

First Steps:

Getting Started with the FOIA

The most successful Freedom of Information Act requests are focused, well-researched, and clear. This chapter will discuss research strategies and preliminary steps to filing a FOIA request.

PREPARING TO FILE A FOIA REQUEST

❖ Start Your Research

The FOIA is a tool of last resort; it should be used only to request documents that are not otherwise publicly available. Before filing a FOIA request, therefore, you should do research to determine what types of documents you are looking for, which agencies are likely to have the documents, and what government records on your topic are already in the public domain.

Older documents are more likely to be publicly available, either online, at the National Archives and Records Administration (NARA), or at the Presidential Libraries. For classified records, many documents more than twenty-five years old should be available under the automatic declassification provisions of Executive Order (EO) 12958, as amended (see app. 7).

As you begin, you may want to develop a chronology or list of key events and issues related to your topic in order to identify likely subjects and/or documents to request. Familiarize yourself with your topic through research in secondary sources including books and articles. Agency Web sites are a key tool for conducting preliminary research before filing a FOIA request.

❖ Search for Public Records

Agencies must make certain records available to the public automatically, without the need for a FOIA request. Certain types of general documents and information about the agency must be published by each agency in the *Federal Register*. You can search the *Federal Register* online on the Government Printing Office's Web site (<http://www.gpoaccess.gov/>).

FIGURE 2.1: LOCATING AGENCY FOIA WEB SITES

There are three ways to locate an agency's FOIA Web site:

1. Use the links on the Department of Justice's Web site for "Other Agencies' FOIA Web Sites":
http://www.usdoj.gov/oip/other_age.htm.
2. All agencies are required to put a link to their FOIA page on their homepage. (Usually, it can be located on the bottom of the page listed as "FOIA" or "Freedom of Information.")
3. Do an Internet search using the agency's name and "FOIA" as search terms.

Certain categories of records must be published on agency Web sites, generally in “electronic reading rooms” within the agency’s FOIA Web site (see fig. 2.1). Agency electronic reading rooms commonly contain significant policy documents as well as records that are requested frequently (see fig. 2.2). Consult these sources first if you believe the records you are seeking may fall within one of these categories. You should also search the Internet, press accounts, agency publications, and other parts of the agency’s public Web site for any relevant materials.

FIGURE 2.2: PUBLICATION OF REQUIRED RECORDS	
<i>Federal Register</i>	<i>FOIA Reading Room</i>
Descriptions of the agency’s organizational structure and how the public may obtain information, make submissions or requests, or obtain decisions	Final opinions and orders made in the adjudication of cases
Nature of agency functions, including all formal and informal procedures	Statements of policy and interpretations adopted by the agency (not published in the <i>Federal Register</i>)
Rules of procedure, descriptions of agency forms, and instructions as to the scope and contents of all papers, reports, or examinations	Administrative staff manuals and instructions to staff that affect a member of the public
Substantive general rules and general policies and policy interpretations adopted by the agency	Records that have been or are likely to become the subject of frequent FOIA requests
Amendments, revisions, or repeals of the above	Index of frequently requested records

WHAT RECORDS MAY I REQUEST?

❖ Agency Records

Almost all executive branch agency records are subject to the FOIA. However, records of Congress and the courts are not subject to the FOIA. Some intelligence operational files held by agencies have been granted specific exemptions.

The term “agency records” refers to those materials either created or obtained by an agency that are under the control of the agency at the time a FOIA request is made.¹ “Records” include information in any form or format, including multimedia and all types of electronic records. While the FOIA allows you to request electronic records, such as e-mails, not all agencies are able currently to comply with such requests because of the nature of their electronic records systems.

Agencies are not required to create records to satisfy a request. This means that you cannot ask the agency to answer a question or generate a list or another document that does not already exist. However, generating records from an existing database is not considered creating a record, so you can request information that may be contained in a database.

One specific category of records may be excluded entirely from the FOIA. Operational files are records of intelligence agencies such as the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency that contain raw intelligence or information

related to the collection of intelligence, namely sources and methods. Congress has granted a limited group of intelligence agencies specific exemptions for their operational files.

