0301 OVERVIEW

This chapter establishes the Department of Veterans Affairs (VA) financial policies and procedures relating to the collection of fees associated with the implementation of the Freedom of Information Act (FOIA) (5 U.S.C. 552) which was enacted by Congress to give the American public greater access to Federal information. FOIA authorizes the release of Federal information, with some restrictions, from agency records, files, reports and other documents in VA’s custody.

030101 AUTHORITY FOR FOIA FEE COLLECTION. As authorized under 38 C.F.R. 1.555, VA will collect FOIA fees when the cost of collecting the fee is equal to or less than the fee itself.

030102 ACTIONS FOR FOIA FEE COLLECTION. VA will generally provide FOIA information to requestors before they are required to pay a fee, unless the anticipated fee is likely to exceed $250 or the requestor had previously failed to pay a FOIA fee in a timely manner. In the event of non-payment of a FOIA fee, the appropriate VA Finance Activity will establish an accounts receivable in the requestor’s name and implement collection procedures as authorized by VA regulations. VA may also waive collection of fees and adhere to a process on waiver requests that may lead to court proceedings. VA’s decisions concerning FOIA requests, including decisions relative to a FOIA fee waiver decision, are subject to the provisions of 28 U.S.C. 2401, which state that every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues.

0302 POLICIES

030201 AUTHORITY FOR FOIA FEE COLLECTION.

There is no initial fee to file a FOIA request. VA will establish FOIA-related fees to defray VA’s costs incurred in complying with a FOIA request and releasing material. In many requests made to VA, no fees are charged. In some cases, however, VA is entitled by law to charge certain fees depending on the requester (i.e., commercial, educational, news media, etc.).

030202 ACTIONS FOR FOIA FEE COLLECTION.

A. VA will determine whether a fee is to be charged for each FOIA request and will initially advise the requester of the estimated fee amount and ask the requester if he/she is willing to pay that amount.

B. VA will generally invoice the requester after disseminating the FOIA information, but may bill in advance under certain conditions. Each requester will also be informed that payment is due to VA within 30 calendar days. VA may also collect fees for the search of documents even when the information cannot be located or cannot be provided due to the nature of the information.
C. VA will initiate collection procedures against the requester if payment is not received within the 30-day period and advise the requester of his or her due process rights. Suspension of collection action will ensue on VA’s part if the requester seeks a waiver of the fee or disputes the debt and/or amount.

D. Upon collection, VA will promptly deposit the fees into General Fund Proprietary Receipts, Not Otherwise Classified, All Other (36_3220).

0303 AUTHORITY AND REFERENCES

030301 5 U.S.C. Section 552, Public Information - Agency Rules, Opinions, Orders, Records and Proceedings (also known as the Freedom of Information Act)

030302 28 U.S.C. 2401-16, Statute of Limitations - Time for Commencing Action against United States

030303 31 C.F.R. Parts 901-904, Federal Claims Collection Standards (Department of the Treasury–Department of Justice)

030304 38 C.F.R. 1.550–1.559 Release of Information from Department of Veterans Affairs Records Other than Claimant Records

030305 38 C.F.R. 1.900–1.995, PART 1—GENERAL PROVISIONS: Standards for Collection, Compromise, Suspension or Termination of Collection Effort and Referral of Civil Claims for Money or Property

030306 52 F.R. 10012 – Uniform Freedom of Information Act Fee Schedule and Guidelines, issued by OMB, March 1987

030307 Executive Order 13392, "Improving Agency Disclosure of Information"

030308 Presidential Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act, January 21, 2009

030309 United States Department of Justice Guide to the Freedom of Information Act

030310 Department of Veterans Affairs, FOIA Requester’s Reference Guide

030311 VA Directive 6300, Records and Information Management, dated February 26, 2009

0304 ROLES AND RESPONSIBILITIES

030401 The Assistant Secretary for Management/Chief Financial Officer (CFO) oversees all financial management activities relating to the Department’s programs and operations, as required by the Chief Financial Officers Act of 1990 and 38 U.S.C. 309.
Specific responsibilities include the direction, management and provision of policy guidance and oversight of VA’s financial management personnel, activities and operations. The CFO establishes financial policy, systems and operating procedures for all VA financial entities and provides guidance on all aspects of financial management.

030402 Under Secretaries, Assistant Secretaries, Chief Financial Officers, Fiscal Officers, Chief Accountants and other key officials are responsible for ensuring compliance with the policies and procedures set forth in this chapter.

030403 The Assistant Secretary for Information and Technology (OI&T) is VA’s designated Agency Chief FOIA Officer (ACFO), who monitors FOIA implementation throughout VA, recommends to the head of VA such adjustments to practices and policies as may be necessary and prepares reports on VA’s performance in implementing the FOIA.

030404 VA’s Records Management Service, a staff within OI&T, is responsible for implementing the provisions of Executive Order (EO) 13392 and the January 2009 Presidential Memorandum on FOIA throughout the agency, in conjunction with other VA offices that administer and manage FOIA requests.

030405 VA’s FOIA Requester Service Centers (RSC) and FOIA Public Liaisons assist FOIA requesters with inquiries about the FOIA process in general and their FOIA requests in particular. A listing of VA’s RSCs can be found on the VA FOIA home page, and the listing of FOIA Public Liaison Officers is posted at http://www.foia.va.gov/FOIA_Contacts.asp.

