

General FOIA Information for Homepage

This guide explains how the Freedom of Information Act (FOIA) is administered at the Small Business Administration (SBA). Each Federal agency handles requests for its own records by their own rules and this guide pertains only to the SBA. If you would like to request documents that are located or originated from another agency, you must send a separate request to that agency. SBA's Disclosure of Information regulations can be found at 13 C.F.R. part 102 (www.sba.gov/library/lawroom.html). If after reviewing this guide, you still have questions, please feel free to contact SBA's FOI/PA Office at foia@sba.gov (202)401-8203 or fax at (202) 205-7059.

BACKGROUND

The FOIA (5 U.S.C. § 552) was enacted in 1966, took effect on July 4, 1967 and is intended to make all existing Federal government records available to the public unless they are protected from disclosure by any of the nine FOIA exemptions or release of the information would cause a specific harm. Any person, except a fugitive from the law, has a right to request access to federal agency records. FOIA provides two levels of administrative review, initial and appellate. Upon the exhaustion of administrative remedies, a requester may seek judicial review.

DEFINITION OF A RECORD

A record is a data compilation, such as books, papers, maps, and photographs, machine readable, electronic format, or other documents regardless of physical form or characteristics, made or received by an agency of the United States Government and in their possession and control at the time a FOIA request is received. In response to requests, the FOIA does not require agencies to create records, conduct investigations, render opinions, provide subjective evaluations, answer questions or develop information.

AGENCIES THAT ARE SUBJECT TO THE FOIA

The FOIA applies to records created by or in the possession of executive branch agencies including:

- Cabinet agencies;
- Military branches;
- Government corporations;
- Government controlled corporations;
- Independent regulatory agencies;
- Other executive branch offices; and
- Commissions.

ENTITIES NOT SUBJECT TO THE FOIA

The FOIA does not apply to records created by or in the possession of the following entities:

- Executive Office of the President;
- Any elected official of the U.S. Government (i.e., Congress);
- Officers of the Federal Judiciary Branch (i.e., Judges);
- Private Citizens;
- Private companies or associations;
- Government contractors;
- Government grant holders; and
- State or local governments

Public Information

Many documents and information are readily available from the SBA website www.sba.gov. There is no need to file a formal FOIA request to obtain access to this information. Examples are:

- Lists of SBA's Headquarters and field offices where the public may make requests or obtain information and decisions;
- All formal and informal procedures;
- Rules of procedure, descriptions of available forms, locations where forms can be obtained;
- Statutory rules;
- Each amendment, revision, or repeal of the foregoing;
- Final opinions rendered in the adjudication of administrative cases, specific agency policy statements, and administrative staff manuals that affect the public; and,
- Records processed and disclosed in response to FOIA requests that because of their subject matter, the SBA determines have become or are likely to become the subject of subsequent requests.

HOW TO MAKE A FOIA REQUEST

The SBA does not require a special form in order to make a FOIA request. Requests for existing records must be in writing, handwritten or typed, and submitted via mail, fax or electronically. Requests may be sent to SBA program or field offices or to the FOI/PA Office/Requester Service Center, 409 Third St., S.W., Washington, D.C. 20416, or foia@sba.gov (online FOIA Requester Service Center). The FOI/PA Office operates in the appellate capacity and refers initial requests to the SBA office(s) that maintain the

pertinent information. The more specific a request is, (dates, time frames, subject, location), the more responsive SBA can be. If necessary, the SBA will contact a requester in order to refine or clarify the request. All requests are processed under both the FOIA and the Privacy Act in order to provide greater disclosure. Requesters seeking records on themselves must provide either a notarized statement or a statement signed under penalty of perjury stating that they are the person they claim to be. They may have their signature on the request notarized or pursuant to 29 U.S.C. 1746 (2) include the following statement just before the signature line: "I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]." This is to ensure that private information is not improperly disclosed.

