

HOW TO

Use the Freedom of Information Act



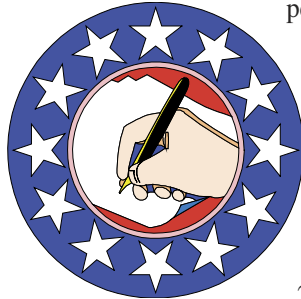
Research - digging up useful information —is a critical tool for community organizations. Much of the information you want may be housed in federal government agency files. The Freedom of Information Act makes government information accessible to the people, and establishes the procedures to follow for getting it.

WHAT IS THE FREEDOM OF INFORMATION ACT —

The Freedom of Information Act (FOIA) was passed by Congress in 1966 and amended in 1974 in order to create an open government. A number of recent government policies and rules significantly alter how information is handled under FOIA.

Attorney General John Ashcroft issued a memorandum in October 2001, instructing agencies to withhold documents whenever legally possible under the Freedom of Information Act. The memo specifically states the exemptions that agencies should use to shield information. The General

Accounting Office (GAO) released a report that shows a significant percentage of FOIA officers have reduced the amount of information available to the public because of the Ashcroft memo.



In December 2005, President George W. Bush issued Executive Order 13392 on FOIA. The Executive Order requires agencies to name a Chief FOIA Officer and to establish FOIA Requester Service Centers to help people find out the status of their requests. This executive order may fix some, but not all, of the problems with the current FOIA system.” In a memorandum dated December 30, 2005, the Office of Management and Budget provided details to Bush’s executive order, including deadlines for implementation throughout fiscal

years 2006 and 2007.

Under FOIA, the good news is that the agency must respond to your written request for information. The bad news is that this “response” may not be very responsive. But eventually, if you are persistent and understand the rules of the game, you should be able to get what you want.

WHAT YOU CAN GET WHERE YOU CAN GET IT

The Freedom of Information Act gives you access to all “agency records,” unless they are specifically exempt (see Exempt Records). You can obtain records on agency operations and actions, and other collected information relating to public health, environmental hazards, consumer product safety, government spending, labor relations, business decisions, taxes, history, foreign policy, national defense and the economy. FOIA specifies that requests must be for existing records. Agencies are not required to collect new information, create new records, do new research or analyze information.

FOIA applies to all 15 departments (Education, Homeland Security, etc.) and 73 other federal agencies (Environmental Protection Agency, Federal Reserve System, etc.) in the executive branch of the U.S. government. It does not apply to the president, Congress or the courts, nor does it apply to local or state governments (though each of the 50 states has its own freedom of information laws, as do many cities).

This *How To* draws substantially on material from the First Amendment Center, The National Security Archive, the Reporters Committee for Freedom of the Press, and *openthegovernment.org*. Our thanks go out to these groups.

SEVEN STEPS FOR GETTING INFORMATION UNDER FOIA

STEP ONE: KNOW WHAT YOU WANT

When a community group does research, it should be clear what information it wants, why it wants the information and how it will be used. Otherwise, you could spend a lot of time spinning your wheels. Some groups assign research to a committee, which should make the job easier and ensures that no one person has a monopoly on the information. It also ensures that members of the group get to do some research, and not just paid staff.

STEP TWO: WHO HAS IT

No one likes to get the runaround, and one sure way is to make a request for information to the wrong agency. You will save time by calling the agency(ies) first to determine where the records you seek are located and where you should direct your request.

STEP THREE: TRY TO OBTAIN WHAT YOU WANT THROUGH INFORMAL MEANS FIRST

You should first try to obtain the information you want through informal means. The government may agree to supply all or part of it at your request. Assuming you know within reasonable specificity which records you want and which agency has them, call the public information or press officer at the agency involved, identify yourself, and ask for the information. It might be helpful to offer some explanation of why you want the documents.

If you are turned down, try the agency's FOIA officer, who may tell you how to obtain the documents you want without the necessity of filing a formal FOIA request. If necessary, use your right to make a formal FOIA request as leverage in your efforts to persuade the agency to release the information you are seeking informally. Make a point of telling any officials with whom you speak that you intend to make a formal request. Remember that only a written FOIA request—not an informal, oral request—will place the agency under a legal duty to act on your request.

