



Freedom of Information Act “FOIA”



Please note that this Information Paper only provides basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.

I have heard a lot about the Freedom of Information Act (FOIA). What is it and how does it affect me?

The FOIA is a law that gives you the right to access information from the federal government. It is often described as the law that keeps citizens in the know about their government. Under the FOIA, agencies must disclose any information that is requested – unless that information is protected from public disclosure. The FOIA also requires that agencies automatically disclose certain information, including frequently requested records. The FOIA’s homepage can be found at: <http://www.foia.gov/index.html>.

I want to get information under FOIA. How do I do this?

To get information under the FOIA, you must make a “FOIA request.” This is a written request in which you describe the information you want, and the format you want it in – give as much detail as possible. You should be aware that FOIA does not require agencies to do research for you, analyze data, answer written questions, or create records in response to your request. FOIA requires that federal agencies release certain information automatically, without the need for you to make a request. Check an agency’s website first to see what’s already available.

Is there a special form I have to use to make a FOIA request? There is no specific form that must be used to make a request. The request simply must be in writing, reasonably describe the information you seek, and comply with specific agency requirements. Most federal agencies now accept FOIA requests electronically, including by web form, e-mail or fax. See the list of federal agencies for details about the methods of making a request at each agency and any specific requirements for seeking certain records: <http://www.foia.gov/report-makerequest.html>.

What can I ask for under the FOIA? A FOIA request can be made for any agency record. You can also specify the format in which you wish to receive the records. FOIA does not require agencies to do research for you, to analyze data, to answer written questions, or to create records in response to a request.

What will I receive in response to a FOIA request? Once the agency has processed your request and any fee issues have been resolved, the agency will send you a written response that will usually include all documents that can be released to you. The response letter will advise you whether any information is being withheld because of the exemptions allowed by law. It will generally give an estimate of the amount of material that has been withheld. When a portion of a record has been withheld, the page will be marked to let you know what exemptions have been applied.

How long will it take to get a response? The time it takes to respond to each request varies depending on the complexity of the request itself and the backlog of requests already pending at the agency. In some circumstances, the agency will be to respond to the request within the standard time limit established by the FOIA – approximately one month. In other instances more time may be needed before the request can be completed. When an agency requires an extension of time, it will notify you in writing and provide you with an opportunity to modify or limit the scope of your request. Alternatively, you may agree to a different timetable for the processing of your request. Under certain conditions, you may be entitled to have your request processed on an expedited basis. The websites for each agency can provide more information on this process or the agency's FOIA Public Liaison can assist.

Can I ever have my request processed faster than usual or expedited? Under certain conditions you may be entitled to have your request processed on an expedited basis. There are two specific situations where a request will be expedited. First, a request will be expedited if the lack of expedited treatment could reasonably be expected to pose a threat to someone's life or physical safety. Second, if an individual will suffer the loss of substantial due process rights, his or her request will be expedited. A request will not normally be expedited merely because the requester is facing a court deadline in a judicial proceeding. However, an agency can allow expedited processing for other situations, depending on the regulations of that agency. The websites for each agency can provide more information on specific rules and regulations regarding expedited processing.

Are there special requirements for obtaining records on myself? If you are seeking records on yourself you will be required to provide a certification of your identity. This certification is required in order to protect your privacy and to ensure that private information about you is not disclosed inappropriately to someone else. Whenever you request information about yourself you will be asked to provide either a notarized statement or a statement signed under penalty of perjury verifying your identity.

What about requirements for obtaining records on someone else? If you request records relating to another person, and disclosure of the records could invade that person's privacy, they ordinarily will not be disclosed to you.

Are there any exemptions? If so, what are they? Not all records can be released under the FOIA. Congress established certain categories of information that are not required to be released in response to a FOIA request because release would be harmful to governmental or private interests. These categories are called "exemptions" from disclosures. Still, even if an exemption applies, agencies may use their discretion to release information when there is no foreseeable harm in doing so and disclosure is not otherwise prohibited by law. There are nine categories of exempt information and each is described below.

