


**AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.**

**ASAP FOIA/Privacy Act
Training Workshop
Chicago, Illinois
September 2019**

**FEE CATEGORIES
AND
FEE WAIVERS**

Marianne Manheim, HHS/NIH
Ryan Mulvey, Cause of Action Institute

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.



**AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.**

Learning Outcomes

- Gain basic knowledge of the FOIA fee structure
- Be able to apply requester fee categories
- Be able to apply public interest fee waiver criteria
- Be able to apply 2007 Open Government Act and 2016 FOIA Improvement Act fee assessment restrictions
- Learn other “administrative tips” for keeping the FOIA process moving

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Sources of Fee & Fee Waiver Guidance

- Office of Mgmt. & Budget, *Uniform Freedom of Information Act Fee Schedule and Guidelines*, 52 Fed. Reg. 10,012 (March 27, 1987)
 - In the FOIA Reform Act of 1986, Congress directed OMB to provide government-wide fee guidance and a uniform schedule of fees. Each agency promulgates its own regulations in accordance with those guidelines and OMB's fee schedule is binding. See 5 U.S.C. § 552(a)(4)(A)(i).
 - But the OMB guidelines have never been updated and, in some instances, they have been superseded by statute or modified by judicial opinion.
 - E.g., Open Government Act of 2007's definition of a "representative of the news media" vice OMB's "organized and operated" standard
 - E.g., "Students" and "educational institutions," *Sack v. Dep't of Def.*, 823 F.3d 687 (D.C. Cir. 2016)
 - Ongoing APA lawsuit to update guidelines: *Cause of Action Inst. v. Office of Mgmt. & Budget*, No. 17-2310 (D.D.C. filed Nov. 2, 2017)
- Your Agency Regulations
- OIP Fee Guidance
- DOJ Guide to the Freedom of Information Act
- FOIA Counselor Hotline: (202) 514-3642 (FOIA)

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

General Points to Keep in Mind

- The FOIA's legislative history suggests that Congress did not intend for fees to be a barrier to public access to agency records.
- Communication is key. Resolving fee issues—such as seeking clarification from a fee waiver applicant—requires agency-requester collaboration.
- When in doubt, consult the available guidance.

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

Four Types of Fees

- **Statutorily Authorized, 5 U.S.C. § 552(a)(4)(ii)(I)(III)**
 - **“Search” Fees:** All time spent searching for responsive records (including electronic searches); can be charged even if no records are located
 - **“Review” Fees:** All time spent reviewing potentially responsive records to determine whether they can be released, including the time necessary to prepare their release
 - **“Duplication” Fees:** The per-page cost of the records being released; often negated by electronic production.
- **Authorized by the OMB Fee Guidelines**
 - **Cost Recovery for “Special Services”:** Special mailing costs, certification, unusual document size, microfiche, etc.



These slides are copyrighted by ASAP. Information contained in the slides is for public use.

Three Types of Requesters

- **Commercial-Use Requesters**
Seek information that furthers commercial, trade, or profit interests
- **“Favored” Requesters**
Educational institutions, non-commercial scientific institutions, and representatives of the news media
- **“All Other” Requesters**
Those not classified by one of the above two categories (primarily consumers)



These slides are copyrighted by ASAP. Information contained in the slides is for public use.

Who Pays What?

	<u>Search</u>	<u>Review</u>	<u>Dup.</u>
Commercial Use	Yes	Yes	Yes
“Favored”	No	No	Yes*
All Others	Yes**	No	Yes*

- “Favored” and All Others requesters receive the first 100 pages of duplication free of charge
- ** All Others requesters receive the first two hours of search free of charge per component.



These slides are copyrighted by ASAP. Information contained in the slides is for public use.

Statutory Entitlements

Except for commercial-use requesters, agencies must provide the first 100 pages of duplication for free and the first two hours of search for free



These slides are copyrighted by ASAP. Information contained in the slides is for public use.

Statutory Entitlements

Note: These two provisions work together. So, except for commercial-use requesters, agencies should not begin to assess fees until *after* they provide the free search time and free pages, and determined whether the assessable fees that remain exceed the agency's threshold amount for charging fees. Only then would fees be assessed.



These slides are copyrighted by ASAP. Information contained in the slides is for public use.

