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## 1. Background Research

The first step is to determine which agency has the records you want. There is no central government FOIA office, and each agency has its own office or public information staff. There is no special way to determine which agency has the information other than common sense and contacting various agencies. If you have trouble determining which federal agencies have the records you seek, you may consult the United States Government Manual, which is available at most public libraries and on the Internet. The Government Manual contains a list of federal agencies, a brief description of their functions, and contact information.

Agencies are also required to inventory their information systems and establish a government-wide electronic service to identify the major information systems, holdings, and dissemination products of each agency for the public. 44 U.S.C. 3511. Agency compliance with this requirement has been very uneven. Some agencies have made extensive indexes of their information systems available on the Internet, while others have not.

In addition to these government indices, there are many publicly and privately maintained websites that can help with research on where government information is stored. PCLG maintains a list of online directories and search engines for federal government information.

Moreover, you may find that the information you are seeking is available without a FOIA request. Agency Handbooks for Requesting Information provide information on how members of the public can obtain information from the agency without filing a FOIA request, as well as guidance on how to submit a FOIA request. Consult these resources to determine whether the records that you seek can be obtained without a FOIA request.

For example, agencies make many records available free of charge or sell them through the Government Printing Office or the National Technical Information Service. Agencies are also required to make many records available in "reading rooms," where records may be examined without a FOIA request. Many agency policies, decisions and frequently requested records are available in these reading rooms. Agencies also must make their Reading Room materials available on-line, or on CD-ROM or disk, if the records were created after November 1, 1996.

Even if the material is not distributed in this manner, the agency may release records without requiring that a request be submitted to the agency's FOIA office. Agency officials who are responsible for the records that you seek or the public information staff may be able to provide guidance on how to obtain information from the agency without a formal FOIA request.

Additionally, the National Archives and Records Administration holds the historical records of federal agencies, congressional bodies, and courts. If the records that you seek were created more than thirty years ago (twenty for some records), you should contact the National Archives to determine whether relevant records are in its holdings.

Finally, the Library of Congress provides links to congressional committees and publications. Congress and its committees are not subject to the FOIA, but have extensive records on public policy issues that are often available to the public through publications or other documents.

If you discover that the records you are seeking are held by a state or local government, the federal FOIA will not apply. [Click here](#) for more information on state FOI laws.

## 2. Drafting a FOIA Request

Once you have determined which agency is likely to have the information you are seeking, and if you have been unable to locate the information in the public sphere, you may decide to file a FOIA request. When drafting your request, check the agency's FOIA regulations and Agency Handbooks for Requesting Information. The FOIA regulations will provide agency-specific information about where to send your requests and any special requirements imposed by the agency. The Agency Handbooks will provide less formal descriptions of the procedures for submitting a FOIA request and other methods of obtaining information from the agency. Some agencies allow you to submit a FOIA request online or by fax. All agencies accept FOIA requests by mail. When sending a request by mail, you should write "Freedom of Information Request" (or Appeal) on the envelope and on the letter, and you should retain a copy for your files.

You do not have to explain the reasons for your request, and government employees generally do not have any right to ask unless you are seeking a waiver of costs. In your request letter, you must specify what you want, because the law requires your request to "reasonably describe" the records you seek. This means that you may not simply ask questions but must request records describing or pertaining to a particular subject. You do not need to specify a document by name or title, but you must provide a reasonable enough description to allow government employees who are familiar with the agencies' files to locate the records you seek. For example, if you want information on nursing homes in your area and know that the government requires some sort of annual surveys to be conducted on nursing homes, it is sufficient to ask for the surveys and all records pertaining to the surveys for particular years and/or regions. Agencies are not obligated to create a record to respond to your request, but only to provide existing records. A record is information in any format, including maps, photographs, computer disks, and electronic formats.

Your request should state that it is being made pursuant to the Freedom of Information Act (5 U.S.C. § 552) and, if you are requesting records about yourself, pursuant to the Privacy Act (5 U.S.C. § 552a) as well.

Records about you. To request records about yourself, you may ask for "all records pertaining to me" and include your full name, address, date and place of birth, and social security number. To verify that you are requesting your own records, you must have your signature notarized by a notary public or add to the letter the following: "Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct."

Electronic records. If the agency maintains the records you seek in electronic form, you can request that the information be provided in that form. Also, the agency is required to undertake a "reasonable" electronic search for records it maintains in electronic format. 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 should be aware that each agency's ability to reproduce information in specified electronic formats varies.

[Click here to see a sample FOIA request.](#)

### 3. Costs and Requesting Fee Waivers

The Act 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. \$.10-\$.25 per page is reasonable. All other users may be charged for document search and duplication. Except for commercial users, the first two hours of search time and the first hundred pages of copying are always 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).

