



GSA Federal Citizen Information Center

Your Right To Federal Records

Questions and Answers
on the Freedom of Information Act
and Privacy Act
September 2004



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Introduction

The Freedom of Information Act (FOIA), enacted in 1966, generally provides that any person has the right to request access to federal agency records or information. Federal agencies are required to disclose records upon receiving a written request for them, except for those records that are protected from disclosure by any of the nine exemptions or three exclusions of the FOIA. This right of access is enforceable in court.

In 1996, Congress revised the Freedom of Information Act (FOIA) by passing the Electronic Freedom of Information Act Amendments (E-FOIA). The E-FOIA amendments provide for public access to information in an electronic format and for the establishment of electronic FOIA reading rooms through agency FOIA sites on the Internet. The primary source of FOIA-related information on the Internet is the Justice Department's FOIA website (www.usdoj.gov/foia), which contains links to the FOIA websites of other federal agencies.

The Privacy Act of 1974 is another federal law regarding federal government records or information about individuals. The Privacy Act establishes certain controls over how the executive branch agencies of the federal government gather, maintain, and disseminate personal information. The Privacy Act also can be used to obtain access to information, but it pertains only to records that federal agencies keep about individ-

ual U.S. citizens and lawfully admitted permanent resident aliens. The FOIA, on the other hand, covers all records in the possession and control of federal executive branch agencies.

This brochure provides basic guidance about the FOIA and the Privacy Act to assist people in exercising their rights. It uses a question-and-answer format to present information about these laws in a clear, simple manner. The brochure is not intended to be a comprehensive treatment of the complex issues associated with the FOIA and the Privacy Act.

The questions answered here are those frequently asked by persons who contact the Federal Citizen Information Center (FCIC) of the U.S. General Services Administration for information on the FOIA and the Privacy Act. The answers were compiled by the FCIC, along with the Justice Department—the agency responsible for coordinating the administration of the FOIA and encouraging agency compliance with it. The Office of Management and Budget (OMB), which has a similar responsibility for the Privacy Act, reviewed the answers to questions on that law.

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What information is available under the FOIA?

The FOIA provides access to all federal agency records except for those records (or portions of those records) that are protected from disclosure by any of nine exemptions or three exclusions (reasons for which an agency may withhold records from a requester).

The exemptions cover:

- (1) classified national defense and foreign relations information,
- (2) internal agency rules and practices,
- (3) information that is prohibited from disclosure by another law,
- (4) trade secrets and other confidential business information,
- (5) inter-agency or intra-agency communications that are protected by legal privileges,
- (6) information involving matters of personal privacy,
- (7) certain information compiled for law enforcement purposes,
- (8) information relating to the supervision of financial institutions, and
- (9) geological information on wells.

The three exclusions, which are rarely used, pertain to especially sensitive law enforcement and national security matters.

Even if information is exempt from disclosure under the FOIA, the agency still may disclose the information as a

matter of administrative discretion if it chooses to do so and disclosure of that information is not prohibited by any law. The full text of the FOIA is printed beginning on page 16 of this publication.

The FOIA does not apply to Congress, the courts, or the central offices of the White House, nor does it apply to records of state or local governments. However, all state governments have their own FOIA-type statutes. You may request details about a state's records access law by writing to the office of the attorney general of that state.

The FOIA does not require a private organization or business to release any information directly to the public, whether it has been submitted to the federal government or not. However, information submitted to the federal government by such organizations or companies can be available through a FOIA request if it is not protected by a FOIA exemption, such as the one covering trade secrets and confidential business information.

Under the FOIA, you may request and receive by mail a copy of any record that is in an agency's files and is not covered by one of the exemptions or exclusions. For example, suppose you have heard that a certain toy has been recalled as a safety hazard and you want to know the details. The Consumer Product Safety Commission could help you by providing copies of the recall



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documents. Perhaps you want to read the latest inspection report on conditions at a nursing home certified for Medicare. Your local Social Security office keeps such records on file. Or you might want to know whether the Department of Veterans Affairs has a file that mentions you. In all of these examples, you could use the FOIA to request information from the appropriate federal agency.

If, on the other hand, the records you seek are about yourself, you may request them under for the FOIA and the Privacy Act of 1974 (see description beginning on page 8). In such cases, records may be withheld only if exempt under both laws (see Sample Privacy Act Request Letter on page 11).

