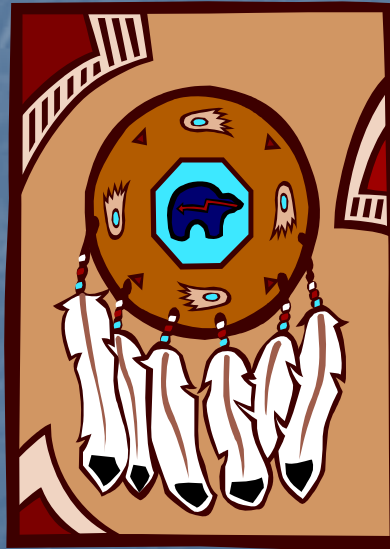


Freedom of Information Act (FOIA)



FOIA

The FOIA generally provides that *any person* has a right, enforceable in court, to obtain *access to federal agency records*, except to the extent that such records (or portions of them) are protectable from public disclosure by one of *nine exemptions* or by one of *three special law enforcement record exclusions*.

Public Opinion on Use of FOIA

The FOIA is critical for the functioning of democratic government because it helps ensure that the public is fully informed about matters of public concern. The FOIA has helped uncover fraud, waste, and abuse in the federal government. It has become particularly important in the last few years as the government has tried to keep more of its activities secret.

Overview of The Administrative Process

Receive Request

Interpret the Request

Send Acknowledgment

Search for Responsive Records

Review Located Records

Assess Fees/Fee Categories

Redact Exempt Information

Respond to the Request

Advise of Administrative Appeal Process

FOIA Request



A request from any person for access to:

- Federal Agency records
- Personal records on another individual
- Personal records about himself/herself that are *not* filed within a Privacy Act system of records

The “*why*” behind the request

FOIA requesters generally do not have to justify or explain their reasons for making requests.

FOIA

- Allows any person to request copies of agency records
- Requester has to follow agency rules and agree to pay fees
- Must respond to requesters within 20 business days.



Who May File a FOIA Request?

Any person. Two broad classes are excluded from "any person:"
federal government entities

and

fugitives from justice.



“Any person” covers:

- Individuals
- Businesses
- Governments (foreign, state, or local)
- Universities and not-for-profit organizations
- Any other entity you can think of

FOIA DOES NOT PERTAIN TO:

LEGISLATIVE BRANCH

JUDICIAL BRANCH

STATE AND LOCAL GOVERNMENTS

COMMERCIAL ENTITIES

PRIVATE ENTITIES

TRIBES

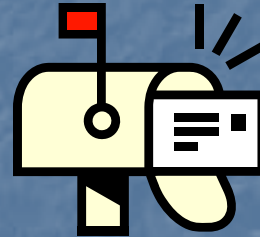
How are Requests to be Filed?

Requests must be in writing.

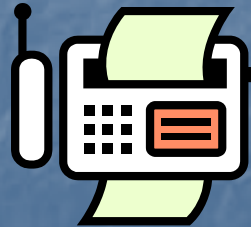


They may be mailed,

faxed,




or emailed.



FOIA Fees

We bill requesters for FOIA services based on who they are. FOIA Staff determines the requester's fee category and what fees to assess:

- Commercial users pay for all search, review, and copying.
- News media and educational requesters pay for copying (but the first 100 pages are provided free). 
- "All Others" pay for all search and all copying (but the first 2 hours of search and the first 100 pages are provided free).

***If the billable cost is nominal,
we automatically
waive the fee.***

What Constitutes an *Agency Record* for FOIA Purposes?

"Agency records" are those created or obtained in the course of conducting agency business, including paper, electronic or other physical forms. They include reports, letters, photographs, recordings, e-mails, etc.

A record must exist and be in the *possession* and *control* of the agency before it is considered for release.