Agencies' FOIA Regulations and Agency Handbooks for Requesting Information should contain information about the agency's fee schedule for FOIA requests. It is important to consider the provisions in the regulations concerning fees because agencies generally will not begin work on a FOIA request if the requester has not complied with the procedures concerning fees.

Generally, if you believe that you qualify for a waiver ask for a waiver in your FOIA letter. 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 are a media representative, or an "educational or non-commercial scientific" entity, send along proof of this fact with your request letter.

If you are denied a fee waiver or if an agency grants an unsatisfactory reduction of fees, ask the agency to justify its actions. Fee issues may be appealed and are 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. If the costs are substantial, you may be able to minimize the copying costs by asking for permission to review the records before having copies made, so that you can select particular documents for copying.

#### 4. Agency Response

**Delay.** The law 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 is "tolled" (that is, the clock is stopped) if the agency asks for more information or clarification from the requester, either as to the scope of the request or fees. The tolling period ends (the clock begins again) once the requester has furnished the necessary information. FOIA also requires agencies to expedite requests that are particularly time-urgent: if there is a threat to an individual's life or safety, or the party requesting the information demonstrates an urgent need to inform the public.

In spite of these rules, delay is common. Even though the law says that an agency may receive a time extension only in unusual or exceptional circumstances, agencies regularly exceed the twenty working-day deadline without notifying the requester. At some agencies, the delays may last many months or even years. Annual Reports by each agency provide information on how often the agency has been able to comply with the statute's time limits and the agency's backlog of requests at the end of each fiscal year.

In an effort to speed up the process, Congress amended the FOIA in 1996 to encourage agencies to set up a multi-track system so that requests for smaller amounts of material can be responded to more quickly. Check agency regulations to see if your request can qualify for faster processing under a multi-track system or, in unusual circumstances, under the provision for expedited processing. In your request letter, include any information supporting your request for faster processing. If you are seeking expedited processing, you must provide the information 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."

Congress made further attempts to enforce FOIA deadlines in the 2007 amendments by incorporating a penalty on the agency. Now, an agency is prohibited from charging certain fees if they do not respond within the required 20 days.

Even if the agency cannot complete work on your FOIA request within twenty working days, it should send you a letter or other notice acknowledging that it has received your request and identify a point-of-contact or case officer for your FOIA request. If it does not, call or write to the agency's FOIA contacts to check on the status of your request and identify the case officer.

**Denial.** Under the FOIA, an agency may deny your request for a variety of reasons. First, it may assert that you have failed to reasonably describe the documents. If the agency claims you have inadequately described the documents you seek, you should rewrite your request more precisely and resubmit it and/or contact the official processing your request to describe what you seek. Second, an agency could assert that it has conducted a reasonable search and has determined that the requested documents do not exist or are not in the possession or control of the agency. In this case, you may challenge the adequacy of the agency's search in an agency appeal, and, if denied again, in court. The agency may also deny your request if you are not willing to pay the anticipated costs of responding to your request, in which case you may try some of the cost-reduction strategies discussed above or challenge the denial of a fee waiver.

Finally, 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 (1)

release portions of the records that are not exempt and that can be separated from the exempt portions; (2) indicate where the withheld portions appear on the records; and (3) if the records are withheld in their entirety, provide a reasonable estimate of the amount of information that is being withheld, unless giving an estimate would harm an interest protected by the exemption invoked. Under certain circumstances, an agency may state that it has no records subject to your request, even though it does in fact have some relevant records. For example, under exemption 1 (national security), the government can refuse to acknowledge the existence of classified records if the mere existence of the records is classified. Under exemption 7 (investigatory records), where a subject is not aware of a criminal investigation and disclosure could interfere with law enforcement proceedings, the government can refuse to state whether such records exist. You may challenge an agency's decision to withhold the records by appealing any denial. In some cases, you may also ask the agency to use its discretion to release the records even if the records are covered by an exemption.

(1) National Security: The documents exempt under this section are those that are properly classified pursuant to 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 rules and practices of agency personnel that are "predominantly internal" in nature and whose disclosure serves no substantial public interest or significantly risks circumvention of agency regulations or statutes. Thus, minor employee matters such as employee parking and cafeteria regulations are exempt.

(3) Information Exempted by Another Federal Statute: This exemption honors mandatory nondisclosure provisions in other laws.

(4) Trade Secrets and Confidential Commercial or Financial Information: Trade secrets are protected from disclosure. In addition, commercial or financial information may be withheld if it was voluntarily given to the government and is not customarily disclosed to the public by the company, if its disclosure likely would impair the agency's ability to obtain information in the future, or if disclosure of the information would cause substantial competitive injury to the business that submitted it to the government.

