

that nearly every term in FOIA has case law interpreting its meaning. It would be difficult and, in some cases, inappropriate to attempt to distill all of the existing case law into regulatory language. Thus, while LSC does not take issue with the meanings the applicable case law has developed for those terms, LSC believes that the terms are sufficiently clear on their face as not to need additional regulatory definition. Of course, in applying the fee waiver standards, LSC is, and will continue to be, mindful of the interpretations of terms as set forth in the applicable case law.

The third factor currently reads:

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested records will contribute to "public understanding."

LSC proposed to provide additional guidance on the meaning of this factor by adding language explaining that: the disclosure must contribute to a reasonably broad audience of persons interested in the subject, as opposed to the personal interest of the requester; a requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered; and that it shall be presumed that a representative of the news media will satisfy this consideration.

LSC received no comments objecting to the proposed additional language. One commenter suggested that LSC add additional language defining the term "public" as including one or more segments of the public. LSC agrees that the term "public" in this instance may refer to a segment of the public, and not just to the public "at large," and intends that the regulation be understood to have this meaning. However, LSC believes that the addition of the phrase "reasonably broad audience of persons interested in the subject" conveys that meaning. Thus, LSC believes that the language, as proposed, is appropriate.

The fourth factor currently reads:

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of Corporation or Federal government operations or activities.

LSC proposed to include additional guidance in this factor that the public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure must be enhanced by the disclosure to a significant extent.

LSC received one comment in opposition to this language. The

commenter found the additional proposed language to be confusing and not helpful to clarifying the meaning of the factor. Alternatively, the commenter suggested that, if LSC were to leave the language in the regulation, that LSC include greater explanation in the preamble of the meaning of the additional language.

The proposed new language is intended to clarify that this factor is assessing whether the disclosure sought would be "significant" by comparing the likely level of public understanding of the subject matter of the disclosure as it exists at that moment to what the level of understanding would be after disclosure. LSC is not sure in what way this is confusing, but has no objection to providing additional explanation in the preamble if it will aid in understanding of the rule. Generally, the fourth factor examines whether the information that is the subject of the disclosure either has been so widely disseminated and publicized or is so lacking in substantial informative value, such that the disclosure of the information is not likely to add any new perspective or facts (or the like), as to increase the public's understanding of the subject.

Section 1602.13(f)(2) sets forth the factors used by LSC to determine whether disclosure of the information is not primarily in the commercial interest of the requester. The first factor currently reads:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.

LSC proposed to add a sentence to this subparagraph explaining that LSC shall consider any commercial interest of the requester (with reference to the definition of "commercial use" in this Part) or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. LSC received no comments objecting to the proposed additional language.

The second factor reads:

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily" in the commercial interest of the requester.

LSC proposed to add language specifying that a fee waiver or reduction is justified where the public interest standard is greater in magnitude than that of any identified commercial interest in disclosure and that LSC ordinarily shall presume that where a

news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. That is, if the public interest standard has been satisfied, the fact that a news media requester has a commercial interest (*i.e.*, in selling newspapers, etc.) will not ordinarily serve to prevent that requester from getting a fee waiver or reduction. LSC further proposes to add language providing that disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed primarily to serve a public interest. LSC received no comments objecting to the proposed additional language.

In each of these cases, the language proposed to be added is consistent with the current regulations and LSC practice, FOIA case law and government-wide FOIA practice. As noted above, LSC believes the additions will aid in public understanding of the meaning and application of the fee waiver criteria. Accordingly, LSC adopts the new language on the fee waiver standards as proposed.

Three of the commenters also suggested that LSC should generally grant fee waivers in connection with most, if not all, requests received from the legal services community. One of these comments further suggested that LSC formally adopt language providing a blanket fee waiver to all requests from grantees.

LSC is authorized and required to provide fee waivers in accordance with the standards set forth in the FOIA. The statutory standards require fee waiver determinations to be made on a case-by-case basis in reference to the enumerated fee waiver criteria. As such, for LSC to either incorporate into the regulations or even adopt an informal policy to grant a blanket fee waiver policy in connection with requests from grantees or others in the legal services community would exceed LSC's authority under FOIA. LSC will continue, as it has always done, to consider requests individually and grant fee waivers and/or assess fees as required by the statute.

#### Miscellaneous Amendments

There are several instances throughout the regulation where the regulation makes reference to the "Office of the General Counsel." The Office of the General Counsel was renamed the Office of Legal Affairs in 1999. LSC, therefore, proposed to substitute the name "Office of Legal Affairs" for "Office of the General Counsel" each time it appears in