The following are *not* considered agency records

Objects (furniture, wall paintings, etc)

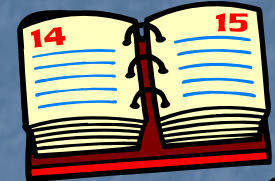


Nontangibles (an individual's memory or oral communications)



Personal records of an individual that are:

- Maintained for the convenience of the employee
- Not subject to record retention and disposal rules



Private material brought into the agency for employee's reference



Notes created by supervisors and other employees provided they are:

- Not filed with official records
- Not shared with other employees
- Not required by law, regulation or custom to be created
- Not used in the decisionmaking process

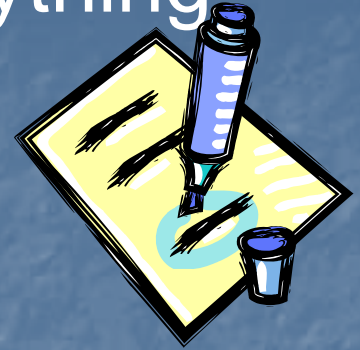


Possession and Control

A record must be under your possession and control before it may be released. A record is in your "possession" if you have it in official files. A record is under your "control" if you created it, had it created under contract, or if the record is considered to be "owned" by IHS by law or regulation.



Do we give a FOIA requester everything he/she asks for?



Sometimes we have to issue full or partial denials. The FOIA lists nine categories of information that may be withheld from the public. These nine categories are referred to as “exemptions.” Whenever something is redacted from a document, we are required to tell the requester why we are withholding the information, which of the exemptions apply, and how to file an appeal.



Appeals

Any response deemed “adverse” may be appealed.

Appeals are to be directed to our appellate authorities (PHS FOIA Officer).

Once an appeal is received, the PHS FOIA Officer will then ask the IHS to provide the case file and reasons why the information was either withheld, or why it hasn't been released as of the appeal date.

FOIA Exemptions

Exemption 1, Classified Material (5 U.S.C. 552(b)(1)).

HARM: Injure the interests of national defense.



Exemption 2, Internal Matters (5 U.S.C. 552(b)(2)).

HARM: Release could allow someone to circumvent, frustrate, or render ineffective laws, statutes, or agency regulations.

Exemption 3, Information prohibited from release by Federal statute (5 U.S.C. 552(b)(3)). HARM: Release would violate federal law. Some laws set both criminal and civil penalties for wrongfully disclosing information to one not entitled to receive it.



FOIA Exemptions (Continued)

Exemption 4, Trade Secret, Commercial, and Financial Data Submitted in Confidence (5 U.S.C. 552(b)(4)). HARM: Release could result in competitive harm to the submitter or impair government's ability to obtain necessary information in the future. The term "submitter" includes a wide range of entities, including businesses, not-for-profit organizations, state, local, and foreign governments, consultants, etc. In most circumstances, we are required to let the submitters know we plan to publicly disclose their information and provide them with an opportunity to comment on or formally bar disclosure through the courts.

* A majority of the requests received in the Headquarters East FOIA program office have to deal with contracts, bids for contracts, etc.



FOIA Exemptions (Continued)

Exemption 5, Government Privileged Information (5 U.S.C. 552(b)(5)). Information that would not be disclosable in litigation. This exemption covers all documents immune from civil discovery, the formal process by which litigants obtain information from each other for use in litigation. There are multiple discovery privileges; however, the most widely claimed are the deliberative process, attorney-client, attorney work product, and government commercial.

HARM: Release could stifle open and honest communication within the agency; interfere with adversarial trial processes; or interfere with the procurement process by prematurely disclosing government costs, estimates, etc.



FOIA Exemptions (Continued)

Exemption 6, Personal Privacy (5 U.S.C. 552(b)(6)).

HARM: Release could invade an individual's privacy or embarrass him; violate the Privacy Act; or promote threats of terrorism. There are civil and criminal penalties for violating the Privacy Act. An individual may be fined up to \$5,000 for violating the Act. Other examples of personal information that would be withheld from records before possible release are home addresses, Social Security Numbers, home telephone numbers, cell phone numbers, etc.).