Determining Requester Fee Category

- Generally, the appropriate fee category is based on the requester's *intent* (or *purpose* or *use*) in seeking records, not the requester's *identity*.
 - E.g., a commercial-use requester "seeks information for a use or purpose the furthers [his] commercial, trade, or profit interests[.]"
 - E.g., "educational" requester "seek[ing] the information in connection with his or her role at the educational institution."
- But sometimes the focus *should* be on a requester's *identity*.
 - E.g., non-commercial scientific institutions must be "operated solely for the purpose of conducting scientific research not intended to promote any particular product or industry."
 - E.g., "representative of the news media" does not depend on the particular records at issue, or the intended use, but instead on the requester's "track record."

Implications:

- Assignment to a fee category is hardly static; a requester is never one fee category by default. In instances where a case-by-case approach is inappropriate (e.g., news media), a requester's identity could change such that it no longer qualifies.
 - May require confirmation or clarification with the requester (phone, email)
- Administrative record is vital, particularly when determining that a requester is in a category other than what the requester claims.



These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Representative of the News Media

The FOIA defines the term “representative of the news media”:

- “[A]ny 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.”
 - Includes online publications
- “‘News’ means information that is about current events or that would be of current interest to the public.”

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Representative of the News Media

Examples of news-media entities:

- Television/radio stations broadcasting to the public
- Publishers of periodicals (only if such entities qualify as disseminators of “news”) who make their products available for purchase, subscription, or free distribution to the general public
- As methods of news delivery evolve (i.e., the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities.
 - **NB: The possible difficult of dealing with “nascent” news media requesters**

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Representative of the News Media

A freelance journalist is regarded as working for a news-media entity, if (s)he can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. Consider:

- Publication contract
- Past publication record of the requester in making such a determination

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Representative of the News Media

Determining Media Status

Look at the requester's overall activity!

- Does it *gather* information of potential interest to a segment of the public?
 - Not request specific.
 - Consider examining an organizational requester's mission statement. How does it describe itself?
- Does it *use editorial skill* to turn raw material into distinct work?
 - Need not gather information from multiple sources.
 - Use of FOIA-requested documents is acceptable.
 - Must be *new* and *substantive* content.
- Does it *disseminate* that work to an audience?
 - Method of dissemination (*i.e.*, blogs, social media) is not a determining factor, and neither is size of audience.


asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Representative of the News Media

Plaintiffs found not to qualify for media status

- **Freelance journalist & publisher of a website**
Brown v. U.S. Patent & Trading Office, 445 F. Supp.2d 1347 (M.D. Fla. 2006) – no evidence of employment by news organization or evidence that he was “freelance” journalist as defined in agency’s regulations; no demonstration of firm intention of creating or publishing an original work
- **Accuracy in Media, Inc. & author of single magazine or newspaper article**
Hall v. CIA, No. 04-0814, 2006 WL 197462 (D. D.C. Jan. 26, 2006) – as to corp., lack of evidence in the administrative record; as to individual, plaintiff’s endeavors — research contributions, email newsletters, and a single article — more akin to a those of a middleman or information vendor
- **ACLU-NC**
ACLU of N. Cal. v. DOJ, 2005 U.S. Dist. LEXIS 3763 (N.D. Cal. Mar. 11, 2005). The court “agreed with agency that while dissemination of information may be a main activity of ACLU-NC, there is no showing that it is **the** main activity”


These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.


Representative of the News Media

Plaintiffs found to qualify for media status

- **National Security Archive**
Nat'l Sec. Archive v. DOD, 880 F.2d 1381 (D.C. Cir. 1989) – plans to publish “document sets” that will index and cross-reference records in a particular subject
- **Center for Public Integrity**
Ctr. For Public Integrity v. HHS, No. 06-1818, 2007 WL 2248071 (D.D.C. Aug. 3, 2007) – staff comprised of investigative journalists, demonstrated past journalistic record
- **Electronic Privacy Information Center (EPIC)**
Elec. Privacy Info. Ctr. v. DOD, 241 F.Supp.2d 5 (D.D.C. 2003) – publishes and prints book on a wide range of privacy issues, gleans information from a wide variety of sources, published a biweekly electronic newsletter distributed to 15,000 readers

Cause of Action

- *Cause of Action v. FTC*, No. 799 F.3d 1108 (D.C. Cir. 2015) -- furnished materials with substantive or editorial comments to newspapers that have used them, even though it does not gather materials “from a range of sources”; its “newsletters, press releases, press contacts, a website, and planned reports □ must be considered in combination” on question of whether it distributes news


These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Representative of the News Media

OMB Guidelines provide that a request from a representative of the news media that supports a news-dissemination function “shall not be considered to be a request that is for a commercial use”


asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Examples

- Attorney requesting records on behalf of his client, a newspaper reporter. Request seeks records re a story the reporter is writing and has claimed “favored” status for fee purposes. The existence of the attorney-client relationship, even if that relationship is commercial, does not make the request commercial. The fee category is determined by the client.
- Requester, an attorney representing a company, seeks records to enhance prospect of the company securing a contract. Fee category is determined by looking at the client’s intended use of the documents. The client’s intended use would constitute a “commercial use.”

