

REQUESTING RECORDS FROM FEDERAL AGENCIES

This summary does not constitute legal advice. It is intended to provide general guidance only. If you have specific legal questions, consult a lawyer.

Freedom of Information Act Generally Enacted in 1966, The Freedom of Information Act (“FOIA”) is a federal law that establishes the public’s right to obtain information from federal government agencies. “Any person” can file a FOIA request, including U.S. citizens, foreign nationals, organizations, associations, and universities. In 1974, after the Watergate scandal, the Act was amended to force greater agency compliance. It was also amended in 1996 to allow for greater access to electronic information.

Who Can I Send a FOIA Request To? The FOIA applies to Executive Branch departments, agencies, and offices; federal regulatory agencies; and federal corporations. Congress, the federal courts, and parts of the Executive Office of the President that function solely to advise and assist the President, are NOT subject to the FOIA. Records that you can obtain under the FOIA include all “agency records” – such as print documents, photographs, videos, maps, e-mail and electronic records – that were created or obtained by a Federal agency and are, at the time the request is filed, in that agency’s possession and control. Agencies are required by FOIA to maintain information about how to make a FOIA request, including a handbook, reference guide, indexes, and descriptions of information locator systems. You can contact the agency directly to get that information. The best place to get this information is on the agencies’ websites. Doing research to determine the right office to send the FOIA request will make your FOIA efforts more productive.

What Are the FOIA Exemptions?

The following records are exempt, meaning you *cannot obtain them through a FOIA request*:

- Exemption (b)(1) - National Security Information
- Exemption (b)(2) - Internal Personnel Rules and Practices
- Exemption (b)(3) - Information exempt under other laws
- Exemption (b)(4) - Confidential Business Information
- Exemption (b)(5) - Privileged inter or intra agency communication
- Exemption (b)(6) - Personal Privacy
- Exemption (b)(7) - Law Enforcement Records that raise one of 6 stated concerns
- Exemption (b)(8) - Financial Institutions
- Exemption (b)(9) - Geological Information

What Does it Cost to Make a FOIA Request?

Agencies are authorized to charge certain fees associated with the processing of requests. Some categories of requesters cannot be charged these fees and in some cases fees can be reduced or waived.

FEE CATEGORIES

An agency is required to determine the projected use of the records sought by the FOIA request and the type of requester asking for the documents. The FOIA was intended to promote the public’s access to information, so news media organizations and educational institutions are excused from certain fees.

Fee categories for FOIA are:

- 1) *Commercial* — Companies that or people who seek information for a use or purpose that furthers commercial, trade, or profit interests, including for use in litigation. Commercial requesters are required to pay for search, review and duplication costs.
- 2) *Educational Institution* — Preschools, public or private elementary or secondary schools, and institutions of graduate higher education, undergraduate higher education, professional education, or vocational education that operate a program(s) of scholarly research. Educational requesters are required to pay duplication costs, but are entitled to the first 100 pages without charge.
- 3) *Non-Commercial Scientific Institution* — Non-commercially operated institutions that conduct scientific research not intended to promote any particular product or industry. Non-commercial requesters are required to pay duplication costs, but are entitled to the first 100 pages without charge.
- 4) *Representative of the News Media* — People who actively gather news for entities organized and operated to publish or broadcast news to the public. News Media requesters are required to pay for duplication, but are entitled to the first 100 pages without charge.
- 5) *Other Requesters* — Requesters who do not fit into any of the above categories. These requesters are persons who are not commercial, news media, scientific or educational requesters and are required to pay search costs for more than 2 hours and duplication costs for more than 100 pages.

To demonstrate that you belong in an educational, news media or non-commercial fee category, provide information about the intended professional scholarly or journalistic uses of the information you receive.

List any relevant previous or pending publications, including books, articles, dissertations, publication contracts or letters of intent or interest, or similar information that shows your ability to disseminate the information you receive from the agency. State that the materials are not requested solely for a private, profit-making commercial purpose. You should request that the agency notify you if any fees will exceed an amount you specify. Actual search, review and duplication fees vary by agency.

Search/Review fees can be anywhere \$8.00 to \$45.00 per hour and duplication fees can be from \$.10 to \$.35 per page. Agencies cannot require a requester to make an advance payment unless the agency estimates that the fee is likely to exceed \$250 or the requester previously failed to pay proper fees.

FEE WAIVERS

Under the FOIA it is possible to have all fees, including copying, waived by the agency if the material requested “is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.” If your request fits this description, you should make your case for a fee waiver in your request letter as strongly as possible. Be sure to describe the scholarly, historical, or current public interest in the material requested, identify specific operations or activities of government to which the request relates, why the information will contribute to an understanding of those activities and operations, why the public in general would be interested, and why the disclosure would be significant.

How Do I Make a Request?

