CHAPTER 2. PROCEDURES FOR HANDLING FREEDOM OF INFORMATION ACT REQUESTS

2-1 Who May Release Records

Records will only be released under the signature of the Director, Executive Secretariat, Headquarters, FOIA Officer or designee; and by Regional and Field Office officials or FOIA Liaison Officers, with the concurrence of the head of the relevant organizational unit, or his/her designee, with respect to records pertaining to programs or activities for which that organizational unit head has primary responsibility (24 CFR 15.51).

Note: "Freedom of Information Officer" in this handbook will refer to the Departmental Freedom of Information Officer, and FOIA Liaison Officers will refer to all program area and field office liaisons.

2-2 Access Offices

a. Compliance with the statutory requirements of the Freedom of Information Act (FOIA), with respect to initial requests, is the responsibility of the Departmental FOIA Officer, FOIA Liaison Officers in Headquarters program offices; and FOIA Liaison Officers in Regional and Field Offices. (See Chapter 3-1 regarding denials and Chapter 3-2 regarding appeals).

b. (Reserved)

c. Headquarters, Regional and Field Offices may provide access to, or may direct requests for published or publicly available information, such as handbooks, pamphlets, regulations, consumer information material, and news releases to the program area responsible for printing/publishing that information.

d. (Reserved)
Officers in the Regional and Field Offices are designated by Regional Administrators and Field Office managers, respectively. Regulation 24 CFR 15.32 does not designate "Freedom of Information" Officers, as such. The regulation refers to "information officers" who respond to Freedom of Information requests. Selected individuals in the field are to be designated as FOIA Liaison Officers for the purpose of the Freedom of Information Act. These individuals may or may not be FOIA Liaison Officers as a career field, but are asked to take on the additional duty of serving as FOIA Liaison Officers to handle Freedom of Information inquiries; and are entitled to an appropriate allowance of time to facilitate the Department's administration of the requirements of the Act.

b. Role of the FOIA Liaison Officer:

- Assure that FOIA requests are date-stamped on date of receipt and entered into ACORN;
- Clarify inconsistencies regarding the request prior to program area assignment, if possible;
- Establish due date of 10 federal working days from date of receipt of the request;
- Perform all tracking and monitoring of the request;
- Request or invoke extensions on the 10th day if response has not been prepared in accordance with extension guidelines at 24 CFR 15.42(e);
- Provide guidance to program areas in making determinations on responsive materials;
- Review responsive materials to determine accessibility;
- Review program area response for consistency, completeness and regulatory accuracy;
- Concur on final response; and
- Obtain signature/concurrence pursuant to current office procedure;
- Assess fees, send a billing statement and collect fees. See Chapter 2-7 regarding fees and interest charges.

2-4 Procedures for Requesting Records

a. Requests for records may be made by mail or in person during normal business hours. HUD's policy is that All
requests are to be submitted in writing to reduce ambiguity, allow for correct identification of documents, and facilitate the orderly processing of requests. Walk-in requests are permitted if they are in a written format.

b. Each request must reasonably describe the desired record by name, subject matter, number, or date, where possible, to facilitate prompt location of the record, and must contain an agreement to pay fees. Both the envelope containing the request and the letter of request should clearly indicate that it is a Freedom of Information Act request. This will ensure early processing of the request so that a response may be made within the time limitation. Requests for documents which are releasable under the FOIA will be processed as FOIA requests even when they are not clearly marked as such.

c. When a FOIA request does not reasonably describe the desired records, does not contain an agreement to pay fees, or outstanding fees are owed from the same person or organization, the FOIA Liaison in the field, or FOIA Officer in Headquarters will contact the requestor to resolve these requirements.

d. Under such circumstances, requests will not be processed further until these issues with the requestor are resolved. For processing purposes, FOIA's time limitations do not begin until the request is determined to be a proper FOIA request and reaches the appropriate FOIA Liaison Officer.

2-5 Instructions for FOIA Liaison Officers

a. All FOIA requests are received for processing by FOIA Liaison Officers in the field and the Freedom of Information Officer at Headquarters. Enter the requests into the Automated Correspondence On-Line Tracking System (ACORN), along with the due dates (as described in Chapter 2-6), program office having jurisdiction over the requested documents; and all other identifying information, i.e. name, address, organization of requestor, subject of request and any special handling instructions concerning the request.

b. FOIA Liaison Officers will provide to requestors records of the Department, according to their records retrieval procedures, which have been stored in the National Archives, or other record centers of the General Services
Administration. Liaison Officers are responsible for ordering these records from record centers if they are otherwise available under this part.

c. Every effort will be made to make a record available to a requestor when that record is in use by the staff of the Department, and such availability will be delayed only when necessary to avoid serious interference with the business of the Department.

d. The files must be purged of exempt material before outside inspection of requestors is allowed, and the requestor must be advised of the nature of the material which was withheld and exemptions asserted for their nondisclosure. These requestors must also be given their appeal rights.

e. Copies of a requested record need not be furnished if the record is published for public distribution, has been determined to be a "public document," or is available for purchase from the Superintendent of Documents of the Government Printing Office. The requestor shall be directed to the appropriate source for further information. (See Chapter 2-2(c))

f. The FOIA Liaison Officer receiving the request will direct the request to the office having jurisdiction over the requested documents or records. All offices handling FOIA requests will enter the request into ACORN and forward it to the office having jurisdiction over the requested documents or records. The initial receiving office will notify the requestor (in writing), that the date of receipt for processing under FOIA, is the same date it is received by the organizational unit having jurisdiction over the requested documents or records. The name of a contact person, and the address of the appropriate office to which the request is forwarded, will be included in the advisory letter to the requestor. These procedures should also be followed for misdirected requests.

g. Every effort shall be made by Departmental personnel to assist requestors in defining, identifying, or describing the records they are seeking. If a written request is unclear concerning the record sought, the requestor is to be contacted by telephone, if possible, for clarification. If the requestor cannot be reached by
telephone, he must be contacted by mail. Direct communication can help the requestor speedily obtain the records sought, and can also reduce the time and effort expended by Departmental personnel in searching for records that may not be the responsive records.

h. Field and Regional FOIA Liaison Officers are not required to provide to Headquarters copies of FOIA requests or responses.

