



FOIA 101:

Understanding the Freedom of Information Act (FOIA)

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FOIA.gov

Thank you for visiting [FOIA.gov](https://www.foia.gov), the government's central website for FOIA. We'll continue to make improvements to the site and look forward to your input. Please submit feedback to National.FOIAPortal@usdoj.gov.

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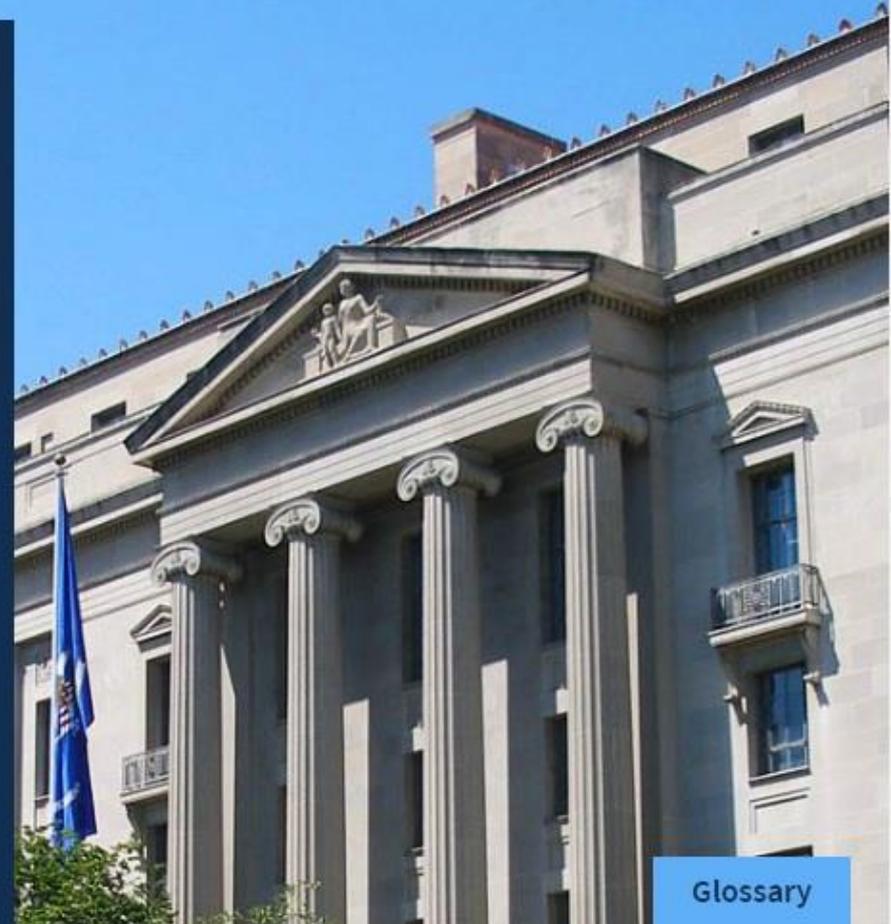
The basic function of the Freedom of Information Act is to ensure informed citizens, vital to the functioning of a democratic society.

This site can help you determine if filing a FOIA request is the best option for you and help you create your request when you're ready.

[Tips for making a request](#) or

[Start your request](#)

[Glossary](#)



- ◎ The FOIA pertains to federal agency records **that exist** and can be located in agency files.



Who May Make A FOIA Request?

- “Any person” – regardless of citizenship
- Includes individuals, corporations, associations, state and local governments, foreign government, etc.



**EFFECTIVE
FOIA
REQUESTING
for EVERYONE**

Who May Make A FOIA Request? The Exceptions

- ◉ Fugitives from Justice, if the requested records relate to the requester's fugitive status



What records are subject to the FOIA? Agency records The factors:

- ◎ Two-part test:
 - > Created or obtained by agency
 - > Under agency **control** when request received



What does “Control” mean? The factors:

- ◎ Four factors:
 - > Creator’s intent to control
 - > Ability of the agency to use
 - > Extent to which personnel have read/relied
 - > Degree of integration into agency files

