Mr. Carl Malamud, President & CEO
Public Resources.Org
1005 Gravenstein Highway North
Sebastopol, CA  95472

Dear Mr. Malamud:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request, dated May 20, 2009, for copies of documents concerning how much money the Department of State is spending on access to federal court documents and other primary legal materials. Specifically you are requesting copies of the following:

1. Any memoranda or budgetary documents that detail the total amount actually spent or the amount budgeted to be spent by the Department of State to access the PACER system run by the Administrative Office of the Courts.
2. Any agreements, contracts or memoranda of understanding between the Department of State and the Administrative Office of Courts governing access to the PACER system by Department of State staff.
3. Any memoranda or other documents from the Department of State management to Department of State lawyers asking them to curtail limit or otherwise ration their use of the PACER system due to cost considerations.
4. Any contracts, memoranda or budgetary materials detailing the specific agreements and amount of money spent by the Department of State with commercial legal information providers.

The time period of your request is from the year 2000 to the present.
We will begin the processing of your request based upon the information provided in your communication. We will notify you as soon as responsive material has been retrieved and reviewed.

We wish to advise you that the cut-off date for retrieving records is either the date you have given the Department by specifying a particular time frame, or the date the search initiated.

**Fees**

The Freedom of Information Act (FOIA) requires agencies to assess fees to recover the direct costs of processing requests, unless a fee waiver has been granted.

According to our regulations, by making a FOIA request, you have agreed to pay all applicable fees up to $25 unless a fee waiver has been granted. You may specify a willingness to pay a greater amount. If the estimated fees exceed this limit, you will be notified.

☐ You have stated your willingness to pay the fees incurred in the processing of this request up to $__________.

☒ Please let us know if you are willing to pay the fees that will be incurred in the processing of your request. You may set a limit of the maximum amount that you wish to pay. Please be advised that, without an agreement to pay fees, your request will be processed without cost up to the required first 2 hours of search time (for all other requester category only) and duplication of the first 100 pages (for all other, media, educational and non-commercial scientific requester categories).

We will notify you of the costs incurred in processing your request as soon as the search for, and review of, any responsive documents have been completed.

Based upon the information that you have provided, we have placed you in the requester category checked below. This request will be processed in
accordance with the fee schedule designated for that category (see 22 C.F.R. 171, enclosed).

☐ Commercial Use Requesters – Requires us to assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record(s) sought.

☐ Educational Institution Requesters – Requires us to assess charges that recover the cost of duplicating the record(s) sought only, after the first 100 pages of duplication.

☐ Non-commercial Scientific Institution Requesters – Requires us to assess charges that recover the cost of duplicating the record(s) sought only, after the first 100 pages of duplication.

☒ Representatives of the News Media – Requires us to assess charges that recover the cost of duplicating the record(s) sought only, after the first 100 pages of duplication.

☐ All Other Requesters – Requires us to assess charges that recover the full reasonable direct cost of searching for and duplicating the record(s) sought, after the first 100 pages of duplication, and the first two hours of search time.

☐ You have indicated your inclusion in a category different than the one indicated above. Please forward the information requested on the enclosed sheet titled “Requester Categories” to substantiate your inclusion in a particular category of requester.

**Fee Waiver**

☐ Your request for a fee waiver has been granted; therefore, your request will be processed at no charge to you.

☒ Based upon the information provided in your letter, your request for a fee waiver has been denied. If you wish to appeal this decision, you may write to the Chief, Requester Liaison Division, at the address given on the bottom of this page. Your appeal should address the points listed in the enclosed sheet titled “Requests for Fee Waivers.” Your appeal must be sent to us within 30 days from the date that you receive this letter.
Expedition

☐ After consideration of your request for expedited processing under the Department’s rules governing Freedom of Information Act requests, we have determined that your request does warrant expedited processing.

Although we cannot promise that the processing of your request will be completed by a specific date, it will be processed ahead of all other requests now pending with the Department, except for those other requests already determined to warrant expedition.

☐ Our published regulations regarding expedition, 22 C.F.R. 171.12(b), require a specific showing of a compelling need. Expeditious processing is granted only in the following situations: (1) imminent threat to the life or physical safety of an individual; (2) urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity and the information is urgently needed in that a particular value of the information would be lost if not disseminated quickly; (3) substantial humanitarian reasons; and (4) loss of substantial due process rights. Your request does not meet any of the established criteria. Regrettably, I must advise that you have not provided adequate justification for expedition. However, you may be assured that we will make every effort to process your request in as timely a manner as possible. For your convenience, I have enclosed a copy of the Department’s expeditious processing criteria.

If you wish to appeal the denial of expedition, you may write to the Chief, Requester Liaison Division, at the address below, within 30 days of receipt of this letter.