When you make a FOIA request, you must describe the records that you want as clearly and specifically as possible. If the agency cannot identify and locate records that you have requested with a reasonable amount of effort, it will not be able to assist you. While agencies strive to handle all FOIA requests in a customer-friendly fashion, the FOIA does not require them to do research for you, analyze data, answer written questions, or in any other way create records in order to respond to a request.

Can I find agency records on the Internet?

Yes, and it can be very useful to look at the information that an agency makes available on the Internet before making a FOIA request. Agencies place a wide variety of information on their websites that is very useful to the general public and describes their various programs and activities. Additionally, under the E-FOIA amendments, the FOIA requires that agencies make certain records available in their electronic FOIA reading rooms on the Internet. For example, you will find certain agency opinions, staff manuals, policy statements, and records frequently requested under the FOIA that were created by the agency after November 1, 1996. You can find links to the FOIA sites of federal agencies on the Internet by going to the Justice Department's website as described on the next page.

Whom do I contact in the federal government with my request? How do I get the right address?

There is no one office of the federal government that handles all FOIA requests. Each FOIA request must be made to the particular agency that has the records that you want. For example, if you want to know about an investigation of motor vehicle defects, write to the Department of Transportation. If you want information about a work-related accident at a nearby manufacturing plant, write to

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the Department of Labor (at its office in the region where the accident occurred). Most of the larger federal agencies have several FOIA offices. Some have one for each major bureau or component; others have one for each region of the country.

You may have to do a little research to find the proper agency office to handle your FOIA request, but you will save time in the long run if you send your request directly to the most appropriate office. For assistance, you can contact the Federal Citizen Information Center (FCIC) of the U.S. General Services Administration. The FCIC is specially prepared to help you find the right agency, the right office, and the right address. See page 13 for information on how to contact the FCIC. On the Internet, you can find addresses of the FOIA offices of federal agencies by going to the Justice Department's website at www.usdoj.gov/foia (click on "Other Agencies," and select "Principal FOIA Contacts at Federal Agencies").

The *U.S. Government Manual*, the official handbook of the federal government, may also be useful. It describes the programs within each federal agency and lists the names of top personnel and agency addresses. The *Manual* is available at most public libraries and can be purchased from the Superintendent of Documents (ordering instructions are on page 13). In addition, each agency publishes FOIA regulations in the Code of Federal Regulations (CFR) that contain

the mailing addresses of its FOIA offices. (For example, the Justice Department's FOIA regulations can be found in Volume 28 of the CFR, Part 16.) The CFR is available at most public libraries. Also, agencies have placed their FOIA regulations on their FOIA sites on the Internet.

How do I request information under the FOIA?

In order to make a FOIA request, simply write a letter to the appropriate agency. For the quickest possible handling, mark both your letter and the envelope "Freedom of Information Act Request." Although you do not have to give a record's title, you should identify the records that you want as specifically as possible in order to increase the likelihood that the agency will be able to locate them. Any facts that you can furnish about the time, place, authors, events, subjects, and other details of the records will be helpful to the agency in deciding where to search and in determining which records respond to your request, saving you and the government time and money.

As a general rule, FOIA requesters are not required to state the reasons why they are making their requests. You may do so if you think it might help the agency to locate the records. If you are not sure whether the records you want are exempt from disclosure, you may request them anyway. Agencies often have the legal discretion to disclose



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A sample request is shown below. Keep a copy of your request. You may need to refer to it in further correspondence with the agency.

Sample FOIA Request Letter

Date

Agency FOIA Officer

Name of agency or agency component

Address (see discussion on pages 2-3 on whom to contact)

Re: Freedom of Information Act Request

Dear _____:

Under the Freedom of Information Act, 5 U.S.C. subsection 552, I am requesting access to [identify the records as clearly and specifically as possible].

If there are any fees for searching for or copying the records, please let me know before you work on my request. [Or, please supply the records without informing me of the cost if the fees do not exceed \$_____, which I agree to pay.]

If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information and notify me of appeal procedures available under the law.

Optional: If you have any questions about handling this request, you may telephone me at _____ (home phone) or at _____ (office phone).

Sincerely,

Name

Address

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information even if it falls within a FOIA exemption.

May I request records in a specific format?

