

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

FOIA GUIDE

The Federal Mine Safety and Health Review Commission (“the Commission”) produced this guide to help members of the public obtain documents or records from the Commission. It describes the Commission and the primary records that it maintains; and sets forth the procedures for obtaining documents and records from the Commission pursuant to the [Freedom of Information Act, 5 U.S.C. § 552](#) (“FOIA”), and by other formal and informal requests.

I. The Commission’s Function

The Commission is an independent adjudicative agency that provides administrative trials and appellate review of legal disputes arising under the Federal Mine Safety and Health Act of 1977 (“Mine Act”). The Commission’s Administrative Law Judges decide cases at the trial level. The five-member Review Commission provides appellate review of Judges’ decisions. Commissioners are appointed by the President and confirmed by the Senate. Review of a Judge’s decision by the Review Commission is not a matter of right but requires the affirmative vote of at least two Commissioners. Most of the cases accepted for review are generated from petitions filed by parties adversely affected by a Judge’s decision. However, the Review Commission can also direct a case for review on its own motion. A Judge’s decision that is not accepted for review becomes a final, non-precedential order of the Commission. Final decisions and orders of the Commission may be appealed to the United States Courts of Appeals.

II. Agency Records

Because of the Commission’s limited role as an adjudicatory agency, the categories of documents found in agency files are limited as well. Briefly, the two major types of documents at the Commission are those created by agency personnel in performing the Commission’s work and other documents under its control, mainly documents submitted to the Commission during the adjudication of Mine Act cases. In cases litigated before the Commission, files contain legal pleadings, orders and decisions, transcripts of hearings, and exhibits.

Below is a brief description of the primary types of documents and records that are maintained by the Commission.

A. Final Decisions and Orders.

Final determinations of the Commission are set forth in decisions and orders which are published in various commercial publications. The decisions are also available at the Commission’s headquarters office located at 601 New Jersey Ave., NW, Suite 9500, Washington, D.C. 20001-2021. Commission decisions are published monthly and are available through subscription by contacting: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.

20402. They may also be accessed in paper format in the library at the Commission's headquarters office, and electronically at the Commission's website at: <http://www.fmshrc.gov>.

B. Case Files.

Files for all cases handled by the Commission are maintained at the Commission's headquarters office for two years after the case is decided or closed, and are destroyed after seven years. These files include all documents generated in connection with contested cases. Audio recordings of Commission meetings are retained for two years. The Commission also maintains files of briefs and other pleadings filed in cases appealed to the U.S. Courts of Appeals.

C. Rules of Procedure.

Rules governing proceedings before the Commission are published in the [Code of Federal Regulations at 29 C.F.R. Parts 2700 to 2706](#). Changes to these governing regulations are published in the Federal Register. These publications are available at most law libraries and many public libraries, and can also be accessed in the reading room at the Commission's headquarters office. In addition, these regulations may be accessed electronically at the Commission's website: <http://www.fmshrc.gov>.

D. Correspondence.

The Commission maintains copies of correspondence to and from the Commission Chairman, other Commissioners, and its Executive Director relating to the agency's official functions, including budgetary and appropriation matters.

E. Computer System.

The Commission utilizes a computer network system at its headquarters office and field office located in Denver, Colorado. The Commission and its employees use the network system to conduct legal research, obtain information relevant to the Commission's work, and communicate by means of electronic mail.

F. GILS Records.

The Government Information Locator Service ("GILS") is designed to assist the public and agencies in locating and accessing information throughout the federal government. The Commission has developed GILS records that provide users with information regarding access to various public records including: (1) audio recordings of Commission meetings; (2) the Commission's official files; (3) the Commission's Internet site; (4) bound volumes of Commission decisions; (5) the Commission's FOIA Guide; (6) records located in the Commission's library; and (7) bound indices of Commission decisions. The Commission's GILS records are accessible via the Internet by searching the Commission's website at: <http://www.fmshrc.gov>.

III. Requests for Documents and Records Pursuant to the Freedom of Information Act

A. Introduction

Records may be obtained from the Commission pursuant to the procedures set forth in the FOIA. The FOIA, which was originally enacted in 1966, provides a statutory right of access to records and documents held by agencies in the executive branch of the Federal Government. The FOIA was amended in several important respects by the Electronic Freedom of Information Act Amendments of 1996. Regulations that set forth the procedures for requesting records from the Commission pursuant to the FOIA are published at [29 C.F.R. Part 2702](#) and were most recently amended in December 2007 (*see* [72 Fed. Reg. 71788 \(Dec. 19, 2007\)](#)). They can also be found at the Commission's website, or requested by contacting the Chief FOIA Officer as indicated below.

Some "agency records" may be made available without a formal FOIA request. *See* Section IV below. All other "records" of a Federal agency may be requested from that agency under the FOIA. While the FOIA does not define the term, "agency records" has been construed to refer to documents that are either created or obtained by an agency; and under agency control at the time of the FOIA request. An agency is required only to look for an existing document or record in response to a FOIA request. An agency is not required to create a new record, to collect information it does not have, or to conduct research or analyze data for a requester.