The “why” behind the request

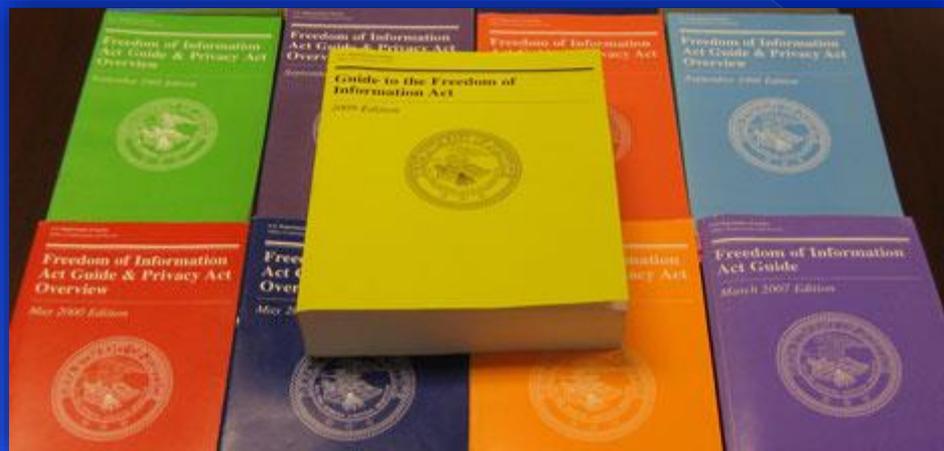
- ⦿ FOIA requesters generally do not have to justify or explain their reasons for making requests.
- ⦿ The why is important in two circumstances:
 - > When expedited processing is requested
 - > When a fee waiver is requested

A Proper FOIA Request?

- ⦿ Request for agency records submitted in writing
- ⦿ Request reasonably describes records requested
- ⦿ Request complies with agencies regulations for making requests

Receipt and Acknowledgment

- Receipt of the request starts the time clock
- If the request will take longer than ten days to process, agency must assign an individual tracking number to the request



Receipt and Acknowledgment

This website provides information to the public about the USMC FOIA program and provides instructions for submitting a FOIA request for USMC documents. The USMC PA website provides administrative tools and guidance to USMC subordinate FOIA/PA officials throughout the Fleet Marine Force. <http://www.hqmc.marines.mil/Agencies/USMCFIOA/USMCPrivacyAct.aspx>.

FOIA Requests. As the HQMC FOIA/PA FOIA Coordinator, ARSF controls and provides administrative support for all FOIA/PA requests seeking access to records maintained in file systems and databases under the possession and control of the Commandant, Assistant Commandant, Director, Marine Corps Staff, and HQMC Departments and Staff Agencies. Any FOIA or PA request received directly by an HQMC Department or Staff Agencies should be immediately delivered to ARSF. ARSF will then staff the request and prepare the appropriate response. ARSF serves as a USMC FOIA Requester Service Center to assist FOIA requesters with complaints or other issues they may be experiencing regarding the processing of requests that have been submitted to HQMC, MCRC, MCSC, MCLC, MCCDC, MARFORCOM, MARFORCENT, MARSOC, MARFORSOUTH, MARFOREUR, MARFORKOREA, MARFORPAC, and MARFORRES.

USMC FOIA Public Liaison. The ARSF Section Head serves as the USMC FOIA Public Liaison for the purpose of mediating unresolved FOIA requester complaint matters addressed to or FOIA requester dissatisfaction with one or more of the 10 USMC FOIA Requester Service Centers FOIA/PA Training. ARSF is responsible for providing FOIA/PA training and conducts a two day FOIA/PA training conference at MCB Camp Lejuene, MCB Camp Pendleton and MCB Camp Butler on a triennial basis. ARSF also provides specialized or customized FOIA/PA training for USMC/HQMC components upon request.

PA Systems of Records Notices. ARSF is responsible for ensuring that all PA Systems of Records

Section Head
(703) 614-4008

Deputy/Privacy Act
(703) 614-4008

HQMC FOIA Team
(703) 614-4008

ARSF Fax: (703) 614-6287

FOIA mailbox: hqmcfoia@usmc.mil
Privacy mailbox: hqmcpa@usmc.mil

FOIA ONLINE

[USMC PII Policy & Training](#)
[Defense FOIA Policy Office \(DFOIPO\)](#)
[Dept of the Navy FOIA](#)

PRIVACY ACT ONLINE

[PII Breach Reporting Navy Website](#)

estimated date of completion

Receipt and Acknowledgment Routing Requirement

- ⦿ Agencies must “route”/“forward” misdirected requests to the proper office.
- ⦿ The 20-day time period begins on the date the request is first received by the appropriate component of the agency, but in any event not later than 10 working days after the request is first received by any component of the agency that is designated in the agency’s regulations to receive requests.

