

A Citizen's Guide
To Request BIA Records
Under The
Freedom of Information Act
(FOIA)

Bureau of Indian Affairs
Office of Management and
Administration

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FREEDOM OF INFORMATION ACT (FOIA) GUIDE

INTRODUCTION:

The purpose of this information is to provide guidance on how to make a Freedom of Information Act (FOIA) request for Bureau of Indian Affairs (BIA) records. It will provide you with

a brief description of your rights and the manner in which BIA will respond to your requests. The information contained herein is not intended to be definitive or exhaustive.

The FOIA is known by its legal cite as 5 U.S.C. 552. The BIA FOIA Program can be found at Part 24 of Chapter 1 of the Indian Affairs Manual.

Because the BIA organization is complexed and decentralized, we try to balance the goals of centralization of authority to promote uniform decisions and decentralization of process to facilitate responses within 20 days.

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I. FREQUENTLY ASKED QUESTIONS?

What is the FOIA?

The FOIA is a Federal law that establishes the public's right to request existing records from Federal Government agencies.

Who can file a FOIA request?

Any "person" can file a FOIA request, including U.S. citizens, foreign nationals, organizations, universities, businesses, and state and local governments.

Who is subject to the FOIA and what type of information can be requested?

The FOIA's scope includes Federal Executive Branch Departments, agencies, and offices, Federal regulatory agencies, and Federal corporations. Congress, the Federal Courts, and parts of the Executive Office of the President are not subject to the FOIA. State and local governments are likewise not subject to the Federal FOIA, but some states have their own equivalent access laws for state records.

What is a record?

A record is the product(s) of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in the BIA's possession and control at the time the FOIA request is made.

Can we ask questions under the FOIA?

The FOIA does not require Federal Agencies to answer questions, render opinions, or provide subjective evaluations. Requesters must ask for existing records, such as those mentioned above.

How do I file a FOIA request?

Label your request "Freedom of Information Act Request," preferably within the request letter and on the envelope, and

address the request to the appropriate Regional Office or Central Office likely to have the information you seek.

State your willingness to pay applicable fees. If you seek a fee waiver, provide a justification for such a waiver.

Describe the specific records you are requesting in enough detail so that they can be located with a reasonable amount of effort. Generally, a record is reasonably described when the description contains sufficient file-related information (type of document, title, subject area, date of creation, originator, etc.); or the request contains enough event-related information (date and circumstances surrounding the event the record covers) to permit the conduct of an organized, non-random search.

NOTE: See Appendix A [Click Here to see Sample Letter](#)

What are reasons for not releasing a record?

There are seven reasons why the BIA may not release a record requested under FOIA. They are:

1. The request is transferred to another BIA organization or Federal agency.
2. The BIA organization determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record.
3. A record has not been described with sufficient detail to enable the BIA organization to locate it by conducting a reasonable search.
4. The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by the FOIA.

5. The request is withdrawn by the requester.
6. The information requested is not a record within the meaning of the FOIA.
7. The record is denied in whole or part in accordance with procedures set forth in the FOIA and

What are FOIA exemptions?

1. records currently and properly classified in the interest of national security;
2. records related solely to internal personnel rules and practices, which, if released, would allow circumvention of an agency function;
3. records protected by another law that specifically exempts the information from public release;
4. trade secrets and commercial or financial information obtained from a private source which would cause substantial competitive harm to the source if disclosed;
5. internal records that are deliberative in nature and are part of the decision making process that contain opinions and recommendations;
6. records which, if released, would result in a clearly unwarranted invasion of personal privacy;
7. investigatory records or information compiled for law enforcement purposes;
8. records for the use of an agency responsible for the regulation or supervision of financial institutions; and
9. records containing geological and geophysical information (including maps) concerning wells.

What is a denial?

When information is withheld, whether partially or fully, this constitutes a denial under FOIA. A request may be denied for one or more of the aforementioned exemptions. When this happens, you will be notified in writing by a FOIA Coordinator and FOIA Officer and given appeal rights. If your request is denied partially you will receive information that has portions deleted. Redacted records have the denied information removed from where it was originally located within the document. The appropriate exemption(s) for deletion of the information should be listed next to the sanitized area(s) on the document. There are usually two methods for sanitizing a document; one is to blacken out the denied information, and the other is to completely remove it.

Can I appeal a denial?

Yes. If your request is initially denied in whole or in part under one or more of the above exemptions or denied for some other reason, you will be advised of your appeal rights and the proper procedures for submitting the appeal within 60 days. You are to submit your appeal within 20 workdays after you receive the denial letter. You are to submit your appeal directly to the Departmental FOIA Appeals Officer. [Click Here](#) If you are not satisfied with the appeal determination, you may seek a judicial review.

How long will it take for my request to be processed

This is a difficult question to answer because of the complexity and decentralization of the BIA. In fairness to all requesters, the BIA processes requests in order by date of receipt and according to their complexity. Whenever possible, an initial determination

to release or deny a record is made within 20 working days after receipt of the request by the official who is designated to respond.