❖ Identifying Records to Request

Once you have determined that the information you are looking for is not publicly available, you should identify the specific documents, types of documents, or subjects of documents you wish to seek. Here, too, Web sites, books, press accounts, and agency publications are useful research tools. Previously released documents are another resource that can be used to identify other specific documents or types of documents (see app. 4).

You can send a FOIA request for a specific document, a series of documents, or documents related to a general subject (see fig. 2.3). Keep in mind that agencies are required only to search for existing documents under the FOIA, not create or compile new documents. You cannot ask an agency to do your research for you.

FIGURE 2.3: DRAFTING A FOIA REQUEST SUBJECT

A general subject request:

“All documents related in whole or in part to the Department of Defense’s policy regarding the handling and disposition of personal papers or the distinction between personal and official papers.”

A request for records related to a particular event:

“All documents related in whole or in part to the August 14, 2000, sinking of the Soviet submarine *Kursk* in the Barents Sea.”

A request for documents for a specific period:

“All cable traffic to and from the US Embassy in Bucharest between March 24 and June 10, 1999, relating in whole or in part to Operation Allied Force, NATO’s military operation in Yugoslavia.”

A request for a regularly issued report for a specific time period:

“Copies of the National Intelligence Daily (NID) for the following dates: April 12, 1998; April 14, 1998; and April 15, 1998.”

A request referring to a newspaper article/clip:

“The spring 2003 memorandum from Maj. Gen. Jack L. Rives, Deputy Judge Advocate General (JAG), Department of the Air Force, on interrogation techniques that is discussed in the attached June 24, 2004, article from *The Washington Post* by R. Jeffrey Smith.”

A request for a record by its title:

“A December 2002 document titled, ‘2001 Intelligence Report to Congress on the Chemical Weapons Convention.’ This document was cited in the March 31, 2005, report by the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (Silberman-Robb Report), p. 228.”

WHERE DO I SEND MY FOIA REQUEST?

All executive branch departments and agencies are subject to the FOIA. A list of these departments and agencies can be found on the Department of Justice's FOIA Web site. (See app. 2 for a list of agencies.)

Congress and the courts are not covered by the FOIA, which means that you cannot send a FOIA request to a court or a congressional office.

The president and his immediate staff also are excluded from the FOIA. Courts have held that components of the Executive Office of the President whose primary function is to advise the president, such as the National Security Council, are not subject to the FOIA. However, under the Presidential Records Act (PRA) most presidential documents become available through the FOIA between five and twelve years after the president leaves office.



In general, private entities are not subject to the FOIA. This includes organizations and entities that are funded by the federal government or that enter into contracts to do work for the federal government. Contracts and related records can be requested from the contracting agencies, but you cannot file a request for records belonging to the private contractor, even if they are related to the contract work.

Under the 2007 amendments, documents that are maintained for an agency by a private entity under a records management contract are considered government records subject to the FOIA. To obtain such records, you must file a request with the federal agency, which is required to retrieve them from the contractor.

❖ Centralized and Decentralized Agencies

Some agencies have “centralized” FOIA programs. This means that one central office is responsible for processing all FOIA requests for the entire agency. Other agencies have “decentralized” FOIA programs, where multiple components, offices, or bureaus within the agency have independent FOIA staff responsible for processing the component's requests.

The Department of Defense is an example of an agency with a decentralized FOIA program. The Office of the Secretary of Defense has its own FOIA office that processes general Defense Department FOIA requests. But each military branch (Army, Navy, Air Force, Marines) and major command has its own FOIA office. Within these components, there are even some subcomponents with independent FOIA offices.

At a decentralized agency, you should send your request directly to the appropriate component or office if possible. You can also send the request to the central processing office, which generally will forward it to the appropriate office, but this may delay processing.