Routing Requirement

- ⦿ This rule addresses the situation where a FOIA request is inadvertently addressed to a component that is designated to receive FOIA requests for the agency, but is not itself the proper component of the agency to process the request.
- ⦿ The receiving/“wrong” component has 10 working days to route the request to the proper component within the agency. On the 10th day the 20-day response time period begins . . . even if the proper component has yet to receive the request.

Time Limits for Responding to a Request

- ⦿ 20 working days to respond
- ⦿ In “unusual circumstances” agency may extend time limit by giving written notice to requester
- ⦿ If time period is extended beyond ten working days agency must provide requester with opportunity to narrow scope of request and must make FOIA Public Liaison available

Time Limits for Responding to a Request

- ◎ “Unusual circumstances” defined:
 - > search for/collect records from facilities separate from the office processing the request
 - > search for/collect/examine a voluminous amount of separate and distinct records
 - > consult with another agency or among two or more components within the agency

Time Limits for Responding to a Request Tolling

- ⦿ When a proper FOIA office receives a request, it determines whether or not the request is reasonably described and meets the other requirements for making a proper request. If necessary, the office then communicates with the Requester to resolve any issues.
- ⦿ The 20-day clock begins to run upon receipt of a proper request.
- ⦿ It is only after this point that the issue of tolling/stopping would even arise.

Time Limits for Responding to a Request Tolling

- ⦿ The number of times the agency can toll the response time is limited.
- ⦿ Tolling can only occur if the request is properly made and the clock already started.

Time Limits for Responding to a Request Tolling

- ⦿ Limit to number of times tolling allowed. Toll the 20-day clock in only two situations:
 - > One time when the agency is waiting for general information it has reasonably requested from Requester.
 - > Agencies are allowed to toll the 20-day clock as many times as necessary in order to clarify any issues with a Requester regarding fee assessment. Fee-related issues often arise sequentially over the course of processing a request, and cannot always be resolved at one given point in time.

Limits on Charging Search Fees

- ⦿ Agencies are prohibited from charging certain fees if they do not meet the response time.
- ⦿ The FOIA prohibits agencies from assessing search fees (or duplication fees if requester is an educational or non-commercial, scientific institution, or representative of the news media) if the agency fails to meet the 20-day response time limit, unless unusual or exceptional circumstances apply to the processing of the request.

Limits on Charging Search Fees

Exceptions to the Rule

- ⦿ If either “unusual” or “exceptional” circumstances apply to the processing of the request, the exceptions to the rule apply and agencies can assess fees as they have normally done.
- ⦿ The pre-existing definitions of “unusual” and “exceptional” circumstances apply to this search fee rule.

Limits on Charging Search Fees Exceptions to the Rule

- ◎ “Unusual Circumstances” exist in three situations:
 - > When there is a need to search for and collect records from separate offices;
 - > When there is a need to search for, collect, and examine a voluminous amount of records; or
 - > When there is a need for consultations with another agency or among two or more components within the same agency.

Limits on Charging Search Fees

Exceptions to the Rule

- ◎ “Exceptional Circumstances”:
 - > The FOIA states that exceptional circumstances cannot include a “delay that results from a predictable workload of requests . . . unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.”
 - > In other words, exceptional circumstances exist if the agency has a backlog of pending requests and is making reasonable progress in reducing that backlog.

Who Pays What?

	<u>Search</u>	<u>Review</u>	<u>Dup.</u>
⦿ Commercial Use	Yes	Yes	Yes
⦿ “Favored”	No	No	Yes*
⦿ All Others	Yes**	No	Yes*

- > * “Favored” and All Others requesters receive the first 100 pages of duplication free of charge per request.
- > ** All Others requesters receive the first two hours of search free of charge per request.

Time Limits for Responding to a Request Expedited Processing

- ⦿ Compelling need -- imminent threat to the life or physical safety of an individual
- ⦿ Urgency to inform the public concerning actual/alleged Federal Government activity (with respect to a request from one engaged primarily in disseminating information)
- ⦿ Agencies may add other grounds for granting expedited processing

