

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
FREEDOM OF INFORMATION ACT
REFERENCE GUIDE**

I. Introduction

The Freedom of Information Act (FOIA), which can be found in Title 5 of the United States Code, Section 552, was enacted in 1966 and generally provides that any person has the right to request access to federal agency records or information. All agencies of the Executive Branch of the United States Government are required to disclose records upon receiving a written request for them, except for those records (or portions of them) that are protected from disclosure by the nine exemptions and three exclusions of the FOIA. This right of access is enforceable in court, and it is supported at the administrative agency level by the "citizen-centered and results-oriented approach" of a presidential executive order.

The FOIA does not, however, provide access to records held by Congress or the federal courts, by state or local government agencies, or by private businesses or individuals. All states have their own statutes governing public access to state and local government records; state agencies should be consulted for further information about them.

This Reference Guide is designed to familiarize you with the specific procedures for making a FOIA request to NASA. The process is neither complicated nor time consuming. Following the guidance below will make it more likely that you will receive the information that you are seeking in the shortest amount of time possible. This Reference Guide also includes descriptions of the types of records maintained by different parts of the agency, some of which are readily available through means other than the FOIA, including through the World Wide Web. The National Aeronautics and Space Administration's home page on the World Wide Web is at:

www.nasa.gov

In particular, its FOIA home page is at:

<http://www.hq.nasa.gov/office/pao/FOIA/agency/>.

Initially, it is important to understand that there is no central office in the government that processes FOIA requests for all federal agencies. Each agency responds to requests for its own records. Therefore, before sending a request to NASA you should determine whether this agency is likely to have the records you are seeking. Each agency should have its own FOIA reference guide, so if the records you are interested in are kept by another agency you may wish to request a copy of that agency's guide

from its FOIA office or view it on that agency's FOIA site on the World Wide Web. A list of the principal FOIA contacts at other federal agencies is attached can be found at:

<http://www.usdoj.gov/04foia/foiacontacts.htm>.

Other general sources of information about how to make a FOIA request include:

- "Your Right to Federal Records." This pamphlet is a joint publication of the General Services Administration and the Department of Justice. It is available for sale for one dollar per copy from the Federal Citizen Information Center, Department 320N, Pueblo, CO 81009 or (888) 878-3256. It also can be accessed on the Justice Department's FOIA site on the World Wide Web under "Reference Materials."
- "A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records." This report is published by the Committee on Government Reform of the House of Representatives and is available for sale at the U.S. Government Printing Office by calling (202) 512-1808.
- Also, a more general publication, the "Consumer Action Handbook," describes which federal agencies are responsible for specific consumer problems and where to write for assistance on them. Single copies of this publication may be obtained for free by calling (888) 878-3256. This booklet also can be accessed on the General Services Administration's site on the World Wide Web at:

www.consumeraction.gov.

In December 2005, an executive order on the FOIA was issued by President Bush. Entitled *"Improving Agency Disclosure of Information,"* this order establishes the position of Chief FOIA Officer - a high-level official who monitors FOIA implementation throughout the agency, recommends to the head of the agency such adjustments to practices and policies as may be necessary, and prepares reports on the agency's performance in implementing the FOIA.

It also requires all federal agencies to establish one or more FOIA Requester Service Centers and FOIA Public Liaisons to assist FOIA requesters with inquiries about the FOIA process in general and their FOIA requests in particular.