Exemption 1: Information that is classified to protect national security. The material must be properly classified under an Executive Order.

Exemption 2: Information related solely to the internal personnel rules and practices of an agency.

Exemption 3: Information that is prohibited from disclosure by another federal law. Additional resources on the use of Exemption 3 can be found on the Department of Justice FOIA Resources page.

Exemption 4: Information that concerns business trade secrets or other confidential commercial or financial information.

Exemption 5: Information that concerns communications within or between agencies which are protected by legal privileges.

Exemption 6: Information that, if disclosed, would invade another individual's personal privacy.

Exemption 7: Information compiled for law enforcement purposes if one of the following harms would occur. Law enforcement information is exempt if it:

- 7(A). Could reasonably be expected to interfere with enforcement proceedings
- 7(B). Would deprive a person of a right to a fair trial or an impartial adjudication
- 7(C). Could reasonably be expected to constitute an unwarranted invasion of personal privacy
- 7(D). Could reasonably be expected to disclose the identity of a confidential source
- 7(E). Would disclose techniques and procedures for law enforcement investigations or prosecutions
- 7(F). Could reasonably be expected to endanger the life or physical safety of any individual

Exemption 8: Information that concerns the supervision of financial institutions.

Exemption 9: Geological information on wells.

What are exclusions? Congress has provided special protection in the FOIA for three narrow categories of law enforcement and national security records. The provisions protecting those records are known as “exclusions.” The first exclusion protects the existence of an ongoing criminal law enforcement investigation when the subject of the investigation is unaware that it is pending and disclosure could reasonably be expected to interfere with enforcement proceedings. The second exclusion is limited to criminal law enforcement agencies and protects the existence of informant records when the informant’s status has not been officially confirmed. The third exclusion is limited to the Federal Bureau of Investigation and protects the existence of foreign intelligence or counterintelligence, or international terrorism records when the existence of such records is classified. Records falling within an exclusion are not subject to the requirements of the FOIA. So, when an office or agency responds to your request, it will limit its response to those records that are subject to the FOIA.

I am not satisfied with the agency’s initial response to my request. Can I appeal the response? Yes, you may file an administrative appeal if you are not satisfied with

an agency's initial response to your request. First, you may contact the FOIA professional handling the request, or the FOIA contact provided by the agency. You may also contact the agency's FOIA Public Liaison. The FOIA Public Liaison is there to explain the process to you, assist in reducing any delays, and help resolve any disputes. Often, a simple discussion between you and the agency will resolve any issues that may arise. If necessary, filing an appeal is very simple. Typically, all you need to do is send a letter to the agency stating that you are appealing the initial decision made on your request. There is no fee or cost involved. After an independent review, the appellate authority will send you a letter advising you of its decision. Once the administrative appeal process is complete, you also have the option to seek mediation services from the Office of Government Information Services at the National Archives and Records Administration.

Does the Army have an office that assists with FOIA requests? If so, how can I contact that office? Yes; the Army's The Freedom of Information Act Office is responsible for management oversight of the Army-wide implementation of the Freedom of Information Act (FOIA) program in accordance with 5 USC, and Public Law 106-554. Their website can be found at: <https://www.rmda.army.mil/foia/RMDA-FOIA-Division.html>

You can submit an Army FOIA request on that website or go directly to:
<https://www.rmda.army.mil/foia/foiarequest/default.aspx>

The Army's FOIA Office's contact information is:

Telephone: (703) 428-6238 / DSN 328-6238.

E-mail: usarmy.belvoir.hqda-oaa-ahs.mbx.rmda-foia@mail.mil

For further information, contact the Legal Assistance Office, Stuttgart Law Center, DSN 421-4152; Civ 0711-729-4152 or make an appointment at www.stuttgartcitizen.com/appointments.