Yes, but the records may not be available in the requested format. If you request records that already exist in an electronic format, the FOIA requires agencies in almost all cases to provide these records to you in that same format, if that is what you prefer. However, if you request records that exist only in paper form, and would like them in some electronic format, the agency is obligated to provide the records in that electronic format only if it can do so with a reasonable amount of effort. The same is true if you request that electronic records be provided to you in an electronic format in which they do not already exist.

What is the cost for getting records under the FOIA?

The FOIA permits agencies to charge fees to FOIA requesters. For noncommercial requesters, an agency may charge only for the actual cost of searching for records and the cost of making copies. Search fees usually range from about \$15 to \$40 per hour, depending upon the salary levels of the personnel needed for the search. The charge for copying documents can be as little as 10 cents per page at some agencies, but may be considerably more at other agencies.

For noncommercial requests, agencies will not charge for the first two hours of search time or for the first 100 pages of document copying. Agencies also will not charge if the total cost is minimal. An agency should notify you before proceeding with a request that will involve large fees, unless your request letter already states your willingness to pay fees as large as that amount. If fees are charged, you may request a waiver of those fees if you can show that the records, when disclosed to you, will contribute significantly to the public's understanding of the operations or activities of the government.

How long will it take to answer my request?

Under the FOIA, federal agencies are required to respond to your request within 20 working days of receipt (excluding Saturdays, Sundays, and federal holidays). If you have not received a response by the end of that time (allowing for mailing time), you may telephone the agency or write a follow-up letter to ask about the status of your request. Sometimes an agency may need more time to find the records, examine them, possibly consult other persons or agencies, decide whether to disclose all of the information requested, and prepare the records for disclosure. Agencies may extend this 20-day period for up to 10 more working days, with written notice to you. Some agencies, particularly law enforcement agencies, receive large numbers of requests, many of



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which involve voluminous records or require exceptional care to process. If an agency has a backlog of requests that were received before yours and has assigned a reasonable portion of its staff to work on the backlog, the agency ordinarily will handle requests on a first-come, first-served basis and may not respond to all requests within the statutory time period. The FOIA allows an agency to set up processing categories so that simple requests do not have to wait to be handled because a more complicated request was received by the agency first.

Is there any way for me to speed up the response time?

If an agency is unable to respond to your request in time, it may ask you to modify your request so that you can receive a response more quickly. Generally, it takes agencies less time to process simple requests involving a small number of records. Complex requests involving a greater number of records can take considerably more time to process. Therefore, you and an agency FOIA Officer may want to discuss narrowing the scope of your request to speed up the response time or to agree on an alternative time frame for record processing.

Another means of obtaining a faster response is to ask the agency for "expedited processing" of your request. However, you should know that the agency will grant this request

only under very specific circumstances. In order to qualify, you must certify that there is an imminent threat to the life or physical safety of an individual or, if you are a member of the news media, you must demonstrate that there is an urgency to inform the public about certain federal government activity. An agency must decide whether to grant a request for expedited processing within 10 calendar days. In their individual regulations, agencies may establish other ways for requesters to obtain expedited processing.

What happens if the agency denies my request?

If the agency locates records in response to your request, it can withhold them (or any portion of them) only if they are exempt from disclosure. If an agency denies your request, in whole or in part, it ordinarily must provide an estimate of the amount of material withheld, state the reason(s) for the denial, and inform you of your right to appeal to a higher decision-making level within the agency.

How do I appeal a denial?

In order to appeal a denial, promptly send a letter to the agency. Most agencies require that appeals be made within 30 to 60 days after you receive notification of a denial. The denial letter should tell you the office to which your appeal letter should be

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addressed. For the quickest possible handling, you should mark both your request letter and the envelope "Freedom of Information Act Appeal."

Simply ask the agency to review your FOIA request and its denial decision. It is a good idea also to give your reason(s) for believing that the denial was wrong. Be sure to refer to any pertinent communications you have had with the agency on the request and include any number the agency may have assigned to your request. It can save time in acting on your appeal if you include copies of your FOIA request and the agency's denial letter. You do not need to enclose copies of any documents released to you. Under the FOIA, the agency has 20 working days (excluding Saturdays, Sundays, and federal holidays) to decide your appeal. Under certain circumstances, it may also take an extension of up to 10 working days. At some agencies, as with initial requests, some appeals may take longer to decide.

What can I do if my appeal is denied?

