

State	Community name	County	Community No.	Effective date
Do	Lynn Haven, city of	Bay	120009	Do.
Do	Juna Beach, city of	Palm Beach	120208	Do.
Do	Unincorporated areas	Monroe	125129	Do.
Do	Unincorporated areas	Palm Beach	120192	Do.
Do	Unincorporated areas	Folk	120261	Do.
Do	Pomona Park, city of	Putnam	120418	Do.
Do	Sanibel, city of	Lee	120402	Do.
Do	South Daytona, city of	Volusia	120314	Do.
North Carolina	Caswell Beach, town of	Brunswick	370091	Do.
Do	Emerald Isle, town of	Carteret	370047	Do.
Do	Unincorporated areas	New Hanover	370168	Do.
Do	Indian Beach, town of	Carteret	470433	Do.
Do	Tabor City, town of	Columbus	370070	Do.
Do	Whiteville, city of	Columbus	370071	Do.
Do	Unincorporated areas	Pender	370344	Do.
South Carolina	Pendleton, town of	Anderson	450019	Do.
Do	Unincorporated areas	Pickens	450166	Do.
Do	Pickens, town of	Pickens	450168	Do.
Do	Pine Ridge, town of	Lexington	450136	Do.
Do	York, town of	York	450982	Do.
Tennessee	Lebanon, city of	Wilson	470286	Do.
Do	Unincorporated areas	Loudon	470107	Do.
Do	Unincorporated areas	Madison	470112	Do.
Do	Maryville, city of	Blount	475430	Do.
Do	Memphis, city of	Shelby	470177	Do.
Do	Milan, city of	Gibson	470060	Do.
Do	Millington, city of	Shelby	470178	Do.
Do	Unincorporated areas	Morgan	470130	Do.
Do	Monistown, city of	Hamilton	470070	Do.
Do	Unincorporated areas	Nashville-Davidson	470040	Do.
Do	Obion, town of	Obion	470253	Do.
Do	Rossville, town of	Fayette	470059	Do.
Do	Unincorporated areas	Shelby	470214	Do.
Do	South Fulton, city of	Obion	475440	Do.
Do	Trenton, city of	Gibson	470082	Do.
Do	Tullahoma, city of	Coffee and Franklin	470080	Do.
Do	Union City, city of	Obion	470142	Do.
Do	Watertown, city of	Wilson	470380	Do.

Issued: February 24, 1988.
 Harold T. Duryea,
 Administrator, Federal Insurance
 Administration.
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LEGAL SERVICES CORPORATION

45 CFR Part 1602

Procedures for Disclosure of Information Under the Freedom of Information Act

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises Part 1602 of the Legal Services Corporation's regulations, 45 CFR Part 1602, governing the disclosure of information under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552 *et seq.* First, these revisions implement the Freedom of Information Reform Act of 1986 ("Reform Act") Pub. L. 99-570, 100 Stat. 3207 (1986), which requires that each entity subject to the FOIA shall promulgate regulations containing a *schedule of fees* in accordance with the guidelines issued by the Office of Management and

Budget ("OMB"). Second, this proposed rule changes subsection (a)(6) of 45 CFR 1602.9 to give the Legal Services Corporation ("LSC" or "Corporation") greater discretion when making a determination whether to withhold law enforcement records in conformance with the Reform Act's revisions to subsection (b)(7) of the FOIA. Third, this proposed rule changes certain administrative provisions, such as the Corporation's address, and conforms the regulation to current Corporation policy that all FOIA requests are handled through LSC's headquarters in Washington, DC.

Congress has been given the fifteen-day notice required by Pub. L. 99-180, as incorporated in Pub. L. 99-591. This revision of Part 1602 will go into effect thirty days after publication in the Federal Register.

EFFECTIVE DATE: March 31, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy B. Shea, General Counsel, Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024-2751. (202) 863-1823.

SUPPLEMENTARY INFORMATION: Notice of the proposed changes to Part 1602 was published in the Federal Register on

May 21, 1987. See 52 FR 28176. The Corporation received three timely comments. The United States Department of Justice urged LSC to set forth in greater detail the procedures and standards to be used in making fee waiver determinations and provided a Fee Waiver Policy Guidance Memorandum ("Guidance") giving its interpretation of the new statutory fee waiver standard. A private citizens' organization specifically rejected the Justice Department's Guidance as being inconsistent with Congressional intent.

LSC has decided to include additional language in the fee waiver section in order to provide more specific guidance on the elements of the decision in passing on fee waiver requests. The additional language merely breaks down the statutory language into logical analytical steps to be taken when deciding whether to grant a fee waiver.

Other comments recommended departure from the definitions provided by OMB over a concern about possible inaccurate interpretations. The Corporation does not believe these concerns are sufficiently supported and will use the definitions proposed in OMB's guidelines.

Finally, the additional language also includes a provision clarifying that the fee waiver provisions are subject to appeal in the same manner as appeals from denials of records under § 1602.12.

