Good afternoon,

On June 27, 2013, the DHS FOIA Office notified components that it will be responsible for determining the proper requester category and whether or not a fee waiver will be granted, in coordination with the applicable DHS component, when a requester seeks records from multiple components and has requested either a fee waiver or claims membership in a preferential fee category. DHS has received multiple requests from MuckRock seeking records from multiple components and often claims a fee waiver or claims media membership.

MuckRock describes itself as acting as “a request proxy, e-mailing, faxing or even snail mailing the request on your behalf. Documents are sent to our offices to be prepared by our team of experts for your convenience. We can even assist with analyzing your data. Our intuitive system ensures that your documents are for your eyes only until you're ready to publish” (see https://www.muckrock.com/about/, Accessed 9/26/2013).

MuckRock claims it is supported by grants, individual donations, and user fees. To submit a request you must create an account and then pay a fee to submit the request. MuckRock manages a new request by creating new virtual mailboxes: “Each request gets both a unique P.O. Box and e-mail address, and all incoming and outgoing responses are automatically channeled through them, so that when an agency responds via e-mail, the user is instantly notified. If they send a snail mail letter (usually the case), we scan it in and upload it that request’s unique page on MuckRock, and the user gets a notification e-mail that their digitized documents are ready” (See http://www.cjr.org/behind_the_news/qa_michael_morisy_cofounder_of_muckrock.php?page=all&print=true, Accessed 9/26/2013).

According to 5 U.S.C. § 552(4)(A)(ii)(II), “fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media.” The FOIA defines the term “a representative of the news media” as “any 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”.

MuckRock is not a member of the news media. Certainly, certain requesters using MuckRock’s services may qualify for such status. Yet, even MuckRock describes itself as a “request proxy” that mails the request on behalf of their paying customer; an organization that simply collects and distributes information. Based on this information, it is my recommendation that on a case-by-case review, MuckRock be placed in the commercial category and charged accordingly. Let me know if you want to discuss.

Regards,

James