

Billing Code 6820TD

ASSASSINATION RECORDS REVIEW BOARD

36 CFR Part 1410

Rules Implementing the Freedom of Information Act

AGENCY: Assassination Records Review Board

ACTION: Notice of Proposed Rulemaking (NPRM)

* * *

§ 1410.15 Requests for Review Board records available through the

Public Reading Room.

(a) A Public Reading Room will be maintained at the Review Board

headquarters and will be open between 10 a.m. and 4:30 p.m.,

Monday through Friday, except on Federal holidays. Documents may

be obtained in person from the Public Reading Room.

(b) The Public Reading Room records will include the following (if

and when such records are created):

(1) The Review Board's rules and regulations;

(2) Statements of policy adopted by the Review Board;

(3) Transcripts of public hearings;

(4) Review Board orders, decisions, notices, and other formal

actions;

(5) Copies of all unclassified filings, certifications, pleadings, Review Board records, briefs, orders, judgments, decrees, and mandates in court proceedings to which the Review Board is a party and the correspondence with the courts or clerks of court;

(6) Unclassified reports to Congress in which the Review Board's operations during a past fiscal year are described;

(7) Administrative staff manuals and instructions to staff to the extent that such manuals or instructions affect a member of the public;

and

(8) Indices of the documents identified in this section, but not including drafts thereof.

* * *

§ 1410.25 Requests for Review Board records not available through the Public Reading Room (FOIA Requests).

(a) Upon the request of any person, the Review Board shall make available for public inspection and copying any reasonably described Review Board record in the possession and control of the Review Board, but not available through the Public Reading Room, subject to the provisions of this part.

(b) A person may request access to Review Board records that are not available through the Public Reading Room by using the following procedures:

(1) The request must be in writing and must reasonably describe the Review Board records requested to enable Review Board personnel

to locate them with a reasonable amount of effort.

* * *

§ 1410.30 Request for waiver or reduction of fees.

(a) The Review Board shall collect fees for record requests made under § 1410.25 as provided in § 1410.35(b), unless the Review Board grants a written request for a waiver or reduction of fees. The Designated FOIA Officer shall make a determination on a fee waiver or reduction request within five working days of the request coming into her possession. If the determination is made that the written request for a waiver or reduction of fees does not meet the requirements of this section, the Designated FOIA Officer shall inform the requester that the request for waiver or reduction of fees is being denied and set forth the appeal rights under § 1410.45.

(b) A person requesting the Review Board to waive or reduce search, review, or duplication fees shall:

(1) Describe the purpose for which the requester intends to use the requested information;

(2) Explain the extent to which the requester will extract and analyze the substantive content of the Review Board record;

(3) Describe the nature of the specific activity or research in which the Review Board records will be used and the specific qualification the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;

(4) Describe the likely impact of disclosure of the requested records on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure;

(5) Describe the size and nature public to whose understanding a contribution will be made;

(6) Describe the intended means of dissemination to the

general public;

(7) *Indicate if public access to information will be provided free of charge or provided for an access or publication fee; and*

(8) *Describe any commercial or private interest the requester or any other party has in the Review Board records sought.*

(c) *The Review Board shall waive or reduce fees, without further specific information from the requester if, from information provided with the request for Review Board records made under § 1410.25, it can determine that 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.*

(d) *In making a determination regarding a request for a waiver or reduction of fees, the Review Board shall consider the following factors:*

(1) *Whether disclosure is likely to contribute significantly to public understanding of Government operations or activities, and*

(2) Whether the requester has a commercial interest and, if so, the extent of any interests and how they would be furthered by the disclosure of the requested Review Board records.

§ 1410.35 Fees for Review Board record requests.

(a) Fees for Review Board records available through the Public

Reading Room. Duplication fees charged shall be limited to the costs

of duplication of the requested Review Board records or the cost to

have them duplicated. A schedule of fees for this duplication service is

set forth at paragraph (b)(6) of this section. A person may also obtain

a copy of the schedule of fees in person or by mail from the Public

Reading Room.

(b) Fees for Review Board records not available through the Public

Reading Room (FOIA requests).