Other Agency Material

☐ Some of the material that you seek appears to have been originated by another agency(ies). If you wish to contact the Freedom of

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Office of Information Programs and Services
U.S. Department of State, SA-2
Washington, DC 20522-8100
Website: www.foia.state.gov

Inquiries:
Phone: 1-202-261-8484
FAX: 1-202-261-8579
E-mail: FOIASstatus@state.gov
Information/Privacy Office of that agency(ies), the address(es) can be found on the attached list.

☐ Some of the records you seek are no longer in the possession of the State Department. The majority of Department of State records (excluding passport and visa records) which are 25 years or older are transferred to the National Archives and Records Administration (NARA) in accordance with Title 22, Code of Federal Regulations, Part 171.6. Accordingly, requests for such records should be addressed to:

National Archives and Records Administration
8601 Adelphi Road, Room 311
College Park, MD 20740-6001

☐ For pre-1925 passport records, and visa records dating 1910-1940, please contact:

Civil Records
National Archives & Records Administration
Washington, DC 20408

If you wish to review further information on our requirements for maintenance or disposal of records, please visit the following website: foia.state.gov/records.asp.

While we will make every effort to meet the time limits cited in the FOIA (5 U.S.C. § 552), unusual circumstances may arise for extending the time limit (see enclosure). We appreciate your patience in this matter.

If you have any questions, please do not hesitate to contact us at the number or address below. We can provide faster service if you include the case number of your request in your communications with us.

We are pleased to be of service to you.
Sincerely,

Mary [Signature]
Requester Communications Branch
ISO 9001:2000 Certified

Enclosures: As stated.
§ 171.14 Fees to be charged—
general.
The Department shall seek to 
charge fees that recoup the full 
allowable direct costs it incurs in 
processing a FOIA request. It 
shall use the most efficient and 
least costly methods to comply 
with requests for documents 
made under the FOIA. The 
Department will not charge fees 
to any requester, including 
commercial use requesters, if the 
cost of collecting a fee would be 
equal to or greater than the fee 
itself. With the exception of 
requesters seeking documents 
for a commercial use, the 
Department will provide the first 
two hours of search time and the 
first 100 pages of duplication 
without charge. By making a 
FOIA request, the requester shall 
be considered to have agreed to 
pay all applicable fees up to 
$25.00 unless a fee waiver has 
been granted. 
(a) Searches for responsive 
records. If the Department 
estimates that the search costs 
will exceed $25.00, the requester 
shall be so notified. Such notice 
shall offer the requester the 
opportunity to confer with 
Department personnel with 
the object of reformulating the 
request to meet the requester’s 
needs at a lower cost. The 
request shall not be processed 
further unless the requester 
agrees to pay the estimated fees. 
(1) Manual searches. The 
Department will charge at the 
salary rate (i.e., basic pay plus 
16 percent of basic pay) of the 
employee making the search. 
(2) Computer searches. The 
Department will charge at the 
actual direct cost of providing 
the service. This 