If the agency denies your appeal, or does not respond within the statutory time period, you may take the matter to court. You can file a FOIA lawsuit in the U.S. District Court where you live, where you have your principal place of business, where the documents are kept, or in the District of Columbia. In court, the agency will have to prove

that any withheld information is covered by one of the exemptions listed in the law. If you win a substantial portion of your case and your lawsuit is found to be a matter of public interest, the court may require the government to pay court costs and reasonable attorney fees for you.



What is the Privacy Act?

The federal government compiles a wide range of information on individuals. For example, if you were ever in the military or employed by a federal agency, there should be records of your service. If you have ever applied for a federal benefit or received a student loan guaranteed by the government, you are probably the subject of a file. There are records on every individual who has ever paid income taxes or received a check from Social Security or Medicare.

The Privacy Act, passed by Congress in 1974, establishes certain controls over what personal information is collected by the federal government and how it is used. This law guarantees three primary rights:

- (1) the right to see records about oneself, subject to the Privacy Act's exemptions;
- (2) the right to amend a nonexempt record if it is inaccurate, irrelevant, untimely, or incomplete; and
- (3) the right to sue the government for violations of the statute, such as permitting unauthorized individuals to read your records.

The Privacy Act also provides for certain limitations on agency information practices, such as requiring that information about an individual be collected from that individual to the greatest extent practicable; requiring agencies to ensure that their records are accurate, relevant, timely, and complete;

and prohibiting agencies from maintaining information describing how an individual exercises his or her First Amendment rights unless the individual consents to it, a statute permits it, or it is within the scope of an authorized law enforcement investigation.

What information can I request under the Privacy Act?

The Privacy Act applies only to records about individuals maintained by agencies in the executive branch of the federal government. It applies to these records only if they are in a "system of records," which means they are retrieved by an individual's name, Social Security number, or some other personal identifier. In other words, the Privacy Act does not apply to information about individuals in records that are filed under other subjects, such as organizations or events, unless the agency also indexes and retrieves them by individual names or other personal identifiers.

There are 10 exemptions to the Privacy Act under which an agency can withhold certain kinds of information from you. Examples of exempt records are those containing classified information on national security and those concerning criminal investigations. Another exemption often used by agencies is that which protects information that would identify a confidential source. For example, if an investigator questions a person about your qualifications for federal employment and that person agrees to answer only

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if his identity is protected, then his name or any information that would identify him can be withheld. The 10 exemptions are set out in the law.

If you are interested in more details, you should read the Privacy Act in its entirety. Though this law is too lengthy to publish as part of this brochure, it is readily available. It is printed in the U.S. Code (Section 552a of Title 5), which can be found in many public and school libraries. You may also order a copy of the Privacy Act of 1974, Public Law 93-579, from the Superintendent of Documents (ordering instructions are on page 14). Also, the full text of the Privacy Act is available on the Justice Department's FOIA site on the Internet. Go to the Justice Department's website at www.usdoj.gov/foia (click on "Reference Materials," and scroll down to the "Text of the Privacy Act").

Whom do I contact in the federal government with my request? How do I get the right address?

As with the FOIA, no one office handles all Privacy Act requests. To locate the proper agency to handle your request, follow the same guidelines as for the Freedom of Information Act.

How do I know if an agency has a file on me?

If you think a particular agency has a file pertaining to you, you may write to

the Privacy Act Officer. Agencies are generally required to inform you, upon request, whether or not they have files on you. In addition, agencies are required to report publicly the existence of all systems of records they keep on individuals. The Office of the Federal Register makes available on the Internet a compilation of each agency's systems of records notices, including exemptions, as well as its Privacy Act regulations. The Privacy Act Issuances Compilation includes most systems, is updated every two years, and can be found at www.access.gpo.gov/su_docs/aces/PrivacyAct.shtml.

How do I request information under the Privacy Act?

Write a letter to the agency that you believe may have a file pertaining to you. Address your request to the agency's Privacy Act Officer. Be sure to write "Privacy Act Request" clearly on both the letter and the envelope.

Most agencies require some proof of identity before they will give you your records. Therefore, it is a good idea to enclose proof of identity (such as a copy of your driver's license) with your full name and address. Do not send any original documents. Remember to sign your request for information, since your signature is a form of identification. If an agency needs more proof of identity before releasing your files, it will let you know.