All requests must be in writing. **A sample letter is included with this information.** These are the

important things to remember in writing your letter:

1. *Write your request clearly; and be specific.* Overly broad requests are wasteful in time (yours, and the government's) and resources (yours, and the government's). Be specific: assume the FOIA officer is not familiar with your topic. As many agencies perform computerized searches for documents, use key words and phrases. For example, an agency may not be able to search "escalation of tension," but may be able to search "military assistance." Also, provide accurate titles and dates, full names, and pertinent news stories discussing the subject of your request. In other words, assist the person in doing the search by providing key items of information.
- 2) *Keep your request brief, avoiding long stories.* Long irrelevant stories will confuse the FOIA Officer. Don't write a two-page supporting essay for your request. Just ask for the documents you want.
- 3) *Target your request.* In addition to researching your topic, research the government to find out where to send the request. Send your request to the agency most likely to hold the records. While the Department of State and the CIA have one centralized FOIA office, the military branches have individual FOIA offices in each component. The FBI, among others, maintains records at headquarters and in field offices. Contacting the main agency FOIA office to determine the location of records can save delays in your responses; at a minimum, they may agree to forward your request to the correct location. Also review the agency's FOIA reference guide and handbook on its website for information on how to target your request. It is worth your time to find out exactly which components of agencies maintain the documents you are requesting. It will save time (weeks, months or even years) in referrals.
- 4) *Establish and maintain contact with the agency.* Agency response letters often identify a point-of-contact or case officer for your FOIA request. If not, after a reasonable period of time, call and check on the status of your request and identify the case officer. Your effort will indicate to the FOIA officer your continued interest in the request. The FOIA officer can then advise you of estimated fees; can seek clarification of your request; and can advise you of delays. Don't harass your FOIA officer with too many calls or letters. Keep a record of all telephone conversations you have with the agency in addition to all letters you receive.
- 5) *Be reasonable.* Consider the FOIA officer receiving your request. A well-written request, helpful contact, and a non-confrontational manner on your end will only aid the processing of your request. The FOIA officer is often faced with bureaucratic or ideological intransigence within his or her own agency. Pestering your FOIA contact at an agency may mean jeopardizing a helpful source of information. Don't send frivolous letters or file pointless appeals; they will delay processing of yours - and others' - requests. Contact with the FOIA officer will help you ascertain what is a useful exercise.

There are many resources on the internet to help you write a letter, including "letter generators" that will write the letter for you – you just fill in some blanks.

Here's a good one: http://www.rcfp.org/foi_letter/generate.php

What Happens After I Make a FOIA Request? Ideally, the agency will promptly release everything you requested. The agency must respond in 20 business days. More common agency responses (and

suggested actions you can take) include the following:

- You receive an acknowledgment of your request and a statement that the request has been placed in the queue and will be processed in its turn. Agencies are allowed to process requests on a first-come, first-served basis, and may also process requests in separate queues depending on their complexity. If the agency has a backlog of requests (and most do), you may have to wait some time before you receive the materials you seek. Call or write the FOIA office to follow up on requests that have been pending for an unreasonable period of time. Get the names of specific FOIA personnel you can contact about your request. If agencies fail to meet the twenty-business day response time provided by the FOIA, you are entitled to file an administrative appeal or a lawsuit. Please keep in mind that if your request is complex and of a sensitive nature the agency will require a significant amount of time to search and review the responsive records.
- Your request for a fee waiver is acknowledged but more information is sought before the agency will begin processing the request. Sometimes the agency asks a series of questions, sometimes a multi-page questionnaire may be enclosed for you to fill out and return. The best way to avoid this response is to provide as much information as possible in your initial letter to support your request for a fee waiver.
- The agency says that no records were found in response to your request, or informs you that your request is too broad. Call or write the FOIA office and ask what additional information is needed from you to make your request more specific. Explain why you believe the agency has material responsive to your request and inquire about other places in the agency's files where relevant records might be found. If no records were found you may send an appeal questioning the agency's adequacy of search.
- Information relevant to your request is found, but the agency withholds all or part of it. The FOIA allows an agency only nine exemptions from its obligation to provide information in response to a request. The citation of these exemptions, found at 5 U.S.C. Section 552(b) and listed above, can be appealed.

How Can I Appeal An Adverse Response? It is worthwhile to file an administrative appeal if the agency's response is unsatisfactory. Appeals can be effective to successfully challenge excessive processing delays, fee waiver denials, and the improper full or partial withholdings of documents. The process for appeals depends on the agency; take careful note of the instructions for filing an appeal in the agency's response to ensure that your appeal is made on time. An appeal letter should state the grounds for appeal and reasons why the agency's response to the request was improper, request a more precise explanation of the agency's decision (if the reasons for the initial determination were unclear), and say that you expect a final ruling on the appeal within the 20-day time limit.

What else should I know? Don't be discouraged if the agency is less than fully responsive to your request. Contact the agency's FOIA office to check on the status of your request and to see if additional information is needed to expedite processing or to clarify what you want. Keep copies of all your correspondence and notes of all phone calls. Always file an appeal letter if the initial response is inadequate. If the agency fails to respond satisfactorily, you may wish to seek the assistance of a member of Congress to contact the agency on your behalf. If all else fails, you have the right to go to court to force the agency to release the documents.

August 19, 2005

FOIA Officer
Consumer Product Safety Commission
4330 East West Highway, Suite 502
Bethesda, MD 20814-4408

FOIA REQUEST

Dear FOI Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of [state clearly which records you want].

[OPTIONAL – if you are going to pay the fee] I agree to pay reasonable duplication fees for the processing of this request in an amount not to exceed \$50.00. However, please notify me prior to your incurring any expenses in excess of that amount.

[OPTIONAL – if you think the fee should be waived] Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities. [state clearly how your request fits in the waiver] Therefore, the release of this information is in the public interest, and the fee should be waived.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

Jane L. Doe
123 Main Street
Anywhere, Tennessee 30303

(123) 555-4545