

Introduction:

What is the FOIA?

The Freedom of Information Act provides public access to federal government records from executive branch agencies or entities. (See app. 6 for the full text of the statute.) Any person, including US citizens, foreign nationals, organizations, associations, and universities, may submit a FOIA request asking for records held by the government. The FOIA carries a presumption of disclosure, which means an agency that receives a FOIA request is required to disclose relevant records unless the records are excluded from disclosure under one of nine specific FOIA exemptions. This right of access is enforceable in federal court. The burden is on the government to show why a document cannot be released.

The federal government answers more than four million FOIA requests each year, the majority from veterans and senior citizens seeking information about their benefits and service records, as well as many from journalists, researchers and historians, businesses, and nonprofit organizations.

The vast majority of requests that are received and processed under the FOIA are routine, such as individuals asking for their own records or for copies of standard documents that are released regularly. Many other FOIA requests are denied, however, and move through the administrative appeals process. Some of these cases are resolved through litigation in federal court. Despite the delays and obstacles that FOIA requesters often confront, particularly when seeking sensitive or high-level documents, millions of government records that rightfully belong to the public are released every year.

FIGURE 1.1: FOIA QUICK REFERENCE

What is the FOIA? A law that allows the public to access government records.

Who may file a FOIA request? Anyone.

Where may I send a request? All federal executive branch agencies (except the president and some White House offices).

What may I ask for? Any records the agency retains (paper, electronic, etc.)

How long does it take? The law requires agencies to respond within 20 days, but it often takes months or years.

How much does it cost? It depends on the request and the requester. Some requesters are eligible for reduced fees.

May I challenge the agency's decision? Yes. You may appeal and/or litigate a denial.

HISTORY OF THE FOIA

The FOIA was enacted in 1966 after several years of wrangling between Congress and federal agencies that strongly opposed the proposed legislation. President Johnson signed the bill grudgingly without a formal ceremony and accompanied it with a signing statement that actually undercut the thrust of the law.

In the wake of the Watergate scandal and the ensuing public outrage regarding excessive government secrecy, Congress sought to amend the FOIA. After negotiations between Congress and the Ford Administration broke down, Congress passed significant amendments to the FOIA. President Ford vetoed the amendments, and Congress swiftly voted to override his veto. The amendments strengthened the FOIA and forced greater agency compliance with a number of significant new provisions, including narrowed definitions of several exemptions, concrete deadlines for processing requests, public interest fee waivers, more fair and efficient court proceedings, and mandatory agency reporting on their compliance with the FOIA.

Some of the most significant recent changes to the FOIA came in 1996, when the Electronic Freedom of Information Act (E-FOIA) amended the law to allow for greater access to electronic records. The E-FOIA amendments required agencies to make guidance and certain documents, including frequently requested records, available online so that members of the public could access this information without filing a FOIA request.

Major amendments to the FOIA enacted in December 2007 targeted some of the most persistent procedural problems in the FOIA system, including excessive delays, lack of responsiveness, and litigation gamesmanship by federal agencies.

POLITICS AND THE FOIA

Although nonpolitical and career staff at federal agencies largely drive the FOIA process, access to information is not wholly insulated from the ebb and flow of the political climate.

After the end of the Cold War, classification fell dramatically and record numbers of documents were declassified and released during the 1990s. However, in the late 1990s, and especially after September 11, 2001, the openness trend was reversed, and the levels of classification and secrecy rose across the government. When more records are classified or otherwise protected, there may be more hurdles to obtaining sensitive records under the FOIA.

Moreover, the president and/or the Attorney General typically have set the tone for the conduct of the FOIA process in each administration. In most administrations, the Attorney General issues a memorandum to the heads of all federal agencies setting forth general policies with regard to the FOIA. For example, in 1993 Attorney General Janet Reno announced a new policy directing agencies to follow a “presumption of disclosure” and to act at their discretion to disclose records when there would be no harm from doing so. In contrast, in 2001 Attorney General John Ashcroft reversed the Reno policy and counseled against discretionary disclosures, even when no potential harm could be identified.

None of these actions changes the letter of the law, because only Congress can amend the FOIA through legislation. However, the impact of the ebb and flow of secrecy on the attitudes and actions of government employees who process FOIA requests is an ongoing consideration for everyone who seeks to access information from the government.

FIGURE 1.2: FOLLOW A REQUEST THROUGH THE FOIA PROCESS

