



## Freedom of Information Act (FOIA) Reference Guide

### I. Introduction

This Guide describes the various ways in which you can obtain public records or information from the U.S. Chemical Safety and Hazard Investigation Board (CSB). It also describes the kinds of public records and information available from the CSB, and the major information systems in which they are located. This Guide has been prepared, and is being made available to the public, in accordance with the Electronic Freedom of Information Act (FOIA) Amendments of 1996.

The CSB is an independent federal agency whose mission is to prevent industrial chemical accidents and save lives. It accomplishes this mission by investigating chemical incidents and hazards, determining root causes, and issuing safety recommendations to government agencies as well as companies, labor unions, trade associations, and other organizations. The CSB does not regulate industry, nor does it issue fines or penalties. The CSB is not a part of any other federal agency, such as the Occupational Safety and Health Administration (OSHA) or the Environmental Protection Agency (EPA). The CSB was created by the Clean Air Act Amendments of 1990 and became operational in January 1998.

### II. Obtaining Records and Information Without a FOIA Request

Depending on what kind of information you are looking for, you may not need to make a formal FOIA request. The CSB disseminates a wealth of information about the agency and its operations through the CSB website, <http://www.csb.gov>. The website provides information about all of the CSB's ongoing and completed investigations, including news releases, transcripts and presentations from public meetings, and complete electronic versions of investigation reports and other safety publications. Detailed information about the CSB's safety recommendations program is also available on the website. Other resources on the website include background information about the history and mission of the agency, a video archive, and real time links to news reports on current chemical incidents. The CSB encourages you to begin your search for information about the agency at the CSB website.

The CSB informs the public about the agency's official procedures by publishing regulations in the Code of Federal Regulations (CFR). The CSB's regulations are in Title 40 of the CFR, beginning with Part 1600. The full text of all CSB regulations is available at <http://www.csb.gov> on the "Legal Affairs/FOIA" page. That page is also home to the CSB Electronic FOIA Reading Room. The complete CFR can be accessed on-line at <http://www.gpoaccess.gov>. Printed copies of the CFR are available at local libraries that are designated as Federal Depository Libraries.

Members of the media with inquiries about the CSB should contact the CSB Office of Government, Public, and Board Affairs at 202-261-7600.

### III. Obtaining Records Through a FOIA Request

#### **A. What is a FOIA Request?**

Under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(c), any person can make a request for records maintained by the CSB. The requested records will be made available to the person seeking them, unless the records are protected from disclosure by one of the FOIA's nine exemptions or three exclusions. The CSB's formal procedures for accepting and processing FOIA requests are published in the Code of Federal Regulations (CFR) at 40 CFR Part 1601. The CSB FOIA regulation is available as described above in Section II of this Guide. This reference guide summarizes the most important information from those procedures. If you do not follow these procedures, the CSB may not be required or able to process your request.

#### **B. Where to File a FOIA Request**

All FOIA requests for records believed to be in the CSB's custody must be submitted in writing to:

CSB FOIA Officer  
U.S. Chemical Safety and Hazard Investigation Board  
2175 K Street, NW  
Suite C-100  
Washington, DC 20037

You must clearly mark the letter and the envelope as a "FOIA Request." It is very important to properly address and mark your request. If you do not, the request may be misdirected and its processing delayed.

It is also important to understand that the CSB can process FOIA requests only for its own records. If you are seeking records from another agency of the United States Government, you must make a FOIA request directly to that agency. The FOIA does not apply to state or local government agencies, although those agencies may have their own open records laws. If you are looking for state or local government records, you should directly contact the appropriate agency.

#### **C. How to Make a FOIA Request**

No special form is necessary to make a FOIA request. However, your request must be in writing and should clearly indicate that it is being made under the FOIA. You should include a phone number in your request so that CSB personnel can contact you if they have any questions.

Your request must describe the records you are seeking in sufficient detail to enable CSB personnel to locate the records with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and/or subject matter of the record. If possible, you should make your request for specific records, rather than for broad classes or categories of files. More focused requests can generally be processed more promptly and at lower cost to you.