A listing of NASA's FOIA Requester Service Center can be found at:

<http://www.hq.nasa.gov/office/pao/FOIA/requester-centers.pdf>

While our listing of FOIA Public Liaison Officers is posted at:

http://www.hq.nasa.gov/office/pao/FOIA/Pub_Lia_Officers.pdf

The formal rules for the making of FOIA requests to the NASA are set forth in Title 14, Part 1206 of the *Code of Federal Regulations*. This multiple-volume set is available in all law libraries and federal depository libraries. A copy of this regulation pertaining to making FOIA requests may be viewed at the following web site:

<http://www.hq.nasa.gov/pao/FOIA/fedregix.html>

II. Access to Certain Records without a FOIA Request

All agencies are required by statute to make certain types of records, created by the agency on or after November 1, 1996, available electronically. If you have access to the World Wide Web, you will not need to make a FOIA request to obtain access to these records. These records include:

1. Final opinions and orders made in the adjudication of cases;
2. Final statements of policy and interpretations which have not been published in the *Federal Register*;
3. Administrative staff manuals and instructions to staff that affect members of the public;
4. Copies of records that have been the subject of a FOIA request and that also are the subject of sufficient public interest or curiosity that the agency believes that other persons are likely to request (or already have requested) them; and
5. The agency's annual FOIA report - which includes such information as the number of FOIA requests received by the agency, the amount of time taken to process requests, the total amount of fees collected by the agency, information regarding the backlog of pending requests, and other information about the agency's handling of FOIA requests.

III. Where to Make a FOIA Request

The National Aeronautics and Space Administration is organized into a number of centers and management offices. Within NASA, each center and management office processes its own records. Therefore, your request will receive the quickest possible response if it is addressed directly to the center or management office that you believe has the

records you are seeking. In almost all cases, you should send your FOIA request to a center or management office FOIA office.

Because, over time, individual employees of the National Aeronautics and Space Administration may change job positions, it is not recommended that you address your request to a specific person. Rather, you should include the notation "Freedom of Information Act Request" on the front of your request envelope and also at the beginning of your request letter. In this way you will be sure that the responsible individual receives your request without delay.

If you believe that NASA does maintain the record(s) you are seeking, but you are uncertain about which component has the record(s), you may send your request to our Headquarters office at: NASA, 300 E Street, SW, Attn: FOIA, Washington, D.C. 20546. Personnel from that office will then forward your request to the center(s) within NASA most likely to maintain the record(s) you are seeking.

IV. How to Make a FOIA Request

A FOIA request can be made for any agency record. This does not mean, however, that NASA will disclose all records sought. As noted above, there are statutory exemptions that authorize the withholding of information of a sensitive nature. When NASA does withhold information from you, it ordinarily must specify which exemption of the FOIA permits the withholding. You should be aware that the FOIA does not require agencies to do research for you, to analyze data, to answer written questions, or to create records in order to respond to a request. Although, as discussed immediately below, certain information may be required from a FOIA requester, no special form is required by NASA. Requests must be in writing, either handwritten or typed; and they may be submitted by mail, fax or email.

In making your request you should be as specific as possible with regard to names, titles, dates, places, events, subjects, recipients, the component(s) likely to maintain that record, etc. If known, you should include any file designations or descriptions for the records that you want. But the more specific you are about the records or types of records that you want, the more likely it will be that NASA will be able to locate those records. Additionally, you should be aware that NASA ordinarily will use the date upon which they begin a record search as the "cut-off" date for determining the records that are responsive to a FOIA request.

When a NASA center receives your FOIA request, it ordinarily will send you a letter acknowledging the request and assigning it an initial request number for continuity and tracking purposes. If you do not provide the

necessary information, the component will advise you of what additional information is required before further processing your request.

Under certain circumstances you may be entitled to receive more information under the Privacy Act of 1974 (a separate federal statute) than under the FOIA. Under the FOIA, generally anyone can request access to any agency record. Privacy Act requests are more limited and can be made only by:

1. U.S. citizens or aliens lawfully admitted for permanent U.S. residence; or
2. Individual seeking information about themselves.

This is in a system of records maintained under their names or other personal identifiers. Even if a request does not mention the Privacy Act, however, NASA automatically treats requests as being made under *both* the FOIA *and* the Privacy Act whenever it is appropriate to do so. In this way, requesters receive the maximum amount of information available to them under the law.