While the FOIA provides generally for the disclosure of records in the possession of agencies and departments of the executive branch of the U.S. Government, it also contains exemptions for nine categories of records that are specifically protected from disclosure. These exemptions protect against the disclosure of information that would harm the privacy of individuals, proprietary interests of businesses, functioning of the government, and other important interests. Information related solely to the internal personnel rules and practices of an agency; and documents related to an agency's internal deliberative processes are also exempt from disclosure under the FOIA. The Commission, like other federal agencies, may refuse to disclose an agency record that falls within any of the FOIA's nine statutory exemptions.

B. Where and How to Make a Request

Requests for information pursuant to the FOIA should be made in writing, in accordance with the Commission's FOIA regulations, [29 C.F.R. Part 2702.2](#) and mailed, sent by facsimile transmission, emailed, or delivered personally to the Commission at:

Chief FOIA Officer
FMSHRC
601 New Jersey Ave., NW
Suite 9500
Washington, D.C. 20001

Fax: 202-434-9944

email: fmsshr@fmsshr.gov

The words "Freedom of Information Act Request" should be printed on the face of the envelope, in the subject line of an email, or on the cover page of a fax. In order for the Commission to respond to a FOIA request, the request must reasonably describe the records sought. A requester should be as specific as possible in identifying a requested document. If any docket numbers or operator names are known, they should be included. Requesters should also specify the format in which they would prefer to receive the information (i.e., paper or electronic). They should list their names and addresses and may also include a telephone number to facilitate resolution of any questions that may arise during the processing of the request. Pursuant to the FOIA requirements, the determination of how to respond to a request will generally be made within twenty working days from the date of receipt, absent unusual or extraordinary circumstances.

C. Commission Response to Request

Pursuant to the Commission's FOIA regulations, the Chief FOIA Officer determines whether requested documents may be properly disclosed. If the records are withheld from disclosure, the requester will be informed of the reasons for the denial and of the right to appeal the denial. Appeals of adverse decisions may be made to the Commission within 10 working days following notification of the determination. Determinations of appeals will be made by majority vote of sitting Commissioners within 20 days of receipt. Adverse decisions by the Commission may be appealed by filing a complaint in the United States District Court.

Pursuant to the FOIA, the Commission posts on its web site an annual report concerning its response to requests for information pursuant to the FOIA during the preceding fiscal year.

D. Fees

For purposes of determining fees only, the Commission divides requesters into three categories: (1) *Commercial requesters* may be charged fees for searching for records, reviewing the records, and photocopying them; (2) *educational or noncommercial scientific institutions and representatives of the news media* are charged only for photocopying records; and (3) *all other requesters* are charged only for record searches and photocopying. (For requesters in the second and third categories, there is no charge for the first two hours of search time or for the first 100 pages of photocopies). With regard to all requesters, the Commission will waive any fee that is less than \$20 because its cost of collecting the fee would be greater than the fee. Further information regarding fees for processing FOIA requests can be found in the Commission's regulations, [29 CFR §§ 2702.5-2702.8](#), which are available on the Commission's website.

E. Schedule of Fees

Threshold amount (amount below which fees will not be charged)	\$20
Notification to requester if total fees to exceed	\$50
Copies of records	
Photocopies	\$.15/page
Computer printouts	\$.15/page
Photographs and other non-standard documents	Actual costs
Computer disks or tapes	Actual costs
Search fee	
Paper files	\$60/hour
Computer files	Actual costs (but costs shall not exceed \$300/hour)
Review fee	\$70/hour

IV. Access to Certain Records Without a FOIA Request

The FOIA requires the Commission to make available for public inspection and copying several types of records without the need for a formal FOIA request. [5 U.S.C. § 552\(a\)\(1\) & \(a\)\(2\)](#). The Commission fulfills applicable statutory requirements by making materials described below available for inspection and copying in its onsite and E-FOIA Reading Rooms. Those materials, among others, include:

- [General Information about the Commission](#)
- Decisions and Orders of the Commission
 - [Recent Decisions](#)
 - [Published Decisions](#)
- [FOIA Guide](#)
- [The Commission's FOIA Regulations](#)
- [FOIA Logs](#)
- [The Commission's Improvement Plan under Executive Order 13392 \(June 2006\)](#)
- [The Commission's Government Information Locator Service \(GILS\)](#)
- [Commission Rules and Regulations](#)
- [The Federal Mine Safety and Health Act of 1977, as amended by the MINER Act and any subsequent legislation](#)
- [Press Releases](#)
- Informal Commission Documents
 - [How a Case Proceeds Before the Commission](#)
 - [Guide to Commission Proceedings](#)
 - [Frequently Asked Questions](#)
 - [Procedural Rule Pamphlet](#)
- [Commission Notices of Meetings](#)

The Commission's onsite FOIA Reading Room is located at the headquarters office at 601 New

Jersey Ave., NW, Suite 9500, Washington, D.C., and the Commission's E-FOIA Reading Room may be accessed at www.fmshrc.gov.

In addition to the records available to the public through the Commission's FOIA Reading Room and its website, other documents may be available to the public without the need for a written FOIA request. In its role as a Federal adjudicatory agency, the Commission maintains files of public proceedings in which operators and other persons have contested citations and orders that were issued by the Mine Safety and Health Administration. Copies of legal briefs, motions, other pleadings, and orders in identified proceedings are generally available at the Commission's headquarters in Washington, D.C., through oral or written requests to the Chief FOIA Officer or the Docket Office.

Date: December 2007