Although under the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996 *et seq.*, the Corporation is not considered an agency of the Federal government, 42 U.S.C. 2996d(g), section 1005(g) of the Act provides that the Corporation, its officers and employees shall be subject to the FOIA. Pursuant to Pub. L. 99-570, section 552(a)(4)(A) of the FOIA now requires covered agencies to create fee schedules in conformance with guidelines promulgated by the Director of the OMB. Because the Corporation is subject to the FOIA, the final rule conforms the fee provisions to OMB's guidelines.

Section 1602(a)(6) of this regulation has been revised in accordance with the amendments made to section 552(b)(7) of the FOIA. Those portions of the new law which specifically address criminal law enforcement authorities have not been included in this proposed rule as they are not pertinent to the Corporation's work.

In 1976, the Corporation promulgated Part 1602 of its regulations to implement section 1005(g) of its Act. Some of the information contained in Part 1602, such as the Corporation's address, is no longer accurate. Changes such as these are also included in the revisions set forth below.

The major change in Part 1602 is the revision of the fee schedule to conform to the Reform Act and the guidelines issued by OMB. For the first time the FOIA establishes categories of requesting parties. The four groups of FOIA requesters are: (1) Commercial use requesters, (2) educational and non-commercial scientific institutions, (3) representatives of the news media, and (4) all other requesters. When determining a requesting party's proper category the Corporation shall look at the use to which a requester will put the documents. Requesters should reasonably describe the records sought and the use for which they are requested. The former fee schedule is changed to permit the Corporation to charge fees for document search, duplication and review for commercial use requesters. When requests are received from educational institutions, non-commercial scientific institutions, or news media representatives, the Corporation shall charge only for document duplication. For all other requesters, the Corporation shall charge for the costs of document search and duplication. The definitions of what constitutes "commercial users",

"educational institutions", "non-commercial scientific institutions", and "news media representatives" are contained in § 1612.2 of the text.

The new fee schedule sets forth corporate staff categories to reflect the direct labor costs attributable to a document search or review. Accordingly, definitions for "direct costs," "search," "duplication", and "review" have been added. In addition, this rule will permit the Corporation to charge for the cost of mailing FOIA responses. The costs incurred by the Corporation for the first two hours of search time and the first 100 pages of duplication will not be charged to the requesting party.

Fee waivers will be warranted if the requester can satisfactorily demonstrate that the disclosure of requested information is in the public interest because it is likely to significantly contribute to the public's understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

In order to determine whether disclosure is in the public interest, the Corporation will consider: (1) The subject of the request, (2) the informative value of the information to be disclosed, (3) the contribution to an understanding of the subject by the general public likely to result from disclosure, and (4) the significance of the contribution to public understanding. In order to determine whether disclosure is not primarily in the commercial interest of the requester, the Corporation will consider: (1) The existence of a commercial interest, and (2) the primary interest in disclosure.

The Corporation may require full advance payment of a fee if it is estimated to exceed \$250 or if the requester has failed to pay a previously owed fee in a timely manner. In addition, the Corporation may charge interest if a fee has not been paid within 31 days of dispatch of the FOIA response.

Section 1602.9(a)(6) has been changed to add a "reasonableness" test which the Corporation shall apply when making a determination whether to release law enforcement information. The requested information may be withheld if the Corporation determines that its disclosure could reasonably be expected to constitute an unwarranted invasion of privacy, disclose a confidential source, endanger the life or physical safety of any individual, or, in the case of law enforcement investigations, risk circumvention of the law.

In sum, the changes in this document are:

1. The Table of Contents of Part 1602 is revised by removing § 1602.6 entitled "Regional records room," to reflect the abolition of the Corporation's regional offices as a source of FOIA records. To avoid renumbering the remaining sections, § 1602.6 is reserved for future use.

2. Sections 1602.1 and 1602.2 are amended by removing the phrase "as amended in 1974" as unnecessary.

3. The definitions "Clerical", "Professional Support", "Professional Staff", and "Management" have been added to § 1602.2 to explain the categories used in the fee schedule set forth in § 1602.13.

4. The definitions "Commercial use request", "Educational institutions", "Non-commercial scientific institution", and "Representatives of the news media" have been added to § 1602.2 to reflect statutory changes made in the FOIA and to conform to the OMB guidelines.

5. The definitions in § 1602.2 have been arranged alphabetically for simplicity and the former alphabetical numbering system has been removed.

6. The reference to the regional office in §§ 1602.4 and 1602.7 have been corrected and in § 1602.6 have been removed to reflect the fact that all records requests are being processed in Washington, DC.

7. Section 1602.5(a) is revised to reflect the Corporation's new address.

8. Section 1602.9(a)(6) is revised to conform with § 1602(a) of Pub. L. 99-570 the Reform Act. Paragraph (b) of section 1602 of Pub. L. 99-570 is not included in these revisions because the Corporation has no involvement in criminal law enforcement proceedings.

9. Paragraphs (b) through (j) of § 1602.13 have been revised to implement section 1603 of the Reform Act in accordance with the OMB guidelines. Former paragraph (h) has been renamed paragraph (k).