(5) Internal Agency Memoranda: This exemption protects inter- or intra-agency memoranda 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 which are both pre-decisional and deliberative, but still requires release of any segregable, factual portions of documents. Typically, preliminary drafts and unfinished reports may be withheld, but final decisions and the memos on which they are based must be disclosed. Thus, a memo from a staff person to a supervisor recommending that a particular policy be established would be exempt from disclosure. But the factual portions of this memo would not be exempt unless they reveal the deliberative decision-making process of the agency.

(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 a brief explanation of the public benefits from disclosure, particularly 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, to identify a confidential source, to disclose techniques and procedures for law enforcement investigations, or to invade personal privacy.

(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. Agency Appeal

If an agency has denied your request in whole or in part, you must appeal before seeking help from the courts. Administrative appeals to higher-level agency officials often result in reversal of decisions to withhold records, so it is

important to pursue an appeal if the agency's initial decision is questionable. Each agency's Annual Report contains statistics concerning how often appeals to higher lever agency officials are successful.

Appeal letters can be used to challenge: (a) the agency's failure to timely respond; (b) the agency's decision not to release records; (c) the adequacy of the search methodology used by the agency to locate responsive records; and (d) the agency's decision not to grant you a fee waiver. If you are appealing a denial, the agency's denial letter should inform you of appeal procedures and the proper address to send your appeal letter. 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, either because the exemption does not apply or because the agency should use its discretion to release the records anyway.

Many agencies require that appeals be filed within 30 days. Unless you are aware of a different time limit, you should file your appeal letter within 30 days. If the agency fails to respond substantively to your initial request within 20 working days, you are legally entitled to go to court without filing an appeal. However, even if your request has been excessively delayed, it is generally better to send a letter demanding a prompt response before going to court. A lawsuit may take a year or more, so coaxing the information out of the agency is preferable. Following up written requests with phone calls can speed up your request. If agencies are aware that you know your rights, they will sometimes move more quickly. For your files, keep a written record of all phone contact with the agency processing your request.

## 6. Filing a Lawsuit

The Act is designed to make litigation as simple as possible. In some instances, taking a FOIA case to court is not overly complicated, and requesters can do it themselves without a lawyer. However, it is more helpful to have a lawyer if you litigate in court. After your appeal is denied, or after 20 working days have elapsed from the time the agency received your appeal, you may sue in the United States District Court where you live, where the documents are located, or in the District of Columbia. If the government cannot prove that the requested documents fall within one of 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 any attorney's fees and out-of-pocket expenses that you incurred.

## 7. Sample FOIA Request and Appeal

Date

Freedom of Information Unit  
(Name and Address of Government Agency)

Dear Sir or Madam:

Re: Freedom of Information Act Request

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, [and/or the Privacy Act, 5 U.S.C. § 552a,] I hereby request access to (or a copy of) all records pertaining to (describe the subject or document containing the information you want).

I am requesting these records (as a representative of the news media, for non-commercial personal use, for an educational institution, etc.).

[If any expenses in excess of \$\_\_\_\_\_ are incurred in connection with this request, please obtain my approval before any such charges are incurred. ]

[I request a waiver of fees because my interest in the records is not primarily commercial, and disclosure of the information will contribute significantly to public understanding of the operations or activities of the government because \_\_\_\_\_.]

I will expect a response within 20 working days as provided by law. If my request is denied in whole or in part, I expect a detailed justification for withholding the records. I also request any segregable portions that are not exempt to be disclosed.

Thank you for your prompt attention to this matter.

Very truly yours,

/S/

Date

Freedom of Information Unit  
(Name and Address of Government Agency)

Dear Sir or Madam:

Re: Freedom of Information Act Appeal

By letter dated (month day, year), I requested access to (use same description as in request letter). By letter dated (month day, year), Mr./Ms. \_\_\_\_\_ of the Freedom of Information Unit (usually) of your agency denied my request. Pursuant to the Freedom of Information Act, 5 U.S.C. 552, I hereby appeal that denial. I have enclosed a copy of my request letter and the denial that I have received.

The denial of my request was improper because ... (describe why the denial was improper, e.g., why the exemption should not apply in your circumstances).

I expect a response within 20 working days, as the law provides.

Very truly yours,

/S/

#### 8. Agency Specific Information

Public Citizen's Freedom of Information Clearinghouse maintains an Agency Database which contains links to each agency's FOIA webpage and FOIA handbook, each agency's contact information for submitting FOIA requests by mail and by email, each agency's FOIA regulations, and each agency's annual FOIA report. If you have identified one or more agencies to which you would like to submit requests, search the Agency Database for agency-specific FOIA information.