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will include the cost of operating 
the central processing unit 
(CPU) for that portion of 
operating time that is directly 
attributable to searching for 
records responsive to a FOIA 
request and 
operator/programmer salary 
attributable to the search. 
(b) Review of records. Only 
requesters who are seeking 
documents for commercial use 
may be charged for time spent 
reviewing records to determine 
whether they are releasable. 
Charges may be assessed for the 
initial review only; i.e., the 
review undertaken the first time 
the Department analyzes the 
applicability of a specific 
exemption to a particular record 
or portion of a record. 
(c) Duplication of records. 
Records shall be duplicated at a 
rate of $.15 per page. For copies 
preserved by computer, such as 
tapes or printouts, the 
Department shall charge the 
actual cost, including operator 
time, of production of the tape or 
printout. For other methods of 
reproduction or duplication, 
the Department shall charge the 
actual direct costs of producing 
the document. 
If the Department estimates that 
the duplication costs will exceed 
$25.00, the requester shall be so 
informed. The request shall not 
be processed further unless the 
requester agrees to pay the 
estimated fees. 
(d) Other charges. The 
Department shall recover the full 
costs of providing services such as 
those enumerated below: 
(1) Certifying that records are 
true copies (see part 22 of this 
chapter); (2) Sending records by 
special methods such as express 
mail, overnight courier, etc. 
(f) Payment shall be in the form 
either of a personal check or 
bank draft drawn on a bank in 
the United States, or a postal 
money order. Remittances shall 
be made payable to the order of 
the Treasury of the United States 
and mailed to the Information 
and Privacy Coordinator. 
(g) A receipt for fees paid will 
be given upon request. Refund of 
fees paid for services actually 
rendered will not be made.
§ 171.15 Fees to be charged—categories of requesters.
Under the FOIA, there are four categories of requesters:
Commercial use requesters,
educational and noncommercial
scientific institutions,
representatives of the news
media, and all other requesters.
The fees for each of these
categories are:
(a) **Commercial use requesters.**
When the Department receives a
request for documents for
commercial use as defined in §
171.11(i), it will assess charges
that recover the full direct costs
of searching for, reviewing for
release, and duplicating the
record sought. Commercial use
requesters are not entitled to two
hours of free search time or 100
free pages of reproduction of
documents. The Department may
recover the cost of searching for
and reviewing records even if
there is ultimately no disclosure
of records (see § 171.16(b)).
(b) **Educational and non-
commercial scientific institution
requesters.** The Department shall
provide documents to requesters
in this category for the cost
of reproduction alone, excluding
charges for the first 100 pages.
To be eligible for inclusion in
this category, a requester must
show that the request is being
made as authorized by and under
the auspices of a qualifying
institution, as defined in §
171.11(m) and (n), and that the
records are not sought for a
commercial use, but are sought
in furtherance of scholarly (if the
request is from an educational
institution) or scientific (if the
request is from a noncommercial
scientific institution) research.
(c) **Representatives of the news
media.** The Department shall
provide documents to requesters
in this category for the cost of
reproduction alone, excluding
charges for the first 100 pages.
To be eligible for inclusion in
this category, a requester must
meet the criteria in § 171.11(o),
and the request must not be
made for a commercial use. A
request for records supporting
the news dissemination function
of the requester shall not be
considered to be a commercial
use request.
(d) **All other requesters.** The
Department shall charge
requesters who do not fit into
any of the categories above fees
that recover the full reasonable
direct cost of searching for and
reproducing records that are
responsive to the request, except
that the first 100 pages of
reproduction and the first two
hours of search time shall
be furnished without charge.
§ 171.11 Definitions.
Unusual Circumstances
As used in this subpart, the following definitions shall apply:
(a) Freedom of Information Act or FOIA means the statute codified at 5 U.S.C. 552, as amended.
(b) Department means the United States Department of State, including its field offices and Foreign Service posts abroad;
(c) Agency means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency;
(d) Information and Privacy Coordinator means the Director of the Department’s Office of Information Programs and Services (IPS) who is responsible for processing requests for access to information under the FOIA, the Privacy Act, E.O. 12958, and the Ethics in Government Act;
(e) Record means all information under the control of the Department, including information created, stored, and retrievable by electronic means, regardless of physical form or characteristics, made in or received by the Department and preserved as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Department or because of the informational value of the data contained therein. It includes records of other Government agencies that have been expressly placed under the control of the Department upon termination of those agencies. It does not include personal records created primarily for personal convenience of an individual and not used to conduct Department business and not integrated into the Department’s record keeping system or files. It does not include records that are not already in existence and that would have to be created specifically to meet a request. However, information available in electronic form shall be searched and compiled in response to a request unless such search and compilation would significantly interfere with the operation of the Department’s automated information systems.
(f) Control means the Department’s legal authority over a record, taking into account the ability of the Department to use and dispose of the record as it sees fit, to legally determine the disposition of the record, the intent of the record’s creator to retain or relinquish control over the record, the extent to which Department personnel have read or relied upon the record, and the degree of control.

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(g) Direct costs means those costs the Department incurs in searching for, duplicating, and, in the case of commercial requests, reviewing documents in response to a FOIA request. The term does not include overhead expenses.
(h) Search costs means those costs the Department incurs in searching for, identifying, and retrieving material, in paper or electronic form, that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The Department shall attempt to ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the Department and the requester.
(i) Duplication costs means those costs the Department incurs in copying a requested record in a form appropriate for release in response to a FOIA request. Such copies may take the form of paper copy, microfiche, audio-visual materials, or machine-readable electronic documentation (e.g., disk or CD-ROM), among others.
(j) Review costs means costs the Department incurs in examining a record to determine whether and to what extent the record is responsive to the FOIA request and the extent to which it may be disclosed to the requester. It does not include costs of resolving general legal or policy issues that may be raised by a request.
(k) Unusual circumstances. As used herein, but only to the extent reasonably necessary to the proper processing of the particular request, the term “unusual circumstances” means:
(1) The need to search for and collect the requested records from Foreign Service posts or other separate and distinct Department offices;
(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or
(3) The need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the Department that have a substantial subject matter interest therein. Such consultation shall be conducted with all practicable speed.
(l) Commercial use request means a request from or on behalf of one who requests information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester belongs within this category, the Department will look at the use to which the requester will put the information requested.
(m) **Educational institution**
means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program or programs of scholarly research.

(n) **Non-commercial scientific institution** means an institution that is not operated on a "commercial" basis, as that term is used in paragraph (l) of this section and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(o) **Representative of the news media** means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. News media include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase by the general public. Freelance journalists may be regarded as working for a news organization if they can demonstrate, such as by past publication, a likelihood of publication through a representative of the news media, even though not actually employed by it.

(p) **All other** means an individual or organization not covered by a definition in paragraphs (l), (m), (n), or (o) of this section.