

## **How to Submit a FOIA Request: A Guide**

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The [Freedom of Information Act \(FOIA\)](#) was enacted by Congress in 1966 to give the public access to information held by the federal government. FOIA gives any person the right to request and receive access to any document, file, or other record in the possession and control of a government agency, subject to exemptions. Although the federal FOIA does not apply to state governments, each state has its own laws governing the disclosure of records held by state and local governments. You can learn more about state public records laws [here](#).

### **1. Background Research**

The first step in submitting a FOIA request is to determine which agency has the records you want. There is no central government FOIA office; each agency has its own office, so you need to know which agency (or agencies) to send the request to. If you have trouble determining which federal agency has the records you seek, you may want to consult the [United States Government Manual](#), which contains a list of federal agencies, a brief description of their functions, and contact information. You can also conduct a search across government websites on [FOIA.gov](#), the federal government's main FOIA website.

The next step is to determine whether a FOIA request is necessary. Agencies are required to make a lot of information available in “reading rooms,” including records that are frequently requested by the public. Those records are now generally made available through online reading rooms. Check online to see if the agency has posted the records you want.

### **2. Drafting a FOIA Request**

Once you determine which agency is likely to have the information you want, and if you have been unable to locate the information online, you may decide to send a FOIA request asking that the agency search its files for the information and make the records available to you. When drafting your request, check the agency's FOIA website for information about the agency's FOIA procedures and where to send the request. There should be a link to the agency's FOIA website at the bottom of the agency's main website; in addition, [FOIA.gov](#) links to agency FOIA websites. You may also want to review the agency's FOIA procedures in the [Code of Federal Regulations](#).

Your FOIA request must be in writing. Most agencies allow you to submit a FOIA request online or by email. Your request should state that it is being made pursuant to the Freedom of Information Act (5 U.S.C. § 552). If you submit a request by mail, write “Freedom of Information Request” on the envelope and on the letter, and keep a copy for yourself.

Your request must “reasonably describe” the records you seek. You do not need to specify a document by name or title, but you must provide a reasonable enough description to allow agency staff who are familiar with the agency’s files to locate the records you seek. Agencies are not obligated to answer questions in a request. Accordingly, your request should ask for records rather than ask questions. Agencies also are not obligated to create records in response to a request, so your request should be for existing records. Your request does not have to explain why you are interested in seeing the documents, and agency staff generally will not ask and has no right to ask about your reasons unless you are seeking a waiver of fees.

If the agency maintains the records you seek in electronic form, you can request that the information be provided in that form. If the agency maintains the records in one format but you want them in another, the agency must provide the information in the format you desire if it is “readily reproducible” in that format.

You can find a sample/template FOIA request, posted by a government agency, [here](#).

### **3. Costs and Fee Waivers**

FOIA provides that agencies may charge different fees depending on who is requesting the information. Commercial users pay reasonable standard charges for document search, review, and duplication. Educational or noncommercial scientific institutions and representatives of the news media may only be charged for reasonable duplication costs. All other users may be charged reasonable search and duplication costs. Except for commercial users, the first two hours of search time and the first hundred pages of copying are free.

Regardless of the above categories, you may be entitled to a waiver or reduction of otherwise chargeable fees if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

If you believe that you qualify for a fee waiver, you should ask for a waiver in your FOIA request. Emphasize that the records sought are not solely for a private, profit-making purpose and explain in your letter how the requested records will “contribute significantly to the public understanding of the operations or activities of the Government.” You should explain, for example, how the records will add to what the public already knows about the topic and how you intend to disseminate the information you receive to the public. If you believe you qualify as a media representative, or an “educational or non-commercial scientific” entity, you should also explain why in your request letter.

If you are denied a fee waiver, you may appeal. A denial of a request for a fee waiver is also subject to judicial review.

If you want the agency to consult you about search and copying fees before processing your request, state in your request letter that you should be notified if the fee is going to be over a specified amount.

## 4. Agency Response

### Acknowledgement

The agency should send you a letter or email acknowledging that it has received your request and providing you with a tracking number. If it has not done so within a week or so, check in with the FOIA contact listed on the agency's website.

### Delay

FOIA sets specific deadlines for replying to FOIA requests: 20 working days on the initial request and 20 working days on the administrative appeal. The 20-day deadline begins when the request is first received by the appropriate component of the agency, but not later than 10 days after the request is received by any office designated in the agency's FOIA regulations to receive FOIA requests. The deadline is "tolled" (that is, the clock is stopped) if the agency asks for more information or clarification from the requester. The tolling period ends (the clock begins again) once the requester has furnished the necessary information. In unusual circumstances, the deadline may be extended for an additional 10 working days by written notice to the requester.

Despite the deadlines in the statute, delay is common. At some agencies, the delays may last months or even years. Annual reports prepared by each agency (and posted on their websites) provide information on how long it generally takes the agency to respond to requests; data from the annual reports is available on [FOIA.gov](https://www.foia.gov).

FOIA requires agencies to expedite requests if there is a threat to an individual's life or safety or if the party requesting the information is primarily engaged in disseminating information and demonstrates an urgent need to inform the public about federal government activity. Agencies may also establish additional circumstances in which they will expedite requests. Check the agency's regulations to see if your request meets the criteria for expedited processing. If you are requesting expedited processing, you should include in your request letter information supporting expedition. That information must be provided in a statement certified to be true and correct to the best of your knowledge and belief. You can do this by including the following sentence in your letter: "I certify that the statements contained in this letter are true and correct to the best of my knowledge and belief."

### Denial

Under FOIA, an agency may deny your request for a variety of reasons.

