



June 2, 2020

The Honorable Paul J. Ray
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
via Regulations.gov

Re: Revisions to Uniform Freedom of Information Act Fee Schedule and Guidelines
85 FR 26499; Docket ID: OMB-2020-0004

Dear Administrator Ray:

On behalf of the undersigned library organizations, we appreciate the opportunity to provide comments on the proposed Revisions to Uniform Freedom of Information Act Fee Schedule and Guidelines (85 FR 26499). Access to information is a core value of the library community and our members have a high level of interest in the effective functioning of the Freedom of Information Act (FOIA). Librarians interact with FOIA in many ways, such as filing FOIA requests, assisting students and faculty in making such requests, and providing educational and training resources about the Act to help people make effective FOIA requests.

Our associations urge the Office of Management and Budget (OMB) to revise the proposed guidelines to clarify that librarians and other staff of educational institutions (such as colleges) qualify for the educational institution requester category. We are concerned that the proposed phrase “whether teachers or students” (86 FR 26500) could be read to exclude non-instructional staff of an educational institution, which would be in conflict with the statute. To accurately represent researchers that are eligible for the educational institution requester category, we suggest that OMB replace the phrase “teachers or students” with “faculty, staff, or students.”

The FOIA limits fees “when records 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.”¹ This provision creates an “educational institution requester” fee category for requesters at educational institutions who make requests for the purpose of scholarly research in connection with their role at their institutions. Such requesters include not only teachers, but also the institution’s library or research staff. For instance, University of Virginia School of Law librarian Jon Ashley has made FOIA requests while conducting research on the Justice Department’s use of non-prosecution agreements.²

¹ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

² See University of Virginia School of Law, “UVA Law Clinic Suit Prompts Justice Department to Release Non-prosecution Agreement,” March 10, 2014, *available at* https://www.law.virginia.edu/news/2014_spr/first_amendment_clinic_win.htm.

The legislative history makes clear that Congress did not intend to exclude non-teaching staff from the educational institution requester category. During the legislative debates, Senator Patrick Leahy, the sponsor of the bill amending FOIA to limit fees for educational institution requesters, stated: “A request made by a professor *or other member of the professional staff* of an educational or noncommercial scientific institution should be presumed to have been made by the institution.”³

Case law also indicates that eligibility for the educational institution requester category is predicated on the scholarly research purpose of the request in connection with the requester’s role at the educational institution, whether or not the requester is a teacher. The United States Court of Appeals for the District of Columbia Circuit has noted that FOIA “contemplates *researchers* at educational institutions seeking information from the Government” and that “the text of the statute refers to ‘educational institutions’ without drawing a line between teachers and students.”⁴ Neither does the text of the statute distinguish between teachers and other researchers at an educational institution.

For these reasons, we urge OMB to revise the proposed guidelines to clarify that librarians and other staff of educational institutions qualify for the educational institution requester category, in line with the statutory meaning and relevant case law. We suggest the following revision to Section 8b of the proposed guidelines (deletion in red strikethrough, insertion in blue underline):

To be eligible for inclusion in this category, requesters—whether ~~teachers~~ faculty, staff, or students—must show that the request is being made in connection with their role at the institution, and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

If you have any questions, please contact Gavin Baker at gbaker@alawash.org. Thank you for your consideration.

Sincerely,

American Association of Law Libraries
American Library Association
Association of Research Libraries

³ 132 Cong. Rec. 27190 (1986) (statement of Sen. Patrick Leahy) (emphasis added).

⁴ *Sack v. U.S. Dept. of Defense*, 823 F.3d 687, 691, 692 (D.C. Cir. 2016),