❖ Choose the Correct Agency

Conduct preliminary research to identify which agencies or agency components are likely to have materials about your research topic. A number of different tools are available to learn about agency operations and help you find out which agencies may have been involved in the topic or issue you are researching. For example:

- Secondary sources like books and articles can provide useful information about agencies or even about documents relevant to your subject.
- Investigate the agency's Web site, and look for mission statements, organizational charts, or other background material about the agency's work.
- Call the agency FOIA office or public affairs office if you are still not sure whether you have selected the correct agency.
- The agency's FOIA site or FOIA office may be able to help you determine whether you need to send your request to the headquarters or to a field office or component.

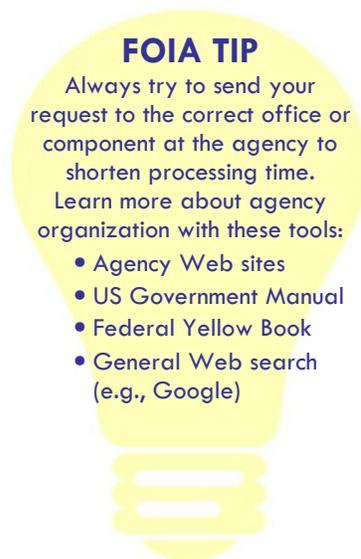
Depending on your research topic or subject of interest, several agencies or components may have relevant documents. If this is the case, you should send your request to each of these agencies or components to ensure that you get all relevant information rather than just the portion held by one agency. For example, if you are searching for information about US policy on drug trafficking in Colombia, you may want to send your request to the Department of State as well as to the Drug Enforcement Administration, the Department of Defense, US Southern Command, and the Defense Intelligence Agency.

❖ Historical Records

For historical records (records that were created more than twenty-five years ago), you should begin your research at NARA or at the Presidential Libraries before filing a FOIA request. Generally, agencies have transferred to NARA records that were created before the 1980s. However, there is no clear cut-off date for when agencies transfer materials to NARA. Moreover, NARA is suffering from a backlog in the processing of documents from agencies. To browse materials NARA has received recently from agencies, see <http://www.archives.gov/research/accessions/listing.html>.

Note that FOIA requests to NARA are significantly different from requests to other executive branch agencies because NARA cannot search for documents using keywords or electronic searches. Instead, the requester must identify the specific document and its location at NARA (record group, project number, collection, box, file, title, and item number) in the initial request.

To locate identifying information about the record(s) you are seeking, you should visit the National Archives and review relevant finding aids, so that you can call up boxes of documents and review file folders. If a document has been withdrawn because it contains exempted or classified material, there will be a withdrawal sheet that provides basic information about the document (date of document, author, recipient, etc.).



DEVELOPING A FOIA STRATEGY

Once you determine precisely what information you are seeking, it is important to develop a strategy to request records effectively.

For general subject requests, drafting a FOIA request is a delicate balancing act between making the request broad enough so that the agency can locate the information you are looking for, yet specific enough that the agency can search for the documents without generating a cumbersome amount of pages to process. Overly broad requests waste time and resources, both yours and the government's.

Most agencies have a two-track system for processing simple and complex FOIA requests. This means your request goes in a queue depending on its complexity. A simple request is one that seeks a single document, a small number of documents, or a very narrow subject that is easy to search for—and where the information is unclassified. Complex requests usually require the agency to search longer to find responsive documents, involve a large number of documents or a broad subject, or concern classified information.

The key is to determine how to get the most information in the shortest amount of time without overburdening the agency. Mapping out the information you are looking for is helpful. You should also try to determine what types of documents might be available at which agencies and how to effectively group the information into separate requests.

Agencies generally process simple requests more quickly. In some cases, requesting a single document will allow you to get the document in a relatively short amount of time. However, one downside to a simple request is that if the request is too narrow or specific, you may not get all of the relevant information you seek.

For example, you probably would not want to send out twelve requests for twelve individual documents if you could craft one broader request that encompasses all twelve records as well as additional, potentially relevant materials. Likewise, if you see a document referenced in a book or article, you may not want simply to send a single request for that document. Rather, you should consider whether other related documents—background records, supporting materials, or other information—might also be helpful, and craft a broader, more encompassing request to include those. However, you should not make the request too general, since the agency may place it in the complex queue. It can even reject the request if it considers it unreasonably broad.