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.




AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Fee Assessment Considerations

Threshold

- Remember requirement to provide first 100 pages and first two hours of search time without cost for non-commercial use requesters.
- No fee may be charged if the Government's cost of collecting and processing the fee is equal to, or will exceed the amount of the fee itself
- Each agency establishes in its regulations the threshold amount for charging a fee (check your agency regs!); DOJ's regulations provide a threshold of \$25.00

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.



AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Advance Payment

If a fee estimate exceeds \$250, or if a requester has previously failed to timely pay a properly assessed fee, an agency can require advance payment of the fee before it proceeds.

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Agreement to Pay Fees

If an estimated fee is less than \$250, an agency should get an agreement from the requester in writing to pay the estimated fees

Note: Estimated fees should not be used to discourage requesters from exercising their access rights under the FOIA

Requester Notice: An agency should never accrue fees greater than those the requester has already paid, or agreed to pay (consult w/ requester)


asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Payment Before Delivery of Records

- In cases where no advance payment was made, and the requester agreed to pay fees up to a certain amount, upon completion of the processing of the records, but before their actual delivery of the records to the requester, the agency may require payment.
- Prior to mailing the processed records to the requester, the agency can provide the requester with the fee assessment, and then upon receipt of the fee, release the processed records.

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.




AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Aggregation

If an agency reasonably believes a requester, or group of requesters, is attempting to divide a request into a series of requests for the purpose of avoiding the assessment of fees, the agency may aggregate those requests and charge accordingly

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.



AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Additional Fee Considerations

- An agency should never accrue fees greater than those the requester has already paid or agreed to pay without notifying the requester, *etc.*
- Superseding fee statutes
- Charging interest on unpaid bills
- Contracting out services
- Other charges for “special” services: done at the discretion of the agency (special mailing, oversize copies, fiche, certification, *etc.*)
- Communication with requests is *vital*.

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Limitations on Assessing Fees

- After the FOIA Improvement Act of 2016, the statute contains more specific limitations on how and when agencies can charge fees.
 - When an agency fails to comply with time limits, no **search** fees may be charged to “commercial-use” or “other” requesters, and no **duplication** fees may be charged to requesters in preferred fee categories.
- But there are three exceptions to the general rule that allow an agency still to assess fees.

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Exception One – Exceptional Circumstances

- The prohibition on charging certain fees can be excused whenever “exceptional circumstances” apply.
- “Exceptional circumstances” are undefined in the statute, but they require a judicial finding and involve a court excusing an agency’s failure to provide a timely response for a court-determined period of time.
- “Exceptional circumstances” cannot arise from “delay that results from a predictable workload of requests . . . Unless the agency demonstrates progress in reducing its backlog of pending requests.” 5 U.S.C. § 552(a)(6)(C).

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Exceptions to the Rule Against Assessing Certain Fees

“Exceptional circumstances” occur only if:

- The agency has a backlog of pending requests *and*
- The agency is making reasonable progress in reducing that backlog, *or*
- The agency’s backlog is not due to a predictable workload of requests

In such situations, the exception to the rule against assessing search fees (or, if applicable, duplication fees) is met, & the agency is not precluded from assessing such fees.