V. Response Times

Under the statute, all federal agencies are required to respond to a FOIA request within twenty business days, excluding Saturdays, Sundays, and legal holidays. This time period does not begin until the request is actually received by the FOIA office of the National Aeronautics and Space Administration center that maintains the records sought. An agency is not required to send out the releasable documents by the last business day; it can send you a letter informing you of its decision and then send you the documents within a reasonable time afterward. Some centers within NASA, such as the Headquarters receive hundreds of requests each year. Many of these requests require a line-by-line review of hundreds or even thousands of pages of documents. Although NASA makes every effort to respond to FOIA requests as quickly as possible, in some cases it simply cannot do so within the specified time period. This may be due either to the size of the request or to the fact that the center has a backlog of previously received requests that are waiting processing. All NASA centers use "multi-track" processing queues to deal with their heavy FOIA workloads. Under the FOIA, a center may extend the response time for an additional ten business days when; (1) the center needs to collect responsive records from various directorates and offices, (2) the request involves a "voluminous" amount of records that must be located, compiled, and reviewed, or (3) the center needs to consult with another agency or other NASA center that have a substantial interest in the responsive information. When such a time extension is needed, the center may notify you of this in writing and offer you the opportunity to modify or limit

your request. Alternatively, you may agree to a different timetable for the processing of your request.

When a determination on your request is not made within the applicable time period and you have not agreed to a different response timetable, you may file suit in federal court to pursue a response. If, however, the court concludes that you have unreasonably refused to limit your request or to accept an alternate timetable for response, the court may find that the component's failure to comply within the statutory time period is justified. The court may excuse the lack of a timely response if the component demonstrates that it has a backlog of requests that were received before yours, that it processes its requests on a first-come/first-served basis, and that it is making reasonable progress in reducing its backlog of pending FOIA requests. In such cases, the court may postpone its consideration of your lawsuit until the agency reaches your request in its processing backlog.

Alternatively, under Executive Order 13392, dated: December 14, 2005, FOIA requesters also may contact an agency's FOIA Requester Service Center(s) to check on the status of their FOIA requests. As mentioned above, the National Aeronautics and Space Administration has established such a center for each of its 13 center and management offices, with a FOIA Public Liaison named for each, whom FOIA requesters may contact by telephone if they are dissatisfied with the response of the center's FOIA Requester Service Center. FOIA requesters are strongly encouraged to make use of these new services that are now available to them.

VI. Expedited Processing

Under certain conditions you may be entitled to have your request processed on an expedited basis. However, you should realize that whenever a FOIA request is expedited for a particular requester, taking that action results in an additional delay for previous requesters who have been waiting for a response. Therefore, in an effort to treat all requesters equitably, NASA ordinarily will process an initial FOIA request or an administrative appeal of a request's denial ahead of others only in cases in which there will be a threat to someone's life or physical safety, or where an individual will suffer the loss of substantial due process rights if the records are not processed on an expedited bases. In most cases, a request will not be expedited merely on the basis that the requester is facing a court deadline in a judicial proceeding. In both criminal prosecutions and civil litigation there is a document-disclosure process known as "discovery," which gives the parties certain rights to obtain relevant information apart from the FOIA. These discovery rights usually are sufficient to protect the requester's due process rights.

The FOIA also requires that requests be processed on an expedited basis if made by a person primarily engaged in disseminating information to the public and the information is urgently needed to inform the public concerning some actual or alleged government activity. Requests are not expedited under this provision merely on the basis that the requester is a representative of the news media. Similarly, NASA also expedites requests when the subject is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity which affect public confidence. Expedited processing decisions for initial requests on this latter basis are made by NASA's Assistant Administrator for Public Affairs or Chief FOIA Public Liaison Officer.

A request for expedited processing must be accompanied by a statement setting forth the reasons why your request should be expedited. You should certify that the reasons you have given are true and correct. The center will be required to notify you of its decision about whether to grant expedited processing within no more than 10 calendar days after receiving your letter. If the component denies your request for expedited processing, you will be advised of your right to submit an administrative appeal of that denial, which will be handled expeditiously.