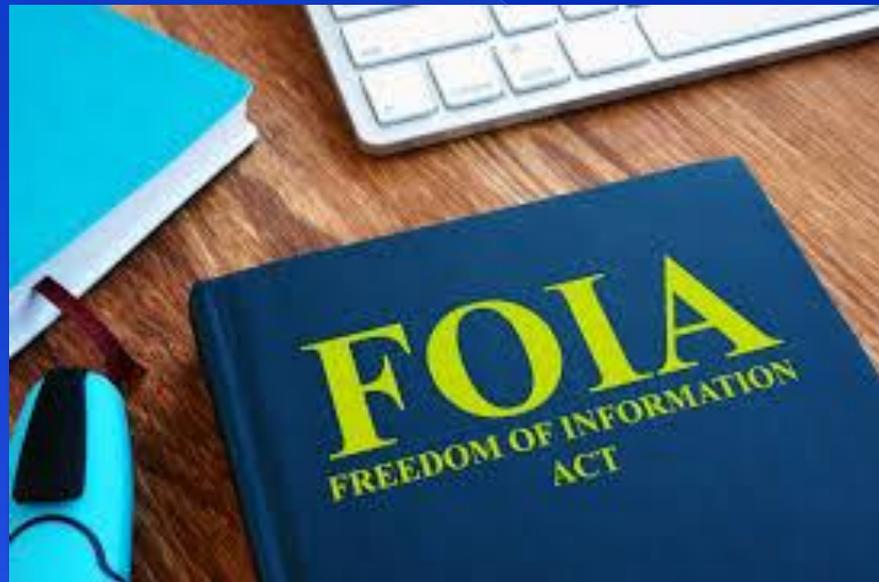
Time Limits for Responding to a Request Expedited Processing

- ⦿ Agencies have 10 calendar days to decide whether to grant or deny requests for expedition.



Time Limits for Responding to a Request Expedited Processing

- ⦿ Agencies must process requests that have been granted expedition as soon as practicable.

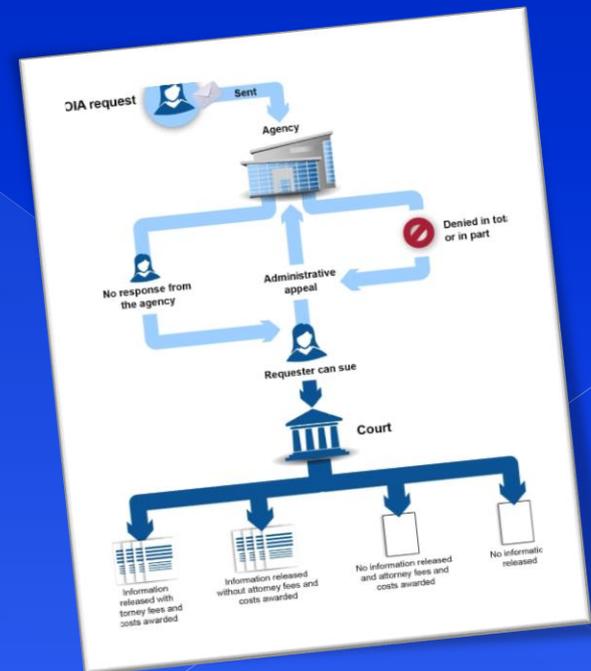


Initial Processing Interpretation and Communication

- ⦿ Reasonable interpretation of unclear requests
- ⦿ Communication with requester
- ⦿ FOIA Public Liaison
- ⦿ Multi-track processing encouraged

Definition of Search

- To review manually or by automated means, agency records for the purpose of locating those records responsive to a request.



Search

- Identify potential locations for responsive records
- Issue search instructions
- Documentation of search
- Cut-off date for search

Adequacy of Agency Search

- ⦿ Agency must conduct search that is “reasonably calculated to uncover all relevant documents”
- ⦿ The fact that the agency did not locate all requested records does not cast doubt on otherwise reasonable search
- ⦿ Duty to search -- must make reasonable efforts to search for records in electronic form unless significant interference with the operations of agency’s automated information system

Reviewing the Documents

Applying the Exemptions

- ⦿ Agencies are to clearly identify the exempt information and apply the appropriate exemption beside each redaction



Reviewing the Documents

Referrals/Consultations

- ⦿ **Referral** – When records are referred to the originating agency or agency component for FOIA review and direct response to the requester.
- ⦿ **Consultation** - When an agency obtains the opinion of another agency or agency component before responding to the requester.
- ⦿ **Coordination** – When records contains sensitive law enforcement or national security

Response to the Requester: What information should appear in the final response letter?

- ⦿ Identification of responsive records
- ⦿ Volume estimate of information withheld
- ⦿ Identification of exemptions asserted
- ⦿ Administrative appeal rights
- ⦿ Must provide records in any form requested “if readily reproducible”

Administrative Appeal

- Requesters may appeal an adverse determination to the designated agency official if for example, all or part of a request is denied, or no responsive records are located. The agency's administrative appeal authority will review the initial action taken on the request and can direct that further actions be taken.

