	<p>Responsible for the following fees, subject to the provisions of the FOIA Improvement Act of 2016:</p> <ul style="list-style-type: none"> • Search with an allowance of two hours of free search time • Duplication with an allowance of 100 free paper copies or the equivalent for other media (i.e. 1,000 pages free if paper records are scanned to electronic media) <p>Other requesters may request fee waivers.</p>	<p>Responsible for the following fees, subject to the provisions of the FOIA Improvement Act of 2016:</p> <ul style="list-style-type: none"> • Duplication with an allowance of 100 free paper copies or the equivalent for other media (i.e. 1,000 pages free if paper records are scanned to electronic media) <p>Preferred requesters may request fee waivers.</p>

Exhibit 11.3.5-2 (10-18-2021)**Providing FOIA Fee Estimates and Commitments to Pay**

Commercial Use Requesters	“All Other ” Requesters	Representatives of the News Media, Noncommercial Scientific & Educational Institutions
--	Provide two hours of free search.	--
Advise the requester that review and duplication fees are generally applicable to the request and search fees <i>may</i> be applicable. Provide an estimate and obtain a commitment to pay fees.	Advise the requester that duplication fees are generally applicable and that search fees <i>may</i> be applicable. Provide an estimate and obtain a commitment to pay fees.	Advise the requester that duplication fees <i>may</i> be applicable. Provide an estimate and obtain a commitment to pay fees.

Exhibit 11.3.5-3 (10-18-2021)
Complete FOIA Searches

Commercial Use Requesters	“All Other ” Requesters	Representatives of the News Media, Noncommercial Scientific & Educational Institutions
<p>If <i>more than 5,000 pages</i> are necessary to respond to the request, the agency must:</p> <ul style="list-style-type: none"> discuss with the requester how to limit the scope of the request (or, make not less than 3 good-faith attempts to do so). <p>Once that outreach is completed, and the agency confirms that it provided timely written notice of unusual circumstances, with all the required elements, it may assess search fees in addition to duplication and review fees.</p>	<p>If <i>more than 5,000 pages</i> are necessary to respond to the request, the agency must:</p> <ul style="list-style-type: none"> discuss with the requester how to limit the scope of the request (or, make not less than 3 good-faith attempts to do so). <p>Once that outreach is completed, and the agency confirms that it provided timely written notice of unusual circumstances, with all the required elements, it may assess search fees in addition to duplication fees.</p>	<p>If <i>more than 5,000 pages</i> are necessary to respond to the request, the agency must:</p> <ul style="list-style-type: none"> discuss with the requester how to limit the scope of the request (or, make not less than 3 good-faith attempts to do so). <p>Once that outreach is completed, and the agency confirms that it provided timely written notice of unusual circumstances, with all the required elements, it may assess duplication fees.</p>
<p>If there are <i>5,000 pages or less</i> that are necessary to respond to the request, regardless of how long the search took, the prohibition on charging search fees applies.</p> <p>The agency may charge review and duplication fees, but not search fees.</p>	<p>If there are <i>5,000 pages or less</i> that are necessary to respond to the request, regardless of how long the search took, the prohibition on charging search fees applies.</p> <p>The agency may charge duplication fees, (after deducting 100 free paper copies (or the equivalent costs) and factoring in the \$25 threshold), but not search fees.</p>	<p>If there are <i>5,000 pages or less</i> that are necessary to respond to the request, the prohibition on charging duplication fees applies.</p> <p>No fees may be assessed for the request.</p>