For reasons set out above, Part 1602 of Title 45 of the Code of Federal Regulations is amended as follows:

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

1. The Table of Contents is revised to read as follows:

Sec.	Purpose.
1602.1	Purpose.
1602.2	Definitions.
1602.3	Policy.
1602.4	Index of records.
1602.5	Central records room.
1602.6	[Reserved]
1602.7	Use of records room.

/cc.

- 1602.8 Availability of records on request.
 1602.9 Invoking exemptions to withhold a requested record.
 1602.10 Officials authorized to grant or deny requests for records.
 1602.11 Denials.
 1602.12 Appeals of denials.
 1602.13 Fees.

2. The authority citation for Part 1602 continues to read as follows:

Authority: Sec. 1005(g), 42 U.S.C. 2906d(g).

§ 1602.1 (Amended)

3. Section 1602.1 is amended by removing the phrase "as amended in 1974."

4. Section 1602.2 is revised to read as follows:

§ 1602.2 Definitions.

As used in this part—

"Clerical" means secretaries and clerks.

"Commercial use request" means request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. When the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a specific category. If still in doubt, the Corporation will make the determination based on the factual circumstances surrounding the request, including the identity of the requester.

"Direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

"Duplication" means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

"Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or program of scholarly research.

"FOIA" means the Freedom of Information Act, 5 U.S.C. 552.

"Management" means unit managers, office directors, and corporation officers.

"Non-commercial scientific institution" means an institution that is not operated on a "commercial" basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

"Professional Staff" means assistants to directors, staff attorneys, monitoring analysts, auditors, and computer programmers/analysts.

"Professional Support" means administrative assistants and junior accountants.

"Records" means books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include *inter alia*, books, magazines, or other materials acquired solely for library purposes and available through any officially designated library of the Corporation.

"Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such

alternative media would be included in this category. In the case of "freelance" journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

"Review" means the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

"Search" means all the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The search should be conducted in the most efficient and least expensive manner. Searches may be done manually or by computer using existing programming.

§ 1602.4 (Amended)

5. Section 1602.4, is amended by removing the words "; and at each regional office" after "DC."

§ 1602.5 (Amended)

6. Section 1602.5(a), "Central records room," is amended by removing the phrase "733 Fifteenth Street, NW., Suite 700, Washington, DC 20005, (202) 376-5100" and substituting "400 Virginia Avenue, SW., Washington, DC 20024-2751, (202) 863-1820".

§ 1602.6 (Removed)

7. Section 1602.6, "Regional records rooms," is removed and reserved.

§ 1602.7 (Amended)

8. Section 1602.7(a), is amended by removing the words "or a regional" after the word "central." It is further amended by removing the words "; although persons wishing to make extended use of regional office facilities should take account of the possible limitations in these facilities" after the word "required".

9. Paragraph (a)(6) of § 1602.9 is revised to read as follows:

§ 1602.9 Invoking exemptions to withhold a requested record.

(a) . . .

(6) Records or information compiled for enforcing the Act or any other law, but only to the extent that the

production of such law enforcement records or information:

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

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

§ 1602.10 (Amended)

10. Section 1602.10 is amended by removing the words "each Regional Director, and each Regional Records Officer."

11. Paragraphs (b), (c), (d), and (e)(1) introductory text, and (e)(1)(i) through (iii) are revised; the introductory text of paragraph (e) is republished; (e)(1)(iv), (6) and (7) are added; (f) through (h) are revised and (i) through (k) are added, to read as follows:

§ 1602.13 Fees.

(b) Fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(c) Fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or non-commercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(d) For any request not described in paragraph (b) or (c) of this section, fees shall be limited to reasonable standard charges for document search and duplication.

(e) The schedule of charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Search for records and production of information is based on the following schedule of direct labor charges:

- (i) Clerical = \$2.77/quarter hour
- (ii) Professional Support = \$3.45/quarter hour
- (iii) Professional Staff = \$4.99/quarter hour
- (iv) Management = \$8.37/quarter hour

(6) Packing and mailing records: actual charges as incurred.

(7) Special delivery or express mail: actual charges as incurred.

(f) Documents shall be furnished without any charge or at a charge reduced below the fees established under paragraph (e) of this section if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government," the Corporation will consider the following four criteria.

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government;"

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

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

(2) In order to determine whether disclosure of the information "is not primarily in the commercial interest of the requester," the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(3) These fee waiver/reduction provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.

(g) No fee will be charged under this section—

(1) If the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(2) For any request described in paragraph (b), (c), or (d) of this section for the first two hours of search time or for the first one hundred pages of duplication.

(h) No requester will be required to make an advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion or the Corporation has determined that the fee will exceed \$250

(1) In the event that a requester has previously failed to pay a required fee (within 30 days of the date of billing), an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. The request will not deemed to have been received by the Corporation until such payment is made.

(2) In the event that the Corporation determines that an estimated fee will exceed \$250, the requesting party shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. The notification shall offer the requesting party the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet his needs at a reduced cost. The request will not be deemed to have been received by the Corporation until an advance payment of the entire fee is made.

(i) Interest will be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(j) If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Corporation shall aggregate such requests and charge accordingly.

(k) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requesting party or to require that

special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

Date: February 25, 1988.

Timothy B. Shea,

General Counsel.

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