Administrative Appeal

- ⦿ The determination on appeal must notify the requester of the right to seek judicial review.
- ⦿ As a matter of good administrative practice, appeal determination letters should also advise requesters of the mediation services offered by the Office of Government Information Services, located at the National Archives and Records Administration.

Judicial Review

- ◎ The FOIA provides requesters with the right to challenge an agency's decision in federal court. Agencies have the burden of proof and must demonstrate to the court that no record has been improperly withheld.

State “FOIA” Laws

Sunshine laws by state

- Alabama Public Records Law
- Alaska Public Records Act
- Arizona Public Records Law
- Arkansas Freedom of Information Act
- California Public Records Act
- Colorado Open Records Act
- Connecticut Freedom of Information Act
- Delaware Freedom of Information Act
- D.C. FOIA Act
- Florida Sunshine Law
- Georgia Open Records Act
- Hawaii Uniform Information Practices Act
- Idaho Public Records Act
- Illinois Freedom of Information Act
- Indiana Access to Public Records Act
- Iowa Open Records Law
- Kansas Open Records Act
- Kentucky Open Records Act
- Louisiana Public Records Act
- Maine Freedom of Access Act
- Maryland Public Information Act
- Massachusetts Public Records Act
- Michigan Freedom of Information Act
- Minnesota Data Practices Act
- Mississippi Public Records Act
- Missouri Sunshine Law
- Montana Public Records Act
- Nebraska Public Records Law
- Nevada Open Records Act
- New Hampshire Right to Know Law
- New Jersey Open Public Records Act
- New Mexico Inspection of Public Records Act
- New York Freedom of Information Law
- North Carolina Public Records Law
- North Dakota Open Records Statute
- Ohio Open Records Law
- Oklahoma Open Records Act
- Oregon Public Records Law
- Pennsylvania Right to Know Law
- Rhode Island Access to Public Records Act
- South Carolina Freedom of Information Act
- South Dakota Sunshine Law
- Tennessee Open Records Act
- Texas Public Information Act
- Utah Government Records Access and Management Act
- Vermont Public Records Law
- Virginia Freedom of Information Act
- Washington Public Records Act
- West Virginia Freedom of Information Act
- Wisconsin Open Records Law
- Wyoming Sunshine Law

MAINE

◎ Maine Freedom of Access Act

> [M.R.S.A. Title 1, Chapter 13.](#)

- <http://www.mainelegislature.org/legis/statutes/1/title1ch13sec0.html>

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The Maine Freedom of Access Act
Your Right to Know

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Frequently Asked Questions (FAQ)
Public Access Ombudsman
How to Make a Request
Training for Elected Officials
Statutory Exceptions to the Freedom of Access Law
State FOAA Contacts
Right to Know Advisory Committee

**Your Right to Know:
The Maine Freedom of Access Act**

The public's right to information about government activities lies at the heart of a democratic government. The Maine Freedom of Access Act ("FOAA") grants the people of this state a broad right of access to public records while protecting legitimate governmental interests and the privacy rights of individual citizens. The act also ensures the accountability of the government to the citizens of the state by requiring public access to the meetings of public bodies. Transparency and open decision-making are fundamental principles of the Maine Freedom of Access Act, and they are essential to ensuring continued trust and confidence in our government.

This website was created as part of the state's ongoing effort to educate and inform state employees and the public about the Maine Freedom of Access Act. On the site, you will find general information about the Freedom of Access Act, including information on how to make a FOAA request, answers to frequently asked questions, and regular updates on other important freedom of access issues. Providing universal access to resources that will inform and educate state employees and the public on the Freedom of Access Act is not just an aim but a priority for the state.

Featured Links

- [2016 Public Access Ombudsman Report \(PDF\)](#)
- [The Freedom of Access Act on the Maine State Legislature website](#)

State Resources

- [Maine Attorney General's Office](#)
- [Maine Freedom of Information Coalition](#)
- [Maine Right to Know Advisory Committee](#)
- [Public Meetings Calendar](#)
- [Citizen's Guide to Maine Freedom of Access Act \(PDF\)](#)

VERMONT

- ◉ Vermont Public Records Law
 - > [Vermont Statute Title 1, Chapter 5.315](#)
 - <https://legislature.vermont.gov/statutes/chapter/01/005>



February 21, 2018

NEW HAMPSHIRE

◎ New Hampshire Right to Know Law

> [R.S.A. Ch. 91-A](#)

- <http://www.gencourt.state.nh.us/rsa/html/vi/91-a/91-a-mrg.htm>

New Hampshire right to know law changes



www.uslawyer.com

QUESTIONS