It is important to understand that a FOIA request can be made only for the purpose of obtaining access to records that already exist. The FOIA does not require the CSB to do

research for you, to analyze data, to answer written questions, to explain the records it discloses, or to create new records.

#### **D. Fees**

No fee is required to file a FOIA request. However, you must indicate in your request that you agree to pay the fees incurred in processing your request. The CSB will consider your agreement an authorization to incur fees up to \$25, unless you specify a willingness to pay a greater or lesser amount. The CSB will contact you before incurring fees in excess of your initial authorization. Be aware that you may be required to pay fees even if the search does not locate any responsive records or, if records are located, they are determined to be exempt from disclosure.

For the purposes of determining fees, FOIA requesters are divided into three categories:

- Commercial requesters, who may be charged fees for the time required to search for records and to review the records to determine whether to release them, and for photocopying;
- Educational or noncommercial scientific institutions and representatives of the news media, who are charged only for photocopying expenses after the first 100 pages; and
- Other requesters, who are charged only for searches and photocopying, with no charge for the first two hours of search time or for the first 100 pages of photocopies.

Charges for search and review time range from \$4 to \$11 per quarter hour, depending on whether the work is performed by clerical or professional/managerial personnel. The photocopying charge is 25 cents per page. For records that cannot be reproduced by photocopying, you will be charged the actual direct costs of duplication.

In any case, if the fee to be charged is less than \$14, the CSB will automatically waive the fee. If, after an initial assessment of a request, the CSB estimates that the fee for processing the request will exceed \$250, the CSB may require the fee to be paid in advance. In such cases, the CSB encourages requesters to confer with the FOIA Officer to determine whether the request can be reformulated to meet the requester's needs at a lower cost.

If you are advised or expect that a fee will be charged, you may request a waiver of those fees. However, fee waivers are limited to situations in which a requester can demonstrate that the disclosure of the requested information 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. If you are considering requesting a fee waiver, you should carefully review the CSB FOIA regulation at 40 CFR § 1601.32(c), which explains the factors the CSB considers in making the case-by-case determination of whether to grant a waiver.

#### **E. Expedited Processing**

In most cases, the CSB has 20 working days to determine whether or not to release records responsive to a FOIA request. You may request expedited processing if you believe you can demonstrate a "compelling need" for the records. If you are considering requesting expedited processing, you should carefully review the CSB FOIA regulation

at 40 CFR § 1601.24(d), which explains the specific situations that constitute a “compelling need.”

Requests for expedited processing must be accompanied by a statement setting forth the reasons why the request should be expedited. You must certify that the reasons you give are true and correct. The CSB will notify you of its decision whether to expedite your request within 10 days after receiving it. If the CSB denies your request for expedited processing, you will be advised of your right to submit an administrative appeal, which will be handled promptly.

## **F. Initial Request Processing and Determination**

The CSB uses a two-track processing system based upon the estimated time it will take to process the request. The first track is for requests of simple to moderate complexity that are expected to be completed within 20 working days. The second track is for requests involving “unusual circumstances” that are expected to take between 21 to 30 working days to complete and those that, because of their volume or complexity, are expected to take more than 30 working days to complete. The CSB will notify requesters when their request is placed in the second track, along with the estimated time for completion. If your request is placed in the second track, you will also have the opportunity to modify your request to allow for faster and/or less costly processing.

Once the CSB has processed your request and any fee issues have been resolved, the CSB will send you a written determination. For complex, second-track requests, the CSB may make partial determinations and releases as processing of batches of records is completed. In most cases, the CSB will enclose any documents that can be disclosed along with this letter, although in some cases the documents themselves may be sent within a reasonable time afterward. The determination letter will advise you whether any information is being withheld and will either specify the number of pages withheld or will make a reasonable effort to estimate the amount of withheld information. If the CSB withholds any information pursuant to one or more of the FOIA's exemptions, the CSB will inform you which exemptions were applied and how you may file an appeal from that initial decision.