VII. Fees

There is no initial fee to file a FOIA request; in fact, in the majority of requests made to NASA, no fees are ever charged. By law, however, an agency is entitled to charge certain fees, which depend on the particular category of FOIA requester that you fall into.

Currently, NASA published fees are provided in Title 14, CFR, 1206.700. Cost for reproduction is currently set at .15 cents per page. The assessment of fees varies for records searches, and review time. Which will depend on the grade of the person performing the search or/and review:

1. Clerical searches are assessed at \$3.75 per quarter hour.
2. Non-routine, non-clerical searches are charged at \$7.50 per quarter hour.

For the purposes of fees only, the FOIA divides requesters into four categories.

1. Commercial requesters – will be charged the total cost to recover the full direct cost for processing the FOIA request; which includes:

- a. Searching for records;
 - b. "Processing" the records (i.e., reviewing them to determine the possible applicability of FOIA exemptions), and;
 - c. Photocopying them.
2. Education and noncommercial scientific institution requesters – shall be assessed for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must demonstrate that they meet the criteria in Title 14 CFR 1206.101(o).
 3. Representatives of the news media – shall be assessed for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must show that the request being made is authorized by and under the auspices of a qualifying institution and the records are not being sought for a commercial use.
 4. All others – are classified as those who do not fit into any of the above mentioned categories. They will be provided 2 hours of free search and review time, and 100 pages of reproduction free of charge. Any assessed fees over and above this will be charged in accordance to the agency's published fee schedule.

You may always include in your request letter a specific statement limiting the amount that you are willing to pay in fees. If a component estimates that the total fees for processing your request will exceed \$15, it will notify you in writing of the estimate and offer you an opportunity to narrow your request in order to reduce the fees. If you continue to want all of the records involved, you will be asked to express your commitment to pay the estimated fees and the processing of your request will be suspended until you agree to do so. You ordinarily will not be required to actually pay the fees until the records have been processed and are ready to be sent to you.

If, however, you have failed to pay fees within thirty days of billing in the past, or if the estimated fees exceed \$250, you may be required to pay the estimated fees in advance, before the records even are processed. If you agree to pay fees and then fail to do so within 30 days of billing, you may be charged interest on your overdue balance and NASA will not proceed with any further requests from you until payment in full has been made.

If you agree to pay fees for searching for records, be aware that you may be required to pay such fees even if the search does not locate any responsive records or, if records are located, even if they are withheld as entirely exempt.

VIII. Fee Waivers

You may request a waiver, however, fee waivers are limited to situations in which a requester can show that the disclosure of the requested information 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. Requests for fee waivers from individuals who are seeking records pertaining to them usually do not meet this standard because such disclosures usually will not result in any increase of the public's understanding of government operations and activities. In addition, a requester's inability to pay fees is not a legal basis for granting a fee waiver. It should be noted that the granting of a fee waiver, which is done on a general public-interest basis under the statute, is entirely separate and distinct from the limitations on fees that are discussed in the previous section.

IX. Initial Request Determinations

Once the component has processed your request and any fee issues have been resolved, the component will send you a written initial determination. In the vast majority of cases, NASA centers will include any documents that can be disclosed along with the determination letter, though in some cases the documents themselves may be sent within a reasonable time afterward. The FOIA provides access to all federal agency records (or portions of those records), except for those records that are withheld under any of nine exemptions or three exclusions (i.e., the reasons for which an agency may withhold records from a requester). The determination letter will advise you of whether any information is being withheld pursuant to one or more of the exemptions. When a page of a record is being withheld in its entirety, the component ordinarily specifies the number of pages being withheld or makes a reasonable effort to estimate the volume of the withheld information.