Exemption 7, Records compiled for law enforcement purposes (5 U.S.C. 552(b)(7)). This exemption has 6 separate prongs, as follows:

5 U.S.C. 552(b)(7)(A)–Interference. HARM: Release could interfere with enforcement proceedings. So long as the investigation or final agency decision on the investigation is pending, this prong protects the entire investigative file. This exemption expires when the investigation is complete and the agency's action has been decided.



FOIA Exemptions (Continued)

5 U.S.C. 552(b)(7)(B)–Fair Trial. HARM: Release could create prejudicial pretrial publicity that could deprive a person of a right to a fair trial or impartial adjudication.

5 U.S.C. 552(b)(7)(C)–Personal Privacy. HARM: Release could constitute an unwarranted invasion of personal privacy. This exemption is applied to the names and identifying details of investigators, suspects, witnesses, sources, and persons casually mentioned in law enforcement records. There is a strong interest in protecting individuals from being associated with alleged criminal activity. Despite the similarities in language with FOIA Exemption 6, Exemption (7)(C) is much broader.

5 U.S.C. 552(b)(7)(D)–Confidential Sources. HARM: Release could disclose the identity of a source, including a state, local or foreign agency who furnished information on a confidential basis. Source names are protected to prevent retaliation against sources and to ensure that witnesses continue to be willing to talk to investigators.

FOIA Exemptions (Continued)

5 U.S.C. 552(b)(7)(E)–Investigative Techniques and Procedures.

HARM: Release would allow people to break the law and go undetected. Examples of data appropriate for withholding would be the location of hidden cameras, methods by which investigators verify statements, procedures for detecting criminals, etc.

5 U.S.C. 552(b)(7)(F)–Physical Safety. HARM: This exemption allows the withholding of information necessary to protect the physical safety of a wide range of individuals and is appropriately applied when a requester has threatened individuals in the past. While this exemption is similar to Exemption (7)(C), it is considerably broader. So long as there is a reasonable likelihood of disclosure risking physical harm to any individual, the person's name and identifying data may be withheld.

FOIA Exemptions (Continued)

Exemption 8: Covers matters contained or related to reports prepared by or for use of an agency responsible for regulation of financial institutions.

Exemption 9: Pertains to geological and geophysical information and data concerning wells and including maps.

