

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-166506

DATE: OCT 20 1975

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MATTER OF:

Retention of fees received by EPA contractors
providing information services to the public.

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DIGEST:

Environmental Protection Agency is not precluded from offering those requesting information from it pursuant to Freedom of Information Act the alternative of dealing directly with contractors EPA uses to process, store and retrieve its information, provided Freedom of Information requirements are not thereby avoided. Contractors filling such requests for information are acting as independent entrepreneurs and not agents of EPA, and are entitled to assess and retain fees charged for services rendered.

This decision to the Administrator, United States Environmental Protection Agency (EPA) is in response to a request from Alvin L. Alm, Assistant Administrator for Planning and Management, EPA, for our views concerning the propriety of a procedure which EPA desires to use in furnishing to non-Federal requesters, environmental-related information which is stored in information-handling systems operated by EPA contractors.

EPA states that it has a number of contracts with private firms under which contractors process, store, and facilitate use of various kinds of recorded environmental related information. For example, under its computer time-sharing contract with Optimum Systems, Inc., the contractor provides all the hardware and some of the software which enables storage and retrieval of data supplied by various EPA programs. Under its contract with Berkeley K. & L. Services, Inc., the contractor develops films, makes various prints from the resulting negatives, and stores the negatives so that custom printing may be accomplished as directed by EPA. There also are other similar contracts, all of which have in common the provision by the contractor of processing, storage and retrieval facilities to allow use by EPA of data it has developed or compiled.

EPA also states that much of the environmental information in question is of value to non-Federal parties, who from time to time (and in some cases, in great volume) request either copies of certain specific information (computer printouts, photographs) or direct access to data-processing systems via terminals. EPA advises that this information is available to the public under the Freedom of Information Act and that it desires to make the information available to interested

parties in the most useful manner. However, considerable costs are involved in providing such information or computer access to non-Federal parties.

If EPA provides the environmental related information, either by obtaining it from the contractor and furnishing it to the requester, or by ordering the contractor to furnish it to the requester, EPA incurs considerable costs under the contract. While these costs are borne by funds appropriated to EPA, any charges which EPA may collect from the requester are not retained by the agency, but, instead, must be paid into the Treasury as miscellaneous receipts pursuant to 31 U.S.C. § 484 (1970). Thereafter, these funds are not available to EPA for obligation and expenditure except pursuant to an appropriation act.

For these reasons, EPA seeks our approval of a proposal by which it would be relieved of the tasks and the expenses of searching for and providing access to information. As we understand it, EPA will advise requesting parties to deal directly with the private company which provides the agency with its information-handling services instead. According to EPA, all of the information in the custody of its contractors is available to the public. The requesters and the contractors would reach their own arrangements and the contractor would charge and retain fees for the provision of the necessary services.

As we understand it from informal discussion with EPA staff, there are at least two advantages to this system for the requesting parties. First, the contractor will generally be able to provide the information more cheaply than EPA can. Second, where appropriate, the requester may be able to get direct access to data-processing systems via terminals. EPA emphasizes that it is desirous of making the information involved available to interested parties in the most useful manner and that both the requesters and EPA will benefit from use of this method.

However, in view of the provisions of 31 U.S.C. § 484 (1970) requiring monies received for the use of the United States to be deposited in the Treasury as miscellaneous receipts, EPA has sought our decision as to the propriety of its proposal. In its view, where the contractor fills the request, the United States is not providing any services and hence, is not entitled to charge any fees when "the entire transaction occurs solely between the requester and firm holding the Government contract."

As long as the proposed procedures are not used to delay or deny access to information or otherwise circumvent the intent or specific provisions of the Freedom of Information Act, or the User Charge Statute, we have no objection to the EPA proposal. The Congress has established certain standards for charging those persons for whom the Government performs special services or provides access to information in its possession.

See the User Charge Statute, 31 U.S.C. § 483a (1970) and the Freedom of Information Act, as amended, 5 U.S.C. § 552(a)(4). The latter statute provides for each agency to establish a uniform schedule of fees which are limited to reasonable standard charges for recovery of the direct costs of document search and duplication, which may be waived in the public interest. Neither that Act nor any other statute authorizes the Government to recover any of the costs associated with developing the information contained in the requested documents. It would be necessary, therefore, for EPA to assure, by including a provision to this effect in its agreement with its contractors, that the fees charged requesters by the contractor would not exceed the fees which EPA itself would be authorized to charge it if provided the service directly.

There is nothing in the Freedom of Information Act or any other statute which would preclude EPA from offering requesting parties the alternative of dealing with its contractors to obtain the desired information if the contractors can adequately fill the requests. Moreover, there is no authority for EPA to collect a fee where the service of providing the information is, in fact, rendered by someone other than the Government or its agents. In this regard, especially since the requesters retain the right to deal with EPA, the contractors filling such requests are acting as independent entrepreneurs and not as EPA's agents. They will be working on their own time and using their own staff in filling requests they receive for information and they are entitled to assess and retain any fees charged for filling these requests.

Hence, in our view, such funds as may be received by these firms would not be "moneys received * * * for the use of the United States" pursuant to 31 U.S.C. § 484 but instead would be for services rendered the requesters by those firms. As such, these funds clearly do not revert to the United States.

Accordingly, and provided that this method of handling requests for access to information is not used to thwart the provisions of the Freedom of Information Act, we have no objection to EPA's proposal.

R. F. KELLER

Deputy Comptroller General
of the United States