(1) Definitions. For the purpose of paragraph (b) of this section:

Commercial use request means * * *

Direct costs means * * *

Educational institution refers to * * *

Noncommercial scientific institution refers to * * *

Representative of the news media refers to * * *

(2) Fees

(i) If the Review Board determines that the documents are requested for commercial use, it shall charge the average salary rate, including benefits, for Review Board employees, for document search time and for document review time, in addition to the costs of duplication as established in the schedule of fees in paragraph (b)(6) of this section.

(ii) If documents are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the Review Board's charges shall be

limited to the direct costs of duplication as established in the schedule of fees in paragraph (b)(6) of this section. There shall be no charge for the first 100 pages of duplication.

(iii) For a request not described in paragraphs (b)(2)(i) or (b)(2)(ii) of this section the Review Board shall charge the average salary rate for Review Board employees (including benefits), for document search time, and the direct costs of duplication as established in the schedule of fees in paragraph (b)(6) of this section. There shall be no charge for document review time and the first 100 pages of reproduction and the first two hours of search time will be furnished without charge.

(iv) If the Review Board is asked by a requester to send Review Board records by special methods such as express mail, it may do so, provided that the requester pays for the express delivery service.

(v) The Review Board may assess charges for time spent

searching, even if it fails to locate the records, or if Review Board records located are determined to be exempt from disclosure.

(vi) Whenever the Review Board estimates that fees are likely to exceed \$25, it shall notify the requester of the estimated costs, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such a notice shall offer the requester an opportunity to confer with the Review Board personnel to reformulate the request to meet the requester's needs at a lower cost.

(3) Limitations on Fees. The Review Board, or its designate, may establish minimum fees below which no charges will be collected, if it determines that the costs of routine collection and processing of the fees are likely to equal or exceed the amount of the fees. If total fees determined by the Review Board for a FOIA request would be less than the appropriate threshold, the Review Board shall not charge the requesters.

(4) Payment of fees.

(i) Payment of fees must be by check or money order made payable to the U.S. Treasury.

(ii) Advance Payments.

(A) If the Review Board estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250, the Review Board shall notify such requester of the estimated cost and either require satisfactory assurance of full

payment where the requester has a history of prompt payment of fees, or require advance payment of the charges if a requester has no payment history.

(B) If a requester has previously failed to pay a fee in a timely fashion, the Review Board shall require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Review Board will begin to process a new request or pending request from that requester.

(C) When the Review Board requires advance payment under this paragraph, the administrative time limits prescribed in § 1410.40(b) will begin only after the Review Board has received the fee payments.

(5) Aggregation of Requests. Requesters may not file multiple requests, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Review Board reasonably believes that a requester, or a group of requesters acting in concert, is attempting to divide a request into a series of requests for the purpose of evading assessment of fees, the Review Board may aggregate any such requests and charge the requester accordingly. The Review Board shall not, however, aggregate multiple requests on unrelated subjects from a requester.

(6) Fee Schedule

Fees will be charged as provided below:

(i) Duplication of Review Board records. Review Board records will be duplicated at a rate of \$.10 per page, provided the Review Board staff duplicates the records. If the

Review Board determines that the duplication is so time-consuming that it must be sent to an outside duplication service, the requester will be charged the actual commercial rate.

(ii) Duplication of large documents. Large documents (e.g., maps, diagrams) will be duplicated at actual commercial rates.

(iii) Review. Review fees shall be assessed with respect to only those requesters who seek Review Board records for a commercial use, as defined in (b)(2)(i) of this section. For each hour spent by agency personnel in reviewing a requested Review Board record for possible disclosure, the fee shall be \$20.15 except that where the time of managerial personnel is required, the fee shall be \$47.40 for each hour of time spent by such managerial personnel.

(iv) Search. For each hour spent by administrative personnel in searching for and retrieving a requested Review Board record, the fee shall be \$14.75. Where a search and retrieval cannot be performed entirely by clerical personnel -- for example, where the identification of Review Board records within the scope of a request

requires the use of professional personnel -- the fee shall be \$20.15 for each hour of search time spent by such professional personnel. Where the time of managerial personnel is required, the fee shall be \$47.40 for each hour of time spent by such managerial personnel.

** * **