Give as much information as possible as to why you believe the agency has records about you. The agency should process your request or contact you for additional information.

A sample request is shown on page 11. Keep a copy of your request. You may need to refer to it in further correspondence with the agency.

What is the cost for getting records under the Privacy Act?

Under the Privacy Act, an agency can charge only for the cost of copying records, not for time spent locating them.

How long will it take to answer my request?

Under the terms of the Privacy Act, the agency is not required to reply to a request within a given period of time. However, most agencies have adopted the FOIA response times. If you do not receive any response within four weeks or so, you might wish to write again, enclosing a copy of your original request.

What if I find that a federal agency has incorrect information about me in its files?

The Privacy Act requires agencies maintaining personal information about

individuals to keep accurate, relevant, timely, and complete files. If, after seeing your file, you believe that it contains incorrect information and should be amended, write to the agency official who released the record to you. Include all pertinent documentation for each change you are requesting. The agency will let you know if further proof is needed. The law requires an agency to notify you of the receipt of such an amendment request within 10 working days of receipt. If your request for amendment is granted, the agency will tell you precisely what will be done to amend the record. You may appeal any denial.

Even if an agency denies your appeal, you have the right to submit a statement explaining why you think the record is wrong and the agency must attach your statement to any nonexempt records involved. The agency must also inform you of your right to go to court and have a judge review the denial of your appeal.

What can I do if I am denied information requested under the Privacy Act?

There is no required procedure for Privacy Act appeals, but an agency should advise you of its own appeal procedure when it makes a denial. Should the agency deny your appeal, you may take the matter to court. If you win your case, you may be awarded court costs and attorney fees.

The Privacy Act



Sample Privacy Act Request Letter

Date

Agency FOIA/Privacy Act Officer

Name of agency or agency component

Address (see discussion on page 9 on whom to contact)

Re: Privacy Act Request

Dear _____:

Under the Freedom of Information Act, 5 U.S.C. subsection 552, and the Privacy Act, 5 U.S.C. subsection 552a, I am requesting access to [identify the records as clearly and specifically as possible].

If there are any fees for copying the records, please let me know before you work on my request. [Or, please supply the records without informing me of the cost if the fees do not exceed \$_____, which I agree to pay.]

If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information and notify me of appeal procedures available under the law.

Optional: If you have any questions about handling this request, you may telephone me at _____ (home phone) or at _____ (office phone).

Sincerely,

Name

Address

Enclosure (proof of identity)



A Comparison of the Freedom of Information Act and the Privacy Act

What is the relationship between the FOIA and the Privacy Act?

Although the two laws were enacted for different purposes, there is some similarity in their provisions. Both the FOIA and the Privacy Act give people the right to request access to records held by agencies of the federal government. The FOIA's access rights are generally given to "any person," but the Privacy Act's access rights are given only to the individual who is the subject of the records sought (if that individual is a U.S. citizen or a lawfully admitted permanent resident alien).

The FOIA applies to all federal agency records. The Privacy Act, however, applies to only those federal agency records that are in "systems of records" containing information about individuals that is retrieved by the use of a name or personal identifier. Each law has a somewhat different set of fees, time limits, and exemptions from its right of access.

If the information you want pertains to the activities of a federal agency, an organization, or some person other than yourself, you should make your request under the FOIA, which covers all agency records. If the information you want is about yourself, you should make the request also under the Privacy Act, which covers most records of agencies that pertain to individuals. Sometimes you can use the FOIA to get records about yourself that are not in a Privacy Act "system of records." If you are in

doubt about which law applies or would better suit your needs, you may refer to both in your request letter. If you request records about yourself and the Privacy Act applies, the agency should process the request under both the FOIA and the Privacy Act and withhold requested information from you only if it is exempt under both laws.

Can I request information about other people?

Yes, but it might be withheld to protect their personal privacy. The FOIA contains two very important provisions concerning personal privacy: Exemption 6 and Exemption 7(C). They protect you from others who may seek information about you, but they also may prevent you from obtaining information about others. The FOIA's Exemption 6 permits an agency to withhold information about individuals if disclosing it would be "a clearly unwarranted invasion of personal privacy." This includes, for example, almost all of the information in medical and financial benefit files and much of the information in personnel files. Exemption 7(C) similarly protects personal privacy interests in law enforcement records. To decide whether to withhold information under these two FOIA privacy exemptions, an agency must balance personal privacy interests against any public interest that would be served by disclosure. Neither Exemption 6 nor Exemption 7(C) can be used to deny you access to information about yourself, only to deny you information about other persons.