**0305 PROCEDURES**

**030501 AUTHORITY FOR FOIA FEE COLLECTION.** VA is authorized to collect FOIA fees in accordance with 38 C.F.R. 1.555 - Fees.

A. VA will charge fees in accordance with the category of requesters as follows:

1. For commercial use requests, VA will assess charges that will recover the full direct costs associated with the search, review and duplication of records. (Note: review fee applies only to this category of requester.)

2. For educational institution and non-commercial scientific institution requests, VA will assess charges for duplication only, and will not charge for the first 100 pages.

3. For a representative of the news media request, VA will also assess charges for duplication only, and will not charge for the first 100 pages.

4. VA will charge all other requesters who do not fit into any of the categories above search fees (2 hours free) and duplication fees (first 100 pages free).
B. VA will charge specific fees as authorized in 38 C.F.R. 1.555(e) and in accordance with the VA FOIA Requester’s Reference Guide.

030502 ACTIONS FOR FOIA FEE COLLECTION.

A. Upon receipt of a FOIA request, VA will advise the requester that he or she can specify how much they would be willing to pay or VA will prepare an estimate and notify the requestor. If the estimate is likely to exceed either $25 or the amount which the requester indicated a willingness to pay, VA will notify the requester of the estimated fee prior to doing the search and will provide the requester the opportunity to revise or clarify the FOIA request. If the requester agrees to pay the estimated fee, VA will process the request, disseminate the FOIA information if approved and invoice the requester, advising that payment is required within 30 days.

B. VA’s FOIA/Privacy Act Officers will send an invoice to the requester at the time the FOIA information is disseminated. If the requested information is not found, VA may still collect the FOIA fee to compensate for the search effort. VA may further collect FOIA fees when the records requested are found but cannot be disseminated because the records are related to the record types that can be withheld under any of nine exemptions or three law enforcement exclusions (e.g., national defense information). (Refer to Section IX in the linked reference, cited as 030310 above, for a list of all exemptions.)

VA will invoice and collect advance fees from requesters before processing the request, as described in the following circumstances:

1. The allowable charges that a requester may be required to pay are likely to exceed $250, or

2. The requester had previously failed to pay a FOIA request fee within 30 days of billing.

C. The applicable Finance Activity will initiate collection procedures against the debtor, as authorized by 31 C.F.R. Parts 901-904 and VA regulations 38 C.F.R. 1.900 et seq., after the initial 30 days allowed for making payment to VA. For more information on VA’s debt collection process, refer to Chapter 1, “VA Debt Collection Standards,” in this volume of VA’s financial policies and procedures.

1. VA will issue an initial demand letter advising the requester of his or her due process rights and the consequences of failure to pay the fee within 30 days of the date of the letter and establish an accounts receivable. The consequences of failing to pay may include an assessment for interest, administrative costs, penalties and other charges, and possible referral to credit reporting bureaus, private collection agencies and the Department of the Treasury for further collection action.
2. If the requester disputes the debt or requests a fee waiver or reduction, VA will suspend collection action from the requester until the dispute is resolved or a decision is made on the waiver or request for a fee reduction.

3. VA’s FOIA officer will immediately advise the applicable Finance Activity of receipt of any dispute or fee waiver request from the requester. Likewise, the Finance Activity will immediately advise VA’s FOIA officer of any dispute or waiver requests.

   a. VA will consider each request on a case-by-case basis. When a requester fails to provide sufficient information for VA to allow for a fee waiver decision to be made, VA may defer consideration of the request in order to allow the requester time to submit any necessary supplemental or clarifying information.

   b. VA will approve fee waivers where the requester can show the disclosure of the requested information is in the public interest and will contribute significantly to public understanding of the Federal Government’s operations and activities and is not primarily in the commercial interest of the requester.

D. VA will immediately deposit checks and money orders received for FOIA fees from the different categories of requesters as identified in 030202D above.

0306 DEFINITIONS

030601 Agency Records. Records that are created or obtained by an agency and are under agency control at the time of the FOIA request. The Supreme Court has articulated this basic, two-part test for determining what constitutes "agency records" under FOIA.

030602 Commercial Use Requests. A 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.

030603 Direct Costs. Direct costs means those expenditures which VA actually incurs in searching for and duplicating (and in the case of commercial use requests, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work, i.e., 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 of the facility in which the records are stored.

030604 Duplication. Process of making a copy of a document necessary to respond to a FOIA request. Copies can take the form of paper copy, microfilm or audiovisual materials (among others) and will be in a form that is reasonably usable by requesters.

030605 Educational Institution. 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 or an institution of vocational education that operates a program or programs of scholarly research.

030606 Non-commercial scientific institution. 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.

030607 Search. All time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Line-by-line search will not be done when duplicating an entire document is the least expensive and quicker method of complying with a request.

030608 Representative of the News Media. 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.

030609 Review. Process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing documents for disclosure, e.g., doing all that is necessary to redact those documents of exempt material and otherwise preparing them for release.

0307 RESCISSIONS
030701 VA Handbook 4800.16, Freedom of Information Act (FOIA) Fees

0308 QUESTIONS
Questions concerning these financial policies and procedures should be directed as shown below:

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<td>VAVBAWAS/CO/FINREP (Outlook)</td>
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<tr>
<td>All Others</td>
<td>OFP Accounting Policy (Outlook)</td>
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