

# **Freedom of Information Act Reference Guide**

## **Office of the United States Trade Representative Executive Office of the President**

### **I. Introduction**

Enacted in 1966, the Freedom of Information Act (FOIA, found in 5 U.S.C. § 552, Attachment B) provides that members of the public have the right to request access to federal agency records or information, except for those records (or portions of records) that are protected from disclosure by the nine exemptions and three exclusions of the FOIA. This right of access is enforceable in court and is supported by a presidential executive order (Attachment C). FOIA does not provide access to records held by Congress or the federal courts, by state or local government agencies or by private businesses or individuals.

The purpose of this Reference Guide is to provide guidance for making a FOIA request to the Office of the United States Trade Representative and to explain how the request will be handled. However, the information contained in this Reference Guide is not exhaustive. For more detailed information, see Office of United States Trade Representative Freedom of Information Regulations (found in 15 C.F.R. Part 2004, Attachment C) and the Department of Justice's publication [Freedom of Information Act Guide & Privacy Act Overview](#).

### **II. Information Accessible Without a FOIA Request**

The USTR website contains a wealth of information. The FOIA home page contains much information on the USTR FOIA program, including information on Frequently Requested FOIAs. The site also contains information on USTR's mission, history, a description of USTR's organization structure, current recruiting information and employment opportunities, speeches, Congressional testimony, and links to trade agreements. In addition, you may access information on USTR's Government Information Locator System (GILS), which is an index of USTR's major information systems and record locator systems. The Document Library contains information on USTR reports, publications, Federal Register notices, speeches, testimony, press releases, fact sheets and op-eds. A full listing of all reports, and many of the reports themselves, are available on our Internet Home Page or from the Public Affairs Office. Before submitting a FOIA request, you are encouraged to visit the USTR home page. It is very likely that the information you are seeking will be immediately available there at no charge to you.

### **III. FOIA Requests**

In order to obtain records that are in USTR's files which are not available on the USTR website, a requester must submit a written FOIA request to USTR. Individuals wishing to file a FOIA request with USTR must address their request in writing to the FOIA Officer, Office of the U.S. Trade Representative, 600 17th Street NW, Washington, D.C. 20508, phone (202) 395-3419. You can avoid delays caused by mail handling by faxing your FOIA request to (202) 395-9458.

Requests for information should be as specific as possible. The requester must describe the records that he/she seeks in enough detail to enable USTR personnel to locate them in a reasonable amount of time. Request such as "all documents related to . . ." are extremely difficult and costly to process because they require extensive search of numerous USTR files. In contrast, a request for a specific document can generally be processed much more quickly. Such request should include specific information about each record sought, such as the date, title or name, author, recipient and subject matter of the record.

A FOIA request can be made for any agency record. However, this does not mean that the USTR will disclose all of the requested records. First, FOIA does not require agencies to do research, to analyze data, to answer written questions or to create records in order to respond to a request. Second, there are statutory exemptions that authorize the withholding of information of a sensitive nature. If the information is of a sensitive nature, USTR will specify which FOIA exemption permits the withholding.

#### **IV. Fees & Fee Waivers**

By law, an agency may charge fees for responding to FOIA requests. The fee is dependant on characteristics of the requesting party:

- Commercial Use Requesters: When USTR receives a request for documents for commercial use it will assess charges that recover the full cost of searching for, reviewing for release and duplicating the records sought.
- Educational and Non-Commercial Scientific Institution Requesters: USTR shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages.
- News Media Requesters: USTR shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages.
- All Other Requesters: USTR shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, excluding charges for the first 100 pages of reproduction and the first two hours of search time.

Search fees are based on an hourly rate for the level of employee who conducted the search. Duplication presently costs \$0.15 per page.

The requesting party can include a specific statement limiting the amount that he/she is willing to pay in fees. If they do not do so, USTR will assume that the requesting party is willing to pay fees up to a certain amount, currently \$25. If it is anticipated that total fees

for processing the request will exceed \$25, USTR will notify the requesting party. In instances where the estimated fees will greatly exceed \$25, an advance deposit may be required.

If the requesting party expects or is advised that a fee will be charged, he/she may request USTR to waive those fees. USTR may waive fees, in whole or in part, if the requester can show that the disclosure of the requested information is in the "public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Requesters with access to the USTR Internet Home Page should confirm whether their request is in the category entitled "FOIA Responses of General Interest."

#### **IV. Initial Request Determinations**

Once it has processed your request and any fee issues have been resolved, USTR will send the requester a written response to the FOIA requested. If the request has been approved, USTR will include the requested documents along with the determination or send the documents within a reasonable time afterward. However, if the request is denied, USTR will notify the requester of the denial, the reason (exemption) under which the information is being withheld, and of the requester's right to file an appeal to the USTR FOIA Appeals Committee.

There are several statutory exemptions which authorize federal agencies to withhold information, including but not limited to:

- Classified national defense and foreign relations information;
- Internal agency rules and practices;
- Information that is prohibited from disclosure by another federal law;
- Trade secrets and other confidential business information;
- Inter-agency or intra-agency communications that are protected by legal privileges;
- Information involving matters of personal privacy;
- Records or information compiled for law enforcement purposes; and
- Information relating to the supervision of financial institutions.

#### **V. Administrative Appeal**

A party whose request has been denied may file an appeal with USTR if he or she is not satisfied with USTR's initial response to withhold some or all of the records requested, or USTR's decision regarded expedited processing or a fee waiver. The requesting party's appeal must be received within 30 days of the determination letter. There is no specific form or particular language needed to file an administrative appeal, but the written request should include the initial request, determination letter and an explanation of why the requesting party disagrees with the agency's decision. All appeals must be mailed or faxed

to the FOIA Officer, Office of the U.S. Trade Representative, 600 17th Street NW, Washington, D.C. 20508, phone (202) 395-3419 or at fax number (202) 395-9458.

The appeal will be reviewed by the Freedom of Information Appeals Committee, consisting of USTR staff officials designated by the United States Trade Representative. If the appeal is granted, the requester will be notified and sent copies of the releasable documents. If the appeal is denied in whole or part, the requester will be notified of the decision.

## **VI. Judicial Review**

If the requesting party still disagrees with the USTR's handling of the FOIA request, he/she has the right to challenge the agency's action in federal court. The requester will ordinarily be required to file an administrative appeal and have received a response. A court action can be brought in the following federal district courts: 1) where the requester resides; 2) where the requester's principal place of business is located; 3) in the District of Columbia; or 4) where the records are located, if they are not in the District of Columbia. Court actions must be filed within six months.