STEP FOUR: SUBMIT A WRITTEN FOIA REQUEST

If you can't obtain the information you want through informal means, you should submit a written FOIA request, which should contain the elements included in the sample FOIA request letter (see next page).

THE PRIVACY ACT OF 1974

The **Privacy Act of 1974** works in tandem with FOIA to regulate federal agency records about individuals, restricting the disclosure of personal information that might violate privacy while allowing individuals access to records about themselves.

Because the two acts overlap but have different exemptions, information may be released under one while being exempt from disclosure under the other. **When seeking information about oneself, an individual should file a request citing both acts in order to get the fullest possible disclosure. A requester seeking information that is not exclusively about himself or herself should cite FOIA only.** Agencies generally treat Privacy Act requests the same as FOIA requests administratively. For more information see the National Archives and Records Administration Guide to Making a Privacy Act Request, www.archives.gov/foia/privacy-act/guide.html

Each federal agency subject to FOIA has a designated information officer responsible for handling information requests. Large cabinet agencies, such as Agriculture, have separate officers for their various subdivisions and regional offices. If you are sure which subdivision of an agency has the records you want, send your request letter directly to that officer. If you are uncertain, send your request to the agency or departmental officer, who will then forward it to the appropriate division.

Sometimes it is advisable to send separate requests to agency headquarters and to field offices that may have records you want. If you are unsure which federal agency or office has the records you want, send the same request to several agencies or offices.

Address your request letter to the information officer at the appropriate agency or subdivision. Most agencies will accept a request by hand delivery, mail or fax. If you mail your request, mark the outside of the envelope "FOIA Request." If you send the request by registered mail with return receipt requested, you may be able to track the request if you should later need to do so. Keeping a photocopy of your letter and your receipt will help you later if you need to make an appeal.

Some agencies have built FOIA request generators into their websites to receive requests electronically. Most, but not, all agencies accept email and the Department of Justice has encouraged all agencies to do so. You should check to see if email or fax requests are accepted before you send them.

STEP FIVE: THE REPLY

Once the right agency (or component of an agency) has received a complete and perfected request, it has 20 working days to respond with its determination of whether to grant the request. If information is denied in full or in part, the agency must give its reasons for the denial by this deadline. If granted, it does not have to deliver the applicable documents within the time frame, but must do so promptly thereafter.

Federal agencies rarely deliver requested information in a timely manner. Instead here are the kinds of responses you can expect:

- The agency will tell you it doesn't have the information you are seeking, and it has forwarded your request on to another agency.
- The agency will say that it needs additional time to respond (which is permitted under the FOIA). Sometimes you'll get a postcard with an assigned number acknowledging your place in a long line.
- Occasionally, the agency will call you to work out a deal for what it will send you.

EXEMPT RECORDS

Here are the categories of information agencies can exempt under the Freedom of Information Act.

1. Documents properly classified as secret in the interest of national defense or foreign policy;
2. Matters related solely to internal personnel rules and practices;
3. Information specifically exempted by other federal statutes;
4. A trade secret or privileged or confidential commercial or financial information obtained from a person;
5. A privileged inter-agency or intra-agency memorandum or letter;
6. A personnel, medical, or similar file the release of which would constitute a clearly unwarranted invasion of personal privacy;
7. Documents compiled for law enforcement purposes, the release of which would bear on present or potential litigation or enforcement actions;
8. Information contained in or related to examination, operating, or condition reports about financial institutions regulated or supervised by certain federal agencies; or
9. Documents containing certain exempt information about oil, gas or other wells.

**SAMPLE
FREEDOM OF INFORMATION ACT
REQUEST LETTER**

Agency head (or FOIA Officer)
Name of Agency
Address of Agency
City, State, Zip Code

Date

Dear _____,

I request under the Freedom of Information Act, 5 U.S.C 552, that a copy of the following documents [or documents containing the following information] be provided to me: **[identify the documents or information as specifically as possible.]**

In order to determine our status assess fees, you should know that [your organization] is a non-profit, tax-exempt educational and public information organization. I believe this request falls under any reasonable definition of the public interest and therefore request a waiver of all costs.

