



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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Freedom of Information Act Basics

What is the Freedom of Information Act?

FOIA (5 U.S.C. § 552) requires federal agencies to publicly disclose certain records that they create or obtain. Records include all tangible forms of information, including writings, images, data, and audio and video recordings in physical or electronic form.

Agencies must proactively disclose certain records in the *Federal Register* or in reading rooms on their websites. FOIA also establishes a process for members of the public to request access to certain records the agency has not proactively disclosed.

What information must the agency provide upon request?

The agency must make “records promptly available to any person” upon receiving a FOIA request, except for information it can withhold under any of nine exemptions and three exclusions.

The requester must “reasonably describe” the records sought and comply with agency procedural rules, including those governing payment of fees.

What must the agency do once it receives a FOIA request?

Within 20 days of receiving a valid request, the agency must inform the requester whether it will grant the request and whether any exemptions apply.

The response must also explain how the requester can appeal the agency’s initial determination or seek dispute resolution services from the Office of Government Information Services.

The agency may extend the review period by 10 days for “unusual circumstances,” a term defined in the statute.

Information agencies must disclose in the *Federal Register*

- Descriptions of agency organization and how to obtain information, make submittals or requests, or obtain decisions
- Statements as to how the agency channels and determines its functions
- Rules of procedure
- Descriptions of forms and how to obtain them
- Instructions as to scope and contents of papers, reports, examinations
- Substantive rules of general applicability
- Statements of general policy and interpretations of general applicability

Information agencies must disclose on their websites

- All information listed above (see E-Government Act of 2002, PL 107-347)
- Adjudication opinions and orders
- Policy statements and interpretations not published in the *Federal Register*
- Manuals and staff instructions that affect members of the public
- Copies and a general index of commonly requested FOIA releases

Information exempted from FOIA disclosure

- National security information
- Internal personnel rules and practices
- Information exempted from disclosure by another statute (e.g., Privacy Act)
- Trade secrets and privileged or confidential business/financial information
- Inter- and intra-agency materials normally privileged in civil discovery (i.e., pre-decisional or deliberative information)
- Personnel, medical, and other similar records
- Certain records or information compiled for law enforcement purposes
- Financial institution reports prepared by/for financial regulatory agencies
- Geological and geophysical information and data concerning wells

Information excluded from FOIA requirements

- Records related to a pending criminal investigation where the target is unaware of investigation and disclosure would interfere with enforcement
- Records maintained by a criminal law enforcement agency under an informant’s name or personal identifier
- Classified FBI records concerning foreign intelligence or terrorism

Additional Resources

- [Freedom of Information Act](#), ACUS Federal Administrative Procedure Sourcebook
- [FOIA.gov FAQ](#), Office of Information Policy (Dept. of Justice)
- [DOJ Guide to the Freedom of Information Act](#)
- Daniel J. Sheffner, Cong. Research Serv., R46238, [The Freedom of Information Act \(FOIA\): A Legal Overview](#) (2020)
- ACUS Rec. [2014-1](#), *Resolving FOIA Disputes Through Targeted ADR Strategies*