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Exceptions Two and Three – Unusual Circumstances

- The other two exceptions apply independently of litigation whenever an agency determines that “unusual circumstances,” as defined under the FOIA, apply and the agency has provided timely written notice to the requester.
- “Unusual circumstances” include:
 - Need to search for and collected records from multiple offices
 - Need to search for, collect, and examine voluminous records
 - Need for consultation with another agency having a substantial interest in the determination or the request or among multiple agency components
- “Timely written notice” means contacting the requester within twenty working days of receipt of the request.
- “Unusual circumstances” grants the agency an additional ten days to issue a determination. “Exception Two” only applies when an agency meets this extended deadline, otherwise the agency must turn to “Exception Three.”
- “Exception Three” is based on the number of pages that need to be reviewed in order to process a request.
 - It only applies when *more than 5,000 pages* are at issue and all of the required notifications have been made.
 - Additionally, the agency must provide the requester with an opportunity to narrow the request or arrange for an alternative time for processing, and recommend the availability of the FOIA Public Liaison and OGIS. Narrowing can be discussed by telephone, written mail, or email. The agency must make at least three good-faith attempts to reach the requester.

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

Applying the “Unusual Circumstances” Exceptions

Agencies will be unable to charge certain fees if they fail to provide a timely determination and:

- The requester seeks a small volume of records
- The requested records are readily located within the office that is processing the request, and
- There is little or no need to consult with other entities

If “Exception Three” does not apply, an agency must either comply with the FOIA’s standard twenty-day time limit or, if “unusual circumstances” apply, the thirty-day time limit. If they do not, there is a consequence: the agency will not be able to assess search fees (or, if applicable, duplication fees).



These slides are copyrighted by ASAP. Information contained in the slides is for public use.

Some Clarifying Hypotheticals

Question: What if the requester is a “commercial use” requester? Can “review” fees still be assessed even if no search fees can?

Answer: Yes. The fee limitation pertains to the charging of *search* fees. Commercial use requesters will still be subject to *duplication* and *review* fees.

Question: What if the requester is an “other” requester? Can duplication fees still be assessed, even if no search fees can?

Answer: Yes. The limitation on charging fees for such requesters pertains to *search* fees. *Duplication* fees can still be assessed.



These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

Litigation Considerations

- A requester's failure to comply with the FOIA's fee provisions, such as failing to pay an estimated fee, or failing to appeal an adverse fee determination, will generally constitute a failure to exhaust administrative remedies.
 - This is why it is especially important for an agency to communicate its fee determinations!
- A requester's obligation to pay fees does not technically cease after litigation has been initiated

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

FOIA Costs v. Fees Collected

Note: Absent statutory authority to the contrary, fees collected through the FOIA are deposited in the U.S. Treasury

- In FY2016, the government **expended an estimated \$478 million on FOIA-related activities**
- Approximately **\$4 million was recouped** through the collection of FOIA fees
 - That's less than 1% of the costs


asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

FEE WAIVERS UNDER THE FOIA

The Statutory Standard

“Documents shall be furnished without any charge [or at a reduced rate] . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”


 These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

FEE WAIVERS UNDER THE FOIA


A. General & Procedural Considerations

I. Preliminary Questions

- a. Are there responsive records?*
- b. Are there assessable fees?*
- c. Has a fee waiver been requested?*

I. Preliminary questions.

a. Are there responsive records?
 b. Are there assessable fees?


 These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF ACCESS PROFESSIONALS, INC.

FEE WAIVERS UNDER THE FOIA

A. General & Procedural Considerations (cont'd)

2. Timing Issues:

Q: When should a fee waiver be evaluated?

A: Agreements to pay pending fee waiver determination (no waiver of appeal rights), or at the outset, (including whether there are applicable exceptions)

Q: How much time does an agency have to evaluate a fee waiver request?

A. Implied by the statute

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF ACCESS PROFESSIONALS, INC.

FEE WAIVERS UNDER THE FOIA

A. General & Procedural Considerations (cont'd)

3. How should a belated fee waiver request be handled?

- a. Case-by-case determinations
- b. The burden-of-proof
- c. Insufficient information
- d. Focus on the releasable records

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF ACCESS PROFESSIONALS, INC.

FEE WAIVERS UNDER THE FOIA

A.3. General & Procedural Considerations (cont'd)

- e. The effect of indigence on entitlement to a waiver
- f. Administrative record / Appeal rights
- g. Standard of review and the scope of review

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF ACCESS PROFESSIONALS, INC.


FEE WAIVERS UNDER THE FOIA

C. Applying The Standard

First Criterion: Does the subject of the request concern identifiable operations or activities of the government? Is the connection clear and not remote?

Second Criterion: Is disclosure likely to contribute to an public understanding of government operations or activities? What is the degree to which “understanding” will be advanced by seeing the information? To what extent will the “public” have access to the information?

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.




AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

FEE WAIVERS UNDER THE FOIA

Further Notes on the Second Criterion

- The information requested must be a meaningful addition to the information already in the public domain. The fact that a document is technically public, however, does not necessarily mean that the second criterion is not met.
- Will the requester dissemination to a reasonably broad audience of interested persons?
 - The requester need not prove the ability to disseminate to a broad cross-section of the public.
 - Also, requesters need not identify several methods of dissemination.
- Other relevant considerations include the requester's expertise, as well as its *intent* and *ability* to convey information to the public.
- Representatives of the news media are generally presumed to satisfy this criterion.
- Advocacy and non-profit organizations (which are not already news media requesters) also can satisfy this criteria if they plan to disseminate to further the public interest.

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.



AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

FEE WAIVERS UNDER THE FOIA

Third Criterion: Is disclosure of the requested information not primarily in the commercial interest of the requester?

- Does the requester even have a commercial interest, i.e., an interest that furthers a commercial, trade, or profit motive of the requester?
- A requester who will benefit alone is ineligible. But the mere existence of commercial interest is not disqualifying. The third criterion is met so long as the contribution to public understanding outweighs any commercial interest.
- It is safe to presume that news media requesters will meet this criterion.
- Data brokers or others who merely compile and market government information for direct economic return are less likely to serve the public interest.

asap These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

FEE WAIVERS UNDER THE FOIA

D. Sources of Authority/Guidance

1. 5 U.S.C. § 552(a)(4)(A)
2. Agency Regulations
3. Case Law
4. 2017 DOJ Fee Guidance
5. OGIS 2017 Fee Guidance
6. 1987 OMB Fee Schedule and Guidelines
7. FOIA Improvement Act of 2016

asap

These slides are copyrighted by ASAP. Information contained in the slides is for public use.
6. DOJ Guide to the FOIA

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

SCENARIOS

- You receive a request from a Georgetown Law Student who cites their participation in a Legal Aid Clinic. How should you classify this requester?
- You receive a request from an attorney in a civil suit, who wants files related to an investigation your agency conducted. How should you classify this requester?
- You receive a request from an individual who is conducting research on their family tree. How should you classify this requester?

6. DOJ Guide to the FOIA


asap

These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

SCENARIOS – Part II


- A requester, using an educational email address, asks for historic files about a naval exercise from the 1980s. They ask for an educational requester fee assessment, but don't provide any other evidence of their educational status beyond stating that they are enrolled in a undergraduate college program. How should they be classified?
- A requester, using a third-party email account that is not tied to a news organization, requests information on the expenditures of a federal program. They indicate that they are a media requester, and include links to articles they have recently written on another topic. They state that they will report on the results of these documents.
- A requester asks for a database detailing oversight actions regarding a federal program. They ask for a fee waiver, but do not provide a justification beyond stating that the material is in the public interest, and note that they will be posting the information on their website, which is free to access but contains advertising. The website does not provide analysis of the documents.


6. [DOJ Guide to the FOIA](#).
These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

SCENARIOS – Part III

- You received a request on March 1, 2016. The request, which was filed by a well-known journalist, is quite broad, implicating at least 8,000 pages of documents – some of which are located offsite. On March 5, you attempt to reach out to the requester to get her to narrow the request, but are unable to reach her. Despite this, the processing of the request is not completed until March 27, 2016. Can you still charge fees?


6. [DOJ Guide to the FOIA](#).
These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

SCENARIOS – Part IV

- You received a request on June 1, 2016 from a medical device company seeking information on your agency's investigation of a competitor company. The request implicates 15,000 pages of documents. On June 15, 2016, you send a letter to the requester informing him of the unusual circumstances. During June you reach out to the requester three times to suggest narrowing the request. You reach him, but he is not receptive and refuses to narrow. Despite your agencies best efforts, the processing of the request is not completed until July 27, 2016. Can you still charge fees?

These slides are copyrighted by ASAP. Information contained in the slides is for public use.

AMERICAN SOCIETY OF
ACCESS PROFESSIONALS, INC.

SCENARIOS – Part V

- You receive from an individual who provided the following statement to justify a request for a fee waiver:
 - I feel that this information (correspondence between a Congressional Rep and your agency on any topic addressed in the agency's Strategic Plan) is of public interest because it is important for the public to know what types of correspondence is exchanged between public officials and cabinet level Federal agencies.
- Is this a compelling argument as defined by the statute?

These slides are copyrighted by ASAP. Information contained in the slides is for public use.