First, an agency might assert that you have failed to reasonably describe the documents. If the agency claims that you have inadequately described the documents you seek, and you are able to provide a more precise description, you should rewrite your request more precisely and resubmit it. If you believe your request reasonably described the records, you can appeal the agency's refusal to process the request

Second, an agency may assert that it has conducted a reasonable search and has not found any records. In this case, you may challenge the adequacy of the agency's search in an agency appeal.

Third, an agency may withhold some or all of the records that you seek if they fall within one or more of the Act's nine exemptions, described below. If an agency withholds records based on one of these nine exemptions, it must release portions of the records that are not exempt and that can be separated from the exempt portions. The agency must indicate the amount of information withheld, and the exemption under which it is withheld, on the released portion of the record, unless providing such information would harm an interest protected by the exemption invoked.

Under certain circumstances, an agency may state that it cannot confirm or deny the existence of responsive records. For example, under exemption 1 (national security), the government can refuse to acknowledge the existence of classified records if the existence of the records is itself classified. Such a response is often called a "Glomar" response.

You may challenge an agency's refusal to provide some or all of the records you request by appealing a denial.

### Exemptions

Records and portions of records that fall within the categories listed below are exempt from disclosure under FOIA. An agency should only withhold information that falls within one of the exemptions if the agency reasonably foresees that disclosure would harm an interest protected by one of the exemptions or if disclosure is prohibited by law.

(1) National Security: This exemption applies to documents that are properly classified under a Presidential Executive Order. If you are requesting a document that the agency tells you is classified, you may want to ask that the reasons for classification be re-examined, as the agency may determine that there is no longer a need for secrecy, at least as to some parts of the records in question.

(2) Internal Agency Rules: This exemption protects internal agency personnel rules and practices.

(3) Information Exempted by Another Federal Statute: This exemption provides that information exempted from disclosure by other federal laws is exempt under FOIA. For information to be exempt under this exemption, the other law must either require that matters be withheld in a way that leaves no discretion on the issue or it must establish particular criteria for withholding or refer to particular types of matters to be withheld. For laws enacted after October 28, 2009, the law must also specifically cite this FOIA exemption. The Department of Justice has a [list of statutes](#) that have been found by courts to qualify under this paragraph.

(4) Trade Secrets and Confidential Commercial or Financial Information: Trade secrets are protected from disclosure. In addition, confidential commercial or financial information is exempt. Information is confidential at least where it is both customarily and actually treated as private by its owner and is provided to the government under an assurance of privacy.

(5) Internal Agency Memoranda: This exemption protects inter- or intra-agency documents that would normally be privileged in litigation. The most often invoked privilege is the “deliberative process” privilege, which allows an agency to withhold documents containing advice and recommendations that are both pre-decisional and deliberative, but still requires release of any segregable, factual portions of documents.

(6) Personal Privacy: This exemption involves a balancing of the public’s interest in disclosure against the degree of invasion of privacy that would result from disclosure. If your request involves this exemption, you should provide an explanation of how disclosure sheds light on government activities, so that it can be determined whether any invasion of privacy resulting from disclosure would be “clearly unwarranted.”

(7) Investigatory Records: This exemption protects information compiled for law enforcement purposes that could reasonably be expected to interfere with enforcement proceedings, deprive a person of a fair trial, invade personal privacy, identify a confidential source, disclose techniques and procedures for law enforcement investigations, or endanger a person’s life or physical safety.

(8) & (9) Other Exemptions: These are two special-interest exemptions relating to banking and oil-well information, and they are not relevant to most FOIA requests.

## **5. Administrative Appeal**

If an agency has made an adverse determination on your request in whole or in part—including if it has withheld or redacted records, failed to find responsive records, or denied a request for a fee waiver—you may submit an agency appeal (and must appeal if you want to file a lawsuit). Administrative appeals to higher-level agency officials may result in reversal of the adverse determination. Each agency’s [annual report](#) contains statistics concerning how often appeals to higher level agency officials are successful.

The agency’s final response letter should state your right to appeal and the deadline for appealing. Agencies must give you at least 90 days to appeal.

The agency’s denial letter should inform you of appeal procedures. Your appeal letter should attach and describe copies of the request and the denial, state that an appeal is being made of the agency’s initial denial, and, if you can, explain why the denial was unwarranted.

If the agency fails to respond substantively to your initial request within the statutory time frame, you are legally entitled to go to court without submitting an appeal. However, even if your request has been excessively delayed, it is often better to follow up with the agency (by letter, email, or telephone), asking for an estimated date of completion and urging a response before going to court. For your files, keep a written record of all written and telephone contact with the agency processing your request.

If the agency does respond to your FOIA request, you must appeal before going to court, even if the agency did not respond within the statutory time frame.

## **6. Filing a Lawsuit**

If the statutory time frame has passed and the agency has not responded to your FOIA request, if the statutory time frame has passed and the agency has not responded to your FOIA appeal, or if the agency has denied your FOIA appeal, you may sue in the United States District Court where you live, where the documents are located, or in the District of Columbia. The agency then has 30 days to file an answer to the complaint.

Most FOIA cases are decided on motions for summary judgment. If the government cannot prove that the requested documents fall within one of the nine exemptions from the Act's mandatory disclosure requirement, then the Court will order the agency to give the documents to you. Even if you lose, the agency may release more documents along the way. If you win, the Court may require the government to pay your attorney's fees and your filing fee. Generally, a FOIA lawsuit will not be resolved for a year or more.

Examples of FOIA complaints and summary judgment motions are available [here](#).