The exemptions authorize federal agencies to withhold information covering:

- (1) Classified national defense and foreign relations information;
- (2) Internal agency rules and practices;
- (3) Information that is prohibited from disclosure by another federal law;
- (4) Trade secrets and other confidential business information;
- (5) Inter-agency or intra-agency communications that are protected by legal privileges;
- (6) Information involving matters of personal privacy;

- (7) Records or information compiled for law enforcement purposes, to the extent that the production of those records
 - a. could reasonably be expected to interfere with enforcement proceedings,
 - b. would deprive a person of a right to a fair trial or an impartial adjudication,
 - c. could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - d. could reasonably be expected to disclose the identity of a confidential source,
 - e. would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or
 - f. could reasonably be expected to endanger the life or physical safety of any individual;
- (8) Information relating to the supervision of financial institutions; and
- (9) Geological information on wells. The three exclusions, which are rarely used, pertain to especially sensitive law enforcement and national security matters.

X. Administrative Appeals

You may file an administrative appeal if:

- (1) If you're not satisfied with a NASA center's initial determination;
- (2) You disagree with the center's withholding of information or you might believe that there are additional records responsive to your request that the center failed to locate;
- (3) If you have requested expedited processing or a fee waiver and the component has not granted that request; or
- (4) You may appeal a determination that what has been requested is not reasonably described, that a record does not exist or cannot be located, that a record is not readily reproducible in the form or format requested, that the requested information is not a record subject to the FOIA, or a determination regarding the charging of a fee.

You should be advised of your right to file an appeal in the initial determination letter sent by the component or in a letter denying your request for expedited processing or a fee waiver. Ordinarily, your appeal must be received within 60 days of the date of the component's determination letter. All appeals must be made in writing and addressed to:

National Aeronautics and Space Administration (NASA)
Attn: "FOIA APPEAL"
300 E Street, SW
Washington, D.C. 20546

Both the front of the envelope and the appeal letter should contain the notation:

"Freedom of Information Act Appeal."

There is no specific form or particular language needed to file an administrative appeal. You should identify the component that denied your request and include the initial request number that the component assigned to your request and the date of the component's action. If no request number has been assigned, it will help if you enclose a copy of the component's determination letter. Please do not attach copies of released documents unless they pertain to some specific point you are raising in your appeal. You may explain the reason or reasons why you disagree with the component's action, but a simple statement that you are appealing the decision ordinarily is sufficient. If, however, you are appealing because you believe there are additional records that have not been located in response to your request, you should specify why you think such records exist and, if possible, where you believe they might be located.

Under the FOIA, the National Aeronautics and Space Administration is ordinarily required to make a determination on your administrative appeal within 20 business days. NASA may take one of several actions on your appeal.

- (1) It may affirm the component's action in full, in which case it will identify which exemptions (if any) have been appropriately claimed;
- (2) Or it may affirm part of the component's action (identifying the applicable exemptions), but order the release of other information previously withheld; or
- (3) Under some circumstances, it may return or "remand" the request to the component for complete reprocessing.

When a case is remanded, you will have an opportunity again to appeal after the component has reprocessed the records if at that time you remain dissatisfied with the component's action in any respect.

XI. Judicial Review

If you still believe that the National Aeronautics and Space Administration has not handled your FOIA request properly under the law after your appeal has been decided, you have the right to challenge the agency's action in a lawsuit filed in federal court. Before doing so, you ordinarily will be required first to have filed an administrative appeal and to have received a response. If NASA fails to respond to either your initial request or your appeal within the time limits discussed above, however, you may file a lawsuit once the time limits have expired.

If you do bring a court action, you may file your lawsuit 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.

If you have received an administrative appeal determination, that final administrative response letter will advise you of your right to seek judicial review and will specify where you can do so. You have 6 years to file a lawsuit from the time your right to sue begins. Lastly, please understand that attorneys and employees of the National Aeronautics and Space Administration are prohibited from giving legal advice to members of the public on any matters, including Freedom of Information Act litigation.