

13 Freedom of Information Act (FOIA)

13.1 Generally

The Freedom of Information Act (FOIA) provides the public access, with certain exceptions, to federal agency records. See 5 U.S.C. § 552. The Office of General Counsel, Executive Office for Immigration Review, responds to FOIA requests for Board records. See Appendix B (Directory).

13.2 Requests

(a) *Who may file.* —

(i) *Parties.* —

(A) *Inspecting the record.* — Parties to a proceeding, and their legal representatives, may inspect the official record of proceedings by prior arrangement with the Clerk's Office. A FOIA request is not required. See Chapter 1.5(d) (Records).

(B) *Obtaining copies of record.* — As a general rule, parties who want a copy of the record of proceedings must file a FOIA request. See subsection (b), below. However, when the record is small or only a portion of the record is needed, parties may contact the Clerk's Office for assistance in obtaining a copy. See Chapter 1.5(d) (Records).

(ii) *Non-parties.* — Persons who are not party to a proceeding before the Board must file a request with the Office of General Counsel, Executive Office for Immigration Review, if they wish to see or obtain copies of the record of proceedings.

(b) *How to file.* —

(i) *Form.* — FOIA requests must be made in writing. See 28 C.F.R. § 16.1 et seq. Requests may be sent to:

Executive Office for Immigration Review

Office of General Counsel, FOIA/Privacy Act Requests
5107 Leesburg Pike, Suite 2400
Falls Church, Virginia 22041

(ii) Information required. — Requests should thoroughly describe the records sought and include as much identifying information as possible regarding names, dates, subject matter, and location of proceedings. For example, if a request pertains to an alien in removal proceedings, the request should contain the full name and alien registration number (“A number”) of that alien. The more precise and comprehensive the information provided in the FOIA request, the better and more expeditiously the request can be processed.

(iii) Fee. — There is no fee to file a FOIA request, but fees may be charged for the review, search, and reproduction of records. See 28 C.F.R. § 16.3(c).

(iv) Processing times. — Processing times for FOIA requests vary, depending on such factors as the nature of the request and the location of the record.

(c) When to file. —

(i) Timing. — A FOIA request should be filed as soon as possible, especially when a party is facing a filing deadline. Parties should not wait to receive a briefing schedule or other response from the Board before submitting a FOIA request.

(ii) Effect on filing deadlines. — Parties should not delay the filing of an appeal, motion, brief, or other document while awaiting a response to a FOIA request. Failure to receive FOIA materials prior to a filing deadline does not excuse the party from meeting a filing deadline.

(d) Limitations. —

(i) Statutory exemptions. — Certain information in agency records, such as classified material and information that would cause a clearly unwarranted invasion of personal privacy, is exempted from release under the Freedom of Information Act. 5 U.S.C. § 552(b)(1)-(9). Where appropriate, records are redacted (e.g., removed or cut out), and copies of the redacted material are

provided to the requesting person. When material is redacted, the reason or reasons for the redaction are indicated.

(ii) Agency's duty. — The FOIA statute does not require the Executive Office for Immigration Review, its Office of General Counsel, or the Board to perform legal research, nor does it entitle the requesting person to copies of documents that are available for sale or on the Internet.

(iii) Subject's consent. — When a FOIA request seeks information that is exempt from disclosure on the grounds of personal privacy, the subject of the record (e.g., the alien, the petitioner, the carrier) must consent in writing to the release of that information.

13.3 Denials

If a FOIA request is denied, in whole or in part, the requesting party may appeal that decision to the Office of Information and Privacy, Department of Justice. Information on how to appeal the denial of a FOIA request is available on the Office of Information and Privacy's website at www.usdoj.gov/oip. The rules regarding FOIA appeals can be found at 28 C.F.R. § 16.9.