## **G. Administrative Appeals**

If you are dissatisfied with the CSB's decision to withhold records pursuant to a FOIA exemption, or the CSB's determination that no responsive records exist, you may file an administrative appeal within 30 days of receiving the CSB's response. As noted above, whenever the CSB issues a decision that is subject to appeal, the decision letter will include instructions for filing an appeal.

Appeals are reviewed by the CSB FOIA Appeals Officer, who will make an independent determination as to whether your request was properly decided. Under the FOIA, the Appeals Officer is required to make a determination on your administrative appeal within 20 working days. The Appeals Officer may: (1) affirm the initial determination in full; (2) affirm part of the initial determination, but release other information previously withheld; or (3) reverse the initial determination and release to all the information requested.

## H. Judicial Review

After your administrative appeal has been decided, if you still believe that the CSB has made a FOIA determination that is not in accordance with the law, you have a right to challenge the agency's decision in a lawsuit filed in federal court, through the litigation process known as "judicial review." Judicial review generally requires that you have filed an administrative appeal and have received an adverse response.

If you do bring a court action, you may file your suit in a federal district court in any of the following places: (1) where you reside, (2) where you have your principal place of business (if any), (3) in the District of Columbia, or (4) where the records are located, if they are not located in the District of Columbia. You have six years to file suit from the time your right to sue begins.

## IV. Reporting

In accordance with the FOIA, the CSB prepares an annual report on its FOIA program activity. The report is prepared on a fiscal year basis, covering the period October 1 through September 30. Each year's report becomes available the following February. The CSB's annual FOIA reports are made available on the agency's website at <http://www.csb.gov>, on the "Legal Affairs/FOIA" page.

## V. Major Information Systems

**Board Safety Publications.** Through these publications the Board fulfills its statutory responsibility to "report to the public in writing the facts, conditions, and circumstances and the cause or probable cause" of the incidents it investigates. The publications take a variety of forms, including investigation reports and digests of those reports, case studies, safety bulletins, and hazard investigations. All Board safety publications are listed and described on, and can be downloaded from, the CSB website at <http://www.csb.gov>.

**Recommendations.** Based on the findings of its investigations, the Board issues formal recommendations to industry, government agencies, and other interested entities to propose measures that would prevent the recurrence of similar incidents. Recommendations are published in the report of the investigation from which they arise. A database of all recommendations, which includes their full text and is searchable by variety of parameters, is available on the CSB website at <http://www.csb.gov>.

**Investigation Files.** Individual case files for all incidents or hazards investigated by the CSB. These files include all records generated or collected in connection with each investigation, such as documentary evidence, research materials, communications, and administrative materials. Records in these files may be exempt from public disclosure because they contain sensitive information such as trade secrets/confidential business information or privileged deliberative process information.

**Regulations.** Regulations governing the operations of the CSB are published in the Code of Federal Regulations at Title 40, beginning with Part 1600. Changes to these regulations are

published in the Federal Register. These publications are available at most law libraries and many public libraries. In addition, the CSB's regulations and any changes to them are published on the CSB website at <http://www.csb.gov>.

**Computer System.** The CSB utilizes a computer network system at its sole offices, the Washington, DC headquarters. This computer system is used for the preparation of official CSB documents, such as safety publications, recommendations, and correspondence, as well as internal working documents. The system is also used for conducting research, storing and sharing information collected in the course of agency operations, and for communications via electronic mail.

**Website.** The CSB maintains and disseminates a variety of information about the agency and its operations through the CSB website, <http://www.csb.gov>. The website provides information about all of the CSB's ongoing and completed investigations, including news releases, transcripts and presentations from public meetings, and complete electronic versions of investigation reports and other safety publications. Detailed information about the CSB's safety recommendations program is also available on the website. Other resources on the website include background information about the history and mission of the agency, a video archive, and real time links to news reports on current chemical incidents.