2-6 Time Limits

a. The FOIA Liaison Officer has 10 federal working days after date of receipt of a FOIA request to make a determination whether to comply with such requests, and shall immediately notify the requestor in writing of such determination.

b. When a determination is expected to exceed 10 federal working days, an "extension" letter will be sent informing the requestor of the status of the request, with an explanation of the causative circumstances. (See Subpart c of this chapter.) Further delay in processing requires an additional letter informing the requestor of progress and an expected completion date.

c. This 10-day extension may be invoked in unusual circumstances when there is a need:

(1) to search for and collect requested records from field facilities or other establishments separate from the office processing the request;

(2) to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;

(3) for consultation with another agency or agencies having substantial interest in the determination of the request; or among two or more organizational units of the Department having a substantial interest in the subject matter of the request (24 CFR 15.42); otherwise

(4) an informal extension may be sought from the requestor, whereby the requestor agrees to expect a response to the request at some future date.
2-7 Fees

HUD's policy with regard to the payment of fees will be in accordance with the following fee schedules:

a. HUD will charge $0.10 per page for paper copies.

b. Documents which are computer generated will be assessed the following fees:

Programming Services $35.00 per hour
CPU Run Time $1.00 per minute

These costs include operator time, production of tape and paper.

c. HUD will charge $9.25 per hour for clerical and $18.50 per hour for professional search and review time.

d. HUD will charge actual cost for any other services such as duplicating microfiche, computer tapes, film, certifying copies, special mail delivery, etc.

e. To assess fees for searching and reviewing records, there are four categories of FOIA requestors: 1) commercial use requestors; 2) education and non-commercial scientific institutions; 3) representatives of the news media; and/1 4) all others. Specific levels of fees are prescribed for each category at 24 CFR 15.15, which also provides descriptions of categories of requestors.

f. Upon request, fees and charges may be reduced or waived if disclosure of the information is in the public interest; contributes significantly to public understanding of government operations or activities; and is not primarily in the commercial interest of the requestor. Indigence alone, without a showing of a public benefit, is insufficient to warrant a fee waiver. Six factors in 24 CFR 15.16 provide guidance regarding fee waiver and reduction.

/1 Applies to all requestors who do not qualify for the fees set forth in the preceding levels (5 U.S.C. 552(a)(4)(ii)(III))
g. HUD cannot require a requestor to make an advance payment before work is commenced unless it is determined that the allowable charges a requestor may be required to pay will exceed $250. Then HUD will notify the requestor and obtain an assurance of full payment, if the requestor has a history of prompt payment of FOIA fees. If the requestor has no history of payment or has previously failed to pay a fee in a timely fashion, HUD may require the requestor to pay the full amount owed plus any applicable interest. (24 CFR 15.18). In the event that advance or partial payment is required, HUD will collect at least one-third of the total fees.

h. Where it is anticipated that fees will exceed $25.00 and the requesting party has not indicated in advance a willingness to pay so high a fee, the requesting party will be promptly informed (may be contacted by telephone) of the amount of the anticipated fee or such portion that can be readily estimated. The notification shall offer the requesting party the opportunity to confer with agency representatives for the purpose of reformulating the request so as to meet that party's needs at a reduced cost.

i. No charge will be assessed when the cost over and above free search and reproduction totals no more than $5.00.

j. Payment can be made by U.S. money order, certified or personal check payable to the Treasurer of the United States. FOIA Liaisons in Field Offices shall remit payments promptly to the respective Office of Accounting for assessments of interest charges. Headquarters liaisons shall remit payments promptly to Executive Secretariat for submission to Office of Accounting. HUD will not accept cash as payment for FOIA fees.

k. Executive Secretariat will process all initial billings for requests received in Headquarters upon completion of each response prepared in Headquarters. FOIA Liaisons will process initial billing in the Regions upon completion of each response received in the Regions. The response will contain a breakdown of what charges are being billed, e.g., computer time, duplication fees, search and review fees. Thereafter, the Office of Finance and Accounting will begin assessing interest
charges on unpaid bills starting on the 31st day following the day on which the billing was sent, based on billing information provided by FOIA Liaisons. Interest will be at the rate prescribed in Section 3717 of Title 31 U.S.C. and will accrue from the date of the billing. "A requestor will be charged a minimum annual rate of interest on an outstanding debt on a U.S. Government claim owed that is equal to the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole percentage point." The Secretary of the Treasury publishes these rates before November 1 of that year. The rate is effective on the first day of the next calendar quarter. The Secretary of the Treasury may change the rate of interest for a calendar quarter if the average investment rate for the 12-month period ending at the close of the prior calendar quarter, rounded to the nearest whole percentage point, is more or less than the existing published rate by 2 percentage points. The interest rate to be paid by the requestor remains fixed at that rate for the duration of the indebtedness.

1. All Departmental fee schedules are subject to change upon proper notice.

m. (Reserved)