



The Freedom of Information Act

A Guide to Obtaining Pertinent Government Records

The Freedom of Information Act (FOIA) was passed in 1967 and gives the public the right to request access to records from federal agencies that are not publicly available. Agencies are required to disclose the information unless it falls under an exemption such as personal privacy, national security, or law enforcement. Each agency has a different process for FOIA requests. FOIA does not require agencies to create new records or to conduct research, analyze data, or answer questions when responding to requests.

When might you want to make a FOIA request? You can put in a request any time you think that a federal agency has information that you might need for your business operations or for possible litigation.

For example, Homeland Security received 281,138 requests in FY2015 or almost 40% of the total 713, 168 federal FOIA request made that year. The most common types of requests that they received involved 1) alien files, 2) copies of contracts, 3) disaster relief records and 4) grants.

There is no fee to submit a request, but the agency may charge for search time or copies. According to the FOIA.gov site, there is usually no charge for the first two hours of search time or for the first 100 pages of duplication. If the agency estimates that the total fees will exceed \$25, it will contact you to see if you want to narrow the scope of your request. Certain types of requesters may have different fee schedules – for example, media, educational, non-commercial or scientific groups have special fee status — they don't have to pay search or review fees, but may have to pay some duplication fees.

Some recent changes to Freedom of Information Act procedures are the result of the passage of the FOIA Improvement Act of 2016 which became law on June 30, 2016 (P.L. 114-185). The act provides some amendments to the Freedom of Information Act. Provisions include the following:

- require federal agencies to make their disclosable records and documents available for public inspection in an electronic format;
- require agencies to make available for inspection in an electronic format records that have been requested three or more times (frequently requested records);
- prohibit an agency from charging a fee for providing records if the agency misses a deadline for complying with an FOIA request unless unusual circumstances apply and more than 5,000 pages are necessary to respond to the request;
- prohibit an agency from withholding information requested under FOIA unless the agency reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or disclosure is prohibited by law (presumption of openness);



- limit the FOIA exemption for agency communications to allow the disclosure of agency records created 25 years or more before the date of a FOIA request;
- require the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between agencies and FOIA requesters;
- expand the authority and duties of the Chief FOIA Officer of each agency to require officers to serve as the primary agency liaison with OGIS and the Office of Information Policy;
- establish a Chief FOIA Officers Council to develop recommendations for increasing compliance and efficiency in responding to FOIA requests, disseminating information about agency experiences, identifying, developing, and coordinating initiatives to increase transparency and compliance, and promoting performance measures to ensure agency compliance with FOIA requirements; and
- require the Director of the Office of Management and Budget to ensure the operation of a consolidated online request portal that allows a member of the public to submit a request for records to any agency from a single website.

Similar procedures exist at the state level. Colorado passed the Colorado Open Records Act (CORA) in 1969, [C.R.S. 24-72-201 et seq.](#) The law exempts correspondence that is work product and all correspondence with constituents that clearly implies by its nature or content that the constituent expects that it is confidential. Any person can request records and they are not required to state a purpose. The custodian of the records is not allowed to ask why the material is being requested. Colorado law includes a three day deadline for a response.

Again, each state agency or office of interest must be contacted since there is no central location to submit all CORA requests. Some types of documents are considered confidential or are excluded from the act. Examples of material that cannot be retrieved include records of criminal investigations; work product prepared for an elected official, medical data; personnel files; letters of reference; trade secrets; library records; or addresses of public school children.

If you want to avoid the hassle of identifying who to contact and how to request documents or would like your request to remain anonymous, Contact A/I for assistance and we can make the arrangements for you.

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