Other Sources of Information



Federal Citizen Information Center

The Federal Citizen Information Center (FCIC) of the U.S. General Services Administration administers a national contact center which can help you find information about the federal government's agencies, services, and programs. You may ask the contact center for assistance in contacting the proper federal agency with your Freedom of Information Act or Privacy Act request.

Simply call toll-free 1 (800) FED INFO (that's 1 (800) 333-4636) from anywhere in the United States. The contact center is open for personal assistance from 8 a.m. to 8 p.m., Eastern time, Monday through Friday, except federal holidays. Recorded information on frequently requested subjects is available around the clock.

A text version of this publication is available on FCIC's website at www.pueblo.gsa.gov (click on "Federal Programs," and scroll down to this publication's title) and the Justice Department's website at www.usdoj.gov/foia (click on "Reference Materials," and scroll down to this publication's title).

In addition, FCIC publishes the free *Consumer Information Catalog*, which lists more than 200 free and low-cost federal booklets on a wide variety of consumer topics. For a free copy of the *Catalog*, write to Consumer Information Catalog, Pueblo, CO 81009, or call toll-free 1 (800) 8 PUEBLO (that's 1 (800) 878-

3256). The *Catalog* is also available on FCIC's website at www.pueblo.gsa.gov.

U.S. Government Manual

The *U.S. Government Manual* is the official handbook of the federal government. Published by the National Archives and Records Administration, it describes the programs in each federal agency, lists the names of top personnel, the mailing address, and a general information telephone number. It is available in most public libraries or can be purchased from the U.S. Government Printing Office (GPO). For pricing and ordering information, call toll-free 1 (866) 512-1800. The text version is available on GPO's website at www.gpoaccess.gov/gmanual.

The Privacy Act of 1974

This law gives citizens the right to see files about themselves, subject to its exemptions; to request an amendment if a nonexempt record is inaccurate, irrelevant, untimely, or incomplete; and to sue the government for permitting others to see their files unless specifically permitted by the law. A complete copy of the Privacy Act can be found at Section 552a of Title 5 of the U.S. Code. Or you may order a copy of the Privacy Act, Public Law 93-579, from GPO by calling toll-free 1 (866) 512-1800. A text version is available on the Justice Department's website at www.usdoj.gov/foia (click on "Reference Materials," and scroll down to the "Text of the Privacy Act").



Other Sources of Information

A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records

This booklet, written by the Committee on Government Reform, U.S. House of Representatives, provides a much more detailed explanation of the Freedom of Information Act and the Privacy Act than this brochure. It may be purchased from GPO by calling toll-free 1 (866) 512-1800. A Portable Document Format (PDF) version is available online at reform.house.gov/GovReform/files.

Freedom of Information Act Guide and Privacy Act Overview

This book is updated every other year by the Justice Department's Office of Information and Privacy. The "Justice Department's Guide to the Freedom of Information Act," is a comprehensive summary of the law that includes a discussion of the nine FOIA exemptions and its most important procedural aspects. The "Privacy Act Overview," prepared in coordination with the Office of Management and Budget, is a discussion of the provisions of the Privacy Act. The book also contains the texts of both statutes. It may be purchased from GPO by calling toll-free 1 (866) 512-1800. View the text versions

on the Justice Department's website at www.usdoj.gov/foia (click on "Reference Materials," and then click on the name of each document).

Freedom of Information Case List

This book, last updated in 2002 by the Justice Department's Office of Information and Privacy, contains lists of cases decided under the Freedom of Information Act, the Privacy Act, the Government in the Sunshine Act, and the Federal Advisory Committee Act. The book includes the texts of those four statutes and a list of related law review articles. For pricing and ordering information, call toll-free 1 (866) 512-1800. A text version is available on the Justice Department's website at www.usdoj.gov/foia (click on "Reference Materials," and then click on "Freedom of Information Case List").

FOIA Update

This newsletter, published by the Justice Department's Office of Information and Privacy from 1979–2000, contained FOIA-related information and guidance for federal agencies. All back issues are available and keyword searchable on the Justice Department's website at www.usdoj.gov/foia (click on "Reference Materials," and then click on "FOIA Update").