[Optional] I am willing to pay fees for this request up to a maximum of \$____. If you estimate that the fees will exceed this limit, please inform me first.

[Optional] I request a waiver of all fees for this request. Disclosure of the requested information to [your organization] 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 our commercial interest. **[Include a specific explanation].**

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

Thank you for your consideration of my request.

Sincerely,

Name and Title

- Sometimes the agency will tell you it does have the information you want, but you will have to pay thousands of dollars for copying.
- Sometimes the agency will ask you to answer questions that bear on whether or not you get a fee waiver.
- You are told that what you requested is exempt from disclosure under the FOIA (see Exempt Records).

STEP SIX: RESPONDING TO A RESPONSE

What if you don't like the response that you get? If the agency's response is evasive or too slow, you can send follow-up letters clearly labeled "FOIA Request #2." You can send a letter of complaint to the head of the agency. You can ask members of Congress to intervene on your behalf. The amount of help you get will depend on the nature of your complaint.

You can also file an administrative appeal if the agency's response is unsatisfactory. Appeals can be effective to successfully challenge excessive processing delays, fee waiver denials, and the improper full or partial withholdings of documents.

SEVEN STEPS FOR GETTING INFORMATION UNDER FOIA (continued)

Agency regulations governing appeals vary; take careful note of the instructions for filing an appeal in the agency's response to ensure that your appeal is timely. An appeal letter should state the grounds for appeal and reasons why the agency's response to the request was improper, request a more precise explanation of the agency's decision (if the reasons for the initial determination were unclear), and say that you expect a final ruling on the appeal within the 20-day statutory limit.

If the agency still refuses to respond satisfactorily, the last remedy prescribed by law is to take the agency to court. The FOIA places the burden on government to prove why information can't be disclosed, so litigation usually makes the agency more responsive. Of course you have to decide whether the information is important enough to warrant this use of your resources.

STEP SEVEN: USING THIS INFORMATION

Now that you have the information you've been seeking, you need to use it. By itself the information is not power, but if put to good use it can be powerful. Remember why you wanted it in the first place. Use it to figure out what you want—and what you can reasonably expect to get—in your campaign. Use it to develop arguments for your position, or to fire people up to join your organization. Analyze it in your newsletter, release it in a press conference, or give it to a good reporter. How you use it is up to you, but use it.

FOR MORE INFORMATION ON THE FOIA:

U.S. Department of Justice Freedom of Information Act Reference Guide:
www.usdoj.gov/04foia/referenceguidemay99.htm#how

The Reporters Committee for Freedom of the Press has prepared an excellent guide, "How to Use the Federal FOI Act." The guide is geared specifically toward journalists, but is helpful for anyone. The guide includes an online FOIA Letter Generator to create a request letter.
www.rcfp.org/foiact/index.html

The National Security Archive, an independent non-governmental research institute and library located at The George Washington University, collects and publishes declassified documents obtained through the Freedom of Information Act. It also publishes a "User's Guide to the FOIA."
www.gwu.edu/~nsarchiv/insal/foia/howtofoia.html

Openthegovernment.org seeks to advance the public's right to know and reduce secrecy in the government. Its website provides a wealth of information on getting and using government information.
www.openthegovernment.org



WORC is a network of grassroots organizations from seven states that include 9,700 members and 44 local community groups. WORC helps its members succeed by providing training and by coordinating regional issue campaigns.

WORC Member Groups:

Dakota Resource Council
Dakota Rural Action
Idaho Rural Council
Northern Plains Resource Council
Oregon Rural Action
Powder River Basin
Resource Council
Western Colorado Congress

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Principles of Community

Organizing training sessions are held twice a year by WORC.
Advanced Leadership and Staff Development training sessions are also held by WORC.

How to Research Corporations and How to Research for Organizing are other topics available in this series of guides to community organizing.

MORE HOW TO GUIDES:

WORC has produced a series of How To's, practical guides to assist members, staff, leaders and citizens to build strong organizations and effective issue campaigns.

Topics are listed on our website – www.worc.org. These publications can be downloaded from the website as PDFs or ordered for \$2 each. Contact WORC regarding bulk orders or about training sessions on topics in this series.

