



## § 5.3 Requirements for Making Requests

### Subsections (b) through (c)

Section 5.3 addresses DHS procedures for handling FOIA requests that do not reasonably describe the records sought. Subsection (b) after receiving a request, a component determines that it does not reasonably describe the records sought, the component should inform

the component *will* inform the requester what additional information agency officials do not simply close requests without any explanation or effort on the part of FOIA officials to clarify the request.

Subsection (c) requires that requests adequately describe the records sought, DHS may seek additional information from the requester. If the requester does not respond to the request for additional information within thirty (30) days, the request may be administratively

Similar to the prior subsection, s 100575004C-2400 i/UHM 5WLRsougdeafsimplougdeafsubsyet

This would add a new requirement to the test for expedited processing; adding a cumbersome requirement for a requester to establish that their primary professional activity or occupation is to disseminate information.

We support the recommendation, submitted by Michael Ravnitzky on July 31, 2015, to change the language in the proposed rule to

o \_\_\_\_\_-time member of the news media  
must establish that he or she is a person who is primarily engaged in disseminating information

## **§ 5.6 Responses to Requests**

In order to ensure greater access to information in the public interest, we recommend section 5.6 include additional information to conform to the Attorney \_\_\_\_\_ guidance<sup>2</sup> on the presumption of openness. We recommend this section include the following provision, based on the model civil society FOIA regulations,<sup>3</sup> updated by civil society experts in July 2014:

(3) When responsive records are located, we adopt a presumption of disclosure and openness. This means we evaluate records with a view toward what can be disclosed, rather than what can be withheld, and we will not withhold information simply because we can do so legally.

## **§ 5.11 Fees**

### **Subsection (e)(2)**

Section 5.11 includes a proposed change to paragraph (e) to improve clarity on fees that a non-commercial requester is required to pay. The section by section analysis of the proposed rule should clarify that this means that a non-commercial requester who refuses to pay any fees still gets two free hours of search time. There is disagreement between agencies as to whether or not this is the case, and the DHS should clarify its stance on this. To be clear, it is the position of the undersigned organizations that the FOIA statute clearly requires that non-commercial requesters be provided two free hours of search time even if they do not commit to paying any fees.

### **New Section: Categories of Exemptions**

We recommend the proposed rules incorporate a new section to the FOIA regulations on applying categories of exemptions to require DHS FOIA officers to consider the public interest

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<sup>2</sup> Office of the Attorney General, Memorandum for Heads of Executive Departments and Agencies, The Freedom of Information Act (FOIA), March 19, 2009: [http](http://www.foia.gov)