If unusual circumstances exist that preclude a timely response, that office will give an estimated completion date and reason(s) for delay. Unusual circumstances are:

1. Need to search for and collect the requested records from other facilities that are separate from the office determined responsible for a release or denial decision on the requested information.
2. The need to search for, collect, and examine a voluminous amount of separate and distinct records which are requested in a single request.
3. The need for consultation, which shall be conducted with all practicable speed, with other agencies having a substantial interest in the determination of the request.

How do I qualify for expedited processing of my request?

To receive expedited processing, the requester must demonstrate one of the following compelling needs:

1. Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.
2. Information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.

3. Other reasons that merit expedited processing are an imminent loss of substantial due process rights and humanitarian need.

Do I have to pay for a FOIA request?

The FOIA allows fees to be charged to certain types of requesters, but it also provides that waivers or reductions in fees be given if disclosing the information is in the public interest. Public interest is defined as information which significantly enhances the public's knowledge of the operations and activities of the BIA. The FOIA requires that requesters be placed into one of the below categories:

Commercial. Requesters who seek information for a use or purpose that furthers their commercial, trade, or profit interest are considered commercial requesters. Commercial requesters pay all fees for search, review, and duplication.

Educational. Institutions of education, including preschools, elementary or secondary schools and institutions of higher learning, qualify as educational institutions. The records must be sought in furtherance of scholarly research. Educational requesters pay only duplication fees, unless it is determined that fees are waived in the public interest. The first 100 pages are provided at no cost.

Non-Commercial Scientific. A non-commercial scientific institution is operated solely for conducting scientific research. The records must be sought in furtherance of scientific research. Like educational requesters, these requesters pay only duplication fees, unless it is determined that fees are waived or

reduced in the public interest. The first 100 pages are provided at no cost.

News Media. A representative of the news media is a person actively gathering news for an entity organized and operated to publicize or broadcast news to the public. News media pay only duplication fees, unless it is determined that fees are waived or reduced in the public interest. Again, the first 100 pages are provided at no cost.

"Other" Requester. Requesters who do not qualify in another category are considered "other" requesters, and normally make requests for agency records for their personal use. "Other" requesters receive two hours search, all review costs, and the first 100 pages at no cost.

All requesters should submit a willingness to pay fees regardless of the fee category, however, this does not mean you will be charged fees. Fee waivers may be granted when disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. The following factors are weighed in making a fee waiver determination. See memorandum date May 30, 1997 on Fee Waiver Guidance [Click Here](#)

1. The subject of the request.
2. The informative value of the information to be disclosed.
3. The contribution to an understanding of the subject by the general public likely to result from the disclosure.
4. The significance of the contribution to public understanding.

5. Disclosure of the information is not primarily in the commercial interest of the requester.
6. The ability of the requester to disseminate the information.

II. READING ROOM.

The Bureau of Indian Affairs' Public Information office operates the BIA's Reading Room. It is open to the general public from 8:00 a.m. - 4:00 p.m., Monday through Friday (excluding Federal holidays). The BIA's Reading Room is currently under development.

III. ELECTRONIC ACCESS.

The BIA's Electronic Freedom of Information Act Reading Room has additional information such as the DOI/BIA Freedom of Information Act Regulation, reading room records, and hyperlinks to other agencies. [Click Here to go to the Reading Room](#)

We trust this information will be helpful to you when pursuing FOIA requests with the Bureau of Indian Affairs. If you have any suggestions, you may call (202)-208-2977 and ask for the FOIA Officer.

APPENDIX A. SAMPLE FOIA REQUEST LETTER

FOIA Coordinator or Officer

BIA organization (Region or Central Office see FOIA Contacts)

Address

City, State, Zip Code

Dear:

This is a request under the Freedom of Information Act (5 U.S.C. 552).

I request that a copy of the following document(s) be provided to me. [Identify the document(s) as specifically as possible].

In order to help you determine my status for the purpose of assessing fees, you should know that I am [Insert one of the descriptions below]

1. a representative of the news media affiliated with the _____ newspaper (magazine, television station, etc.), and this request is made as part of news gathering and not for a commercial use.
2. affiliated with an educational or non-commercial scientific institution, and this request is made for a scholarly or scientific purpose and not for commercial use.
3. affiliated with a private business and am seeking information for use in the companies business.
4. an individual seeking information for personal use and not for a commercial use.

I am willing to pay fees for this request up to a maximum of \$_____. If you estimate that the fees will exceed this limit, please inform me first.

[Optional] I request a waiver of fees for this request because disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the BIA and is not primarily in my commercial interest. [Include details about how the requested information will be disseminated by you to the general public]

[Optional] I also include a telephone number at which I can be contacted if necessary to discuss any aspect of my request.

Sincerely,

Name

Address

City, State, Zip Code

Telephone Number [Optional]