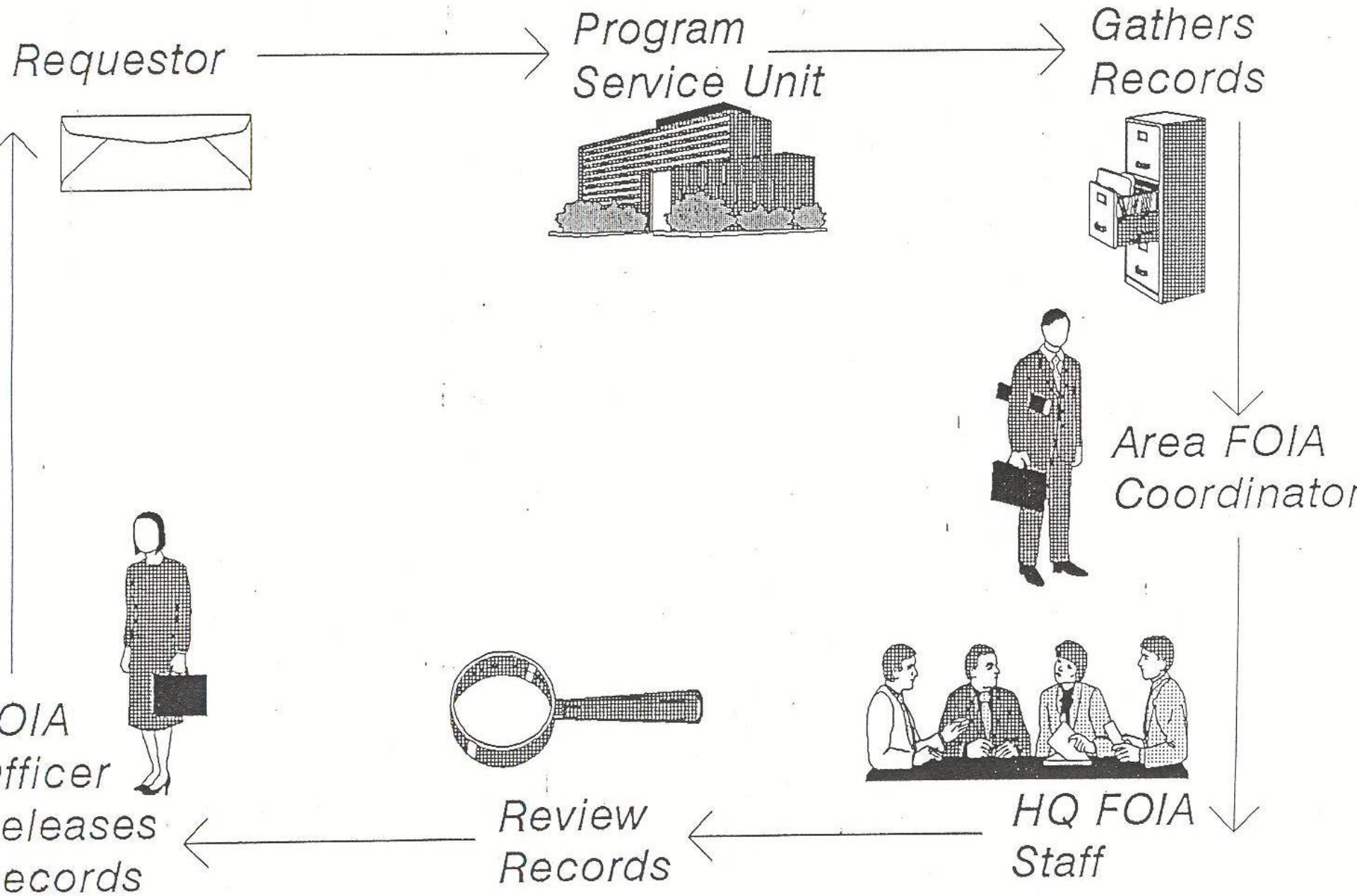
Who Is Authorized to Sign Responses to FOIA?

- Full Releases: Only the FOIA Officer, Division of Regulatory Affairs (DRA), IHS may sign releases.
- Full and Partial Denials: Only the FOIA Officer, DRA, IHS may sign denials.

Examples of FOIA Requests

- Request for medical or personnel records from a third party
- -Third party could be next of kin, lawyer, tribe, union, coworkers, etc.
- Request for Contract. They are usually asking for a copy of the awarded contract. Majority of our request are for copies of Contracts
- Request for impact card holders
- Request from tribes— seeking 638 information
- Requests for info on an investigation being done on an employee
- Request for copies of emails regarding the requester or other employees.
- Request for RPMS
- Request for IHS employees travel records
- Request from the media for information on doctors or nurses
- Request from Media on News around Indian country

FOIA Flow Chart



Raho Ortiz–FOIA Officer
Vacant–FOIA Public Liaison
Janet Ingersoll–FOIA Coordinator
Nina Argent–FOIA Specialist

Indian Health Service
FOIA Office
801 Thompson Ave. (TMP 450)
Rockville, Maryland 20852-1267
Phone: 301-443-1116

For more information check out the IHS Web site.
<http://www.ihs.gov/AdminMngrResources/FOIA/index.cfm>



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Other FOIA Web Sites

- Department of Health and Human Services <http://www.hhs.gov/foia/>
- Department of Justice <http://www.justice.gov/oip/>

