

§ 1184.2 What are IMLS's general policies with respect to FOIA?

(a) *Presumption of openness.* IMLS administers the FOIA with a presumption of openness. Under this presumption, IMLS makes discretionary disclosures of records whenever such disclosure would not foreseeably harm an interest protected by a FOIA exemption or otherwise be prohibited by law.

(b) *Records available at the IMLS FOIA Electronic Reading Room.* IMLS makes records available on its website Reading Room in accordance with 5 U.S.C. 552(a)(2), as amended, as well as other records that have been requested three or more times or that, because of the nature of their subject matter, are likely to be the subject of FOIA requests. IMLS establishes categories of records that can be disclosed regularly and proactively identifies and discloses additional records of interest to the public. To save time and money, and maximize efficiency, IMLS strongly urges individuals who seek information from IMLS to review documents available at the IMLS FOIA Electronic Reading Room before submitting a FOIA request.

(c) *Definitions.* For purposes of this part, IMLS adopts all of the terms defined in the Freedom of Information Act, and the OMB Guidelines, unless otherwise defined in this part.

(1) *Commercial use request.* A request by or on behalf of anyone who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation.

(2) *Direct costs.* Those expenses that IMLS actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16.1 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication.* The making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others.

(4) *Educational institution.* Any school that operates a program of scholarly research. A requester in this category must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research.

(5) *Fee waiver.* The waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a commercial interest.

(6) *FOIA Public Liaison.* An IMLS official who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of FOIA requests, and assisting in the resolution of disputes.

(7) *Non-commercial scientific institution.* An institution that is not operated on a “commercial” basis, as defined in paragraph (c)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and not for a commercial use.

(8) *Representative of the news media.* Representative of the news media is 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” 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 that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. “Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, agencies can also consider a requester's past publication record in making this determination. Agencies will advise requesters of their placement in this category.

(9) *Requester Category.* One of the three categories that IMLS places requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication, and include commercial requesters; non-commercial scientific or educational institutions or news media requesters, and all other requesters.

(10) *Review.* The examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. Review time includes all of the processing that is necessary to prepare any record for disclosure, including, as applicable, redacting portions of the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential business information submitter under § 1184.9 but it does not include time spent resolving general legal or policy issues regarding the applicability of exemptions.

(11) *Search.* The process of looking for and retrieving records or information responsive to a FOIA request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve information from both hard copy and electronic records.

(12) *Working day.* A regular Federal work day constitutes a working day. It does not include Saturdays, Sundays, or Federal holidays.

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