REASONS FOR NONDISCLOSURE

- A reasonable search failed to locate responsive records.
- Request is referred to the Federal agency that possesses the responsive records.
- Request is withdrawn by the requester.
- Information requested is not a record within the meaning of the FOIA.
- Access to the record is denied in whole or in part pursuant to the FOIA exemptions.

RECORDS PROTECTED BY THE NINE FOIA EXEMPTIONS

In response to a FOIA request, existing records will be disclosed unless the information is protected by one or more of the nine FOIA exemptions cited in the Act as 5 U.S.C. § 552(b) (1) through (b)(9):

Exemption (b)(1) records that are currently and properly classified in the interest of national security;

Exemption (b)(2) records that relate solely to the internal personnel rules and practices of an agency;

Exemption (b)(3) records protected by another law that specifically exempts the information from public disclosure. (The specific statute must be cited.);

Exemption (b)(4) trade secrets and commercial or financial information obtained from a person which would cause substantial competitive harm to the submitter if disclosed;

Exemption (b)(5) inter-agency or intra-agency records that are deliberative in nature and are part of the decision making process that contain opinions and recommendations;

Exemption (b)(6) personnel and medical files and similar files the disclosure of which would constitute an unwarranted invasion of individual privacy;

Exemption (b)(7) investigatory records or information compiled for law enforcement purposes;

Exemption (b)(8) records for the use of any agency responsible for the regulation or supervision of financial institutions; and

Exemption (b)(9) records that contain geological and geophysical information (including maps) concerning wells.

RESPONSE TIME

The FOIA requires that agencies respond to requests within twenty working days excluding Saturdays, Sundays and legal holidays. This period begins once the correct SBA office is in receipt of the request and once any issues such as processing fees are resolved. SBA's written acknowledgment of the request will provide contact information in order for the requester to check the status of their request.

The FOIA provides the right to invoke a ten working day extension when responsive records are voluminous, require two or more offices to confer about the records, and/or are located off-site.

EXPEDITED PROCESSING OF FOIA REQUESTS

The FOIA allows that under certain conditions a requester may be entitled to have their request processed on an expedited basis (within 10 calendar days) from the date on which the request was received. The requester must demonstrate one of the following compelling needs:

- failure to obtain requested records on an expedited basis could pose a threat to the life or physical safety of an individual; or
- the requester is primarily engaged in disseminating the information and has an urgency to inform the public on an actual or alleged Federal Government activity.

FEES

The FOIA classifies requesters into four categories:

- Commercial requesters are those who seek information for a use or purpose that furthers their commercial, trade, or profit interests. Commercial requesters pay all fees for search, review and duplication.
- Educational institutions include preschools through institutions of higher learning. Records must be for educational or scholarly research. Educational requesters pay only duplication fees after receiving the first 100 pages at no cost.
- Non-commercial scientific requesters are institutions that operate solely for conducting scientific research and the records must be sought in furtherance of scientific research. These requesters pay only duplication fees after receiving the first 100 pages at no cost.
- News media requesters are those who are actively gathering news for an entity

- organized and operated to publish or broadcast news to the public. Freelance reporters may qualify as media requesters. These requesters pay only duplication fees after receiving the first 100 pages at no cost.
- “Other” requesters are those that do not qualify for another category and the request is for their personal use.

SBA fees are \$30 an hour for search and review and \$.10 a page for duplication.

FEE WAIVERS

A requester may seek a fee waiver if disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. Non-profit, media or indigent statuses do not automatically qualify a requester for a fee waiver. The requester must demonstrate expertise in the subject area and the ability to disseminate the information to the public.

APPEAL OF INITIAL DENIAL

A requester may file an appeal if responsive records are withheld, a “no records” initial response is provided, expedited processing or a fee waiver is denied. The written appeal must be submitted to the FOIA Office within sixty calendar days of the date of the initial response and must contain the signature of the appellant. The FOIA Office will review all pertinent documents and respond directly to the appellant with disclosure, expedited processing and fee waiver determinations.