

request was being rejected) and informing the submitter that the submitter shall have 5 business days from the date of the notice of proposed release to appeal that decision to the LSC President, whose decision will be final.

Under paragraph (d), the submitter's rights process will not apply if (1) LSC determines, upon initial review, that the information requested is exempt from disclosure; (2) the information has been previously published or officially made available to the public; or (3) disclosure of the information is required by statute (other than FOIA) or LSC regulations.

In addition, LSC is including provisions requiring that: (1) Whenever a requester files a lawsuit seeking to compel disclosure of a submitter's information, LSC will have to promptly notify the submitter; (2) whenever LSC provides a submitter with notice and opportunity to object to disclosure under this section, LSC will also notify the requester; and (3) whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, LSC will notify the requester.

LSC also adds a definition of the term "submitter" as that term is used in this section. The definition to be added at section 1602.2(k) would define "submitter" as any person or entity from whom the Corporation receives a grant application.

Authority To Defer Action Pending Receipt of Payment of Fees

Many, if not most, agency FOIA regulations contain a provision permitting the agency to suspend continuing work on any pending requests and appeals from requesters who are 30 or more days in arrears on FOIA fees which they have been charged. LSC regulations provide LSC with the authority to require anticipated fees for new requests be paid in advance for requesters with outstanding overdue bills, but do not expressly contain the authority to cease processing other existing requests, including appeals. Having this express authority would be helpful to the Corporation to avoid wasting resources on "nuisance" requesters who chronically have several requests and/or appeals pending before the Corporation at the same time, while being in arrears on properly assessed fees from prior requests to the Corporation. Accordingly, LSC proposed to add a new paragraph to section 1602.13, Fees, to provide for this authority. Specifically, the new language proposed would provide express authority to the Corporation to cease processing existing requests,

including action on appeals, from a requester who is more than 30 days late in paying a properly assessed FOIA fee.

LSC received three comments which generally supported the proposed new provision, but which requested that LSC clarify that the provision would not apply in circumstances in which a fee waiver decision remains in dispute through a properly filed and pending appeal or lawsuit. This was LSC's intent. Use of the phrase "properly assessed fee" in the preamble to the NPRM and "properly charged FOIA fee" in the proposed regulatory text was intended to convey this meaning. LSC is, however, happy to clarify that the phrase "properly charged FOIA fee" in the text of the regulation is intended to mean fees that have been fairly assessed and which are not the subject of a timely filed and pending appeal or lawsuit.

LSC adopts the new language as proposed. This new language appears as a new paragraph (j) and the current paragraphs (j), (k) and (l) are redesignated as paragraphs (k), (l), and (m), respectively.

Fee Waiver Criteria

Requesters of records under FOIA are generally expected to pay reasonable fees related to the processing of FOIA requests. However, the statute also provides for waivers or reductions of fees when certain enumerated criteria are met. Section 1602.13(f) of the current regulation restates the basic fee waiver criteria as set forth in the statute. By way of contrast, the Department of Justice (DOJ) FOIA regulations on fee waiver criteria are more detailed, providing more guidance, based on long standing case law in this area, on the meaning of each of the factors to be considered in assessing fee waiver requests. LSC believes it would be helpful to both LSC and requesters for the LSC FOIA regulations to provide additional guidance in this area. By having a better understanding of the criteria, requesters can better prepare fee waiver requests and there will be less opportunity for disagreements and confusion as to when a fee waiver or reduction is appropriate. LSC, accordingly, proposed to add language to each of the subparagraphs setting forth the factors upon which fee waiver determinations are made that provides a greater explanation of that factor.

LSC received four comments specifically addressing the proposed revisions to the fee waiver criteria. All of these comments supported the proposed clarifications, although one commenter also provided suggestions

for additional clarifications to the factors.

LSC proposed to add a sentence to subparagraph (i), which currently reads in its entirety "The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Corporation or Federal government," explaining that the subject of the requested records must concern identifiable operations or activities of the Corporation or the Federal government, with a connection that is direct and clear, not remote or attenuated. LSC received no objection to this proposed addition and LSC adopts the new sentence as proposed.(i)

The second factor currently reads, in its entirety, "The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of Corporation or Federal government operations or activities." LSC proposed to add language noting that the requested records must be meaningfully informative about government operations or activities in order to be likely to contribute to an increased public understanding of those operations or activities and that the disclosure of information that is already in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding where nothing new would be added to the public's understanding.

LSC received no comments objecting to the proposed additional language. One commenter suggested that LSC add additional language defining the terms "public domain" and "substantially identical form" as those terms are used in this section. Specifically, the commenter urges LSC define "public domain" as information that is "readily available" to the public and "substantially identical form" as excluding compilations or summaries of information that is in the public domain. Each of these proposals stem from case law interpreting the statute.

While LSC appreciates these suggestions, LSC does not believe it is necessary to define the terms "public domain" and "substantially identical form" in the regulation. LSC believes that these terms are reasonably straightforward. Moreover, in LSC's experience, requesters seeking fee waivers have not evinced much confusion about the meaning of these terms in making their fee waiver applications. LSC is interested in adding some additional language to the factors to aid requesters in understanding the fee waiver standards, but is also mindful