Other Sources of Information



FOIA Post

This web-based successor to *FOIA Update* has been published by the Justice Department's Office of Information and Privacy since 2001. Items of FOIA-related information and guidance are published on an as-needed basis. The *FOIA Post* can be found on the Justice Department's website at www.usdoj.gov/foia (click on "Reference Materials," and then click on "FOIA Post").

FOIA Reference Guides or Handbooks

Under the amended statute, each federal department or agency is required to maintain a reference guide or handbook to assist the public in making FOIA requests to that agency. These are available on each agency's FOIA website (for example, the Justice Department's FOIA Reference Guide is available at www.usdoj.gov/04foia/04_3.html).



The Freedom of Information Act, 5 U.S.C. § 552

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

- (1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—
 - (A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;
 - (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;
 - (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;
 - (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and
 - (E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

- (2) Each agency, in accordance with published rules, shall make available for public inspection and copying—
 - (A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

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- (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;
- (C) administrative staff manuals and instructions to staff that affect a member of the public;
- (D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and
- (E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the



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direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

- (i) it has been indexed and either made available or published as provided by this paragraph; or
 - (ii) the party has actual and timely notice of the terms thereof.
- (3) (A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.
- (B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.
- (C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.
- (D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

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- (E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to —
 - (i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or
 - (ii) a representative of a government entity described in clause (i).

- (4) (A) (i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under the section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.
 - (ii) Such agency regulations shall provide that—
 - (I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;
 - (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; and
 - (III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.



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- (iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) 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.
- (iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—
 - (I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or
 - (II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.
- (v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.
- (vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.
- (vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter *de novo*, provided, that the court's review of the matter shall be limited to the record before the agency.

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- (B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).
- (C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.
- (D) Repealed. Pub. L. 98-620, Title IV, 402(2), Nov. 8, 1984, 98 Stat. 3335, 3357.
- (E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.
- (F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is



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warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

- (G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.
- (5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.
- (6) (A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—
 - (i) determine within twenty days (except Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and
 - (ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.
- (B) (i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the per-

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son making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

- (ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).
- (iii) As used in this subparagraph, “unusual circumstances” means, but only to the extent reasonably necessary to the proper processing of the particular requests—
 - (I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
 - (II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
 - (III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.



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- (iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requester, or by a group of requesters acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.
- (C) (i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.
- (ii) For purposes of this subparagraph, the term “exceptional circumstances” does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.
 - (iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing the request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

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- (D) (i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.
- (ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.
- (iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.
- (E) (i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records—
 - (I) in cases in which the person requesting the records demonstrates a compelling need; and
 - (II) in other cases determined by the agency.
- (ii) Notwithstanding clause (i), regulations under this subparagraph must ensure—
 - (I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and
 - (II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.
- (iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to



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respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

- (iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.
 - (v) For purposes of this subparagraph, the term “compelling need” means—
 - (I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
 - (II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.
 - (vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person’s knowledge and belief.
- (F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

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- (b) This section does not apply to matters that are—
- (1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
 - (2) related solely to the internal personnel rules and practices of an agency;
 - (3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
 - (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
 - (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
 - (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
 - (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confi-



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dential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

- (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

- (c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—
 - (A) the investigation or proceeding involves a possible violation of criminal law; and
 - (B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.
- (2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject

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to the requirements of this section unless the informant's status as an informant has been officially confirmed.

- (3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.
- (d) This section does not authorize the withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.
- (e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include—
 - (A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;
 - (B) (i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and
(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;
 - (C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;



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- (D) the number of requests for records received by the agency and the number of requests which the agency processed;
 - (E) the median number of days taken by the agency to process different types of requests;
 - (F) the total amount of fees collected by the agency for processing requests; and
 - (G) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.
- (2) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunication means have not been established by the agency, by other electronic means.
 - (3) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.
 - (4) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.
 - (5) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under

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this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term—

- (1) “agency” as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and
- (2) “record” and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.

(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including—

- (1) an index of all major information systems of the agency;
- (2) a description of major information and record locator systems maintained by the agency; and
- (3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.

September 2004

A joint publication of:

U.S. Department of Justice
Washington, DC 20530

and

GSA Office of Citizen Services and Communications
Federal Citizen Information Center

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