

55th Wing Freedom of Information  
Act/Privacy Act Office

Making Government Information  
Available to the Public

**FREEDOM OF  
INFORMATION ACT  
(FOIA) GUIDE**

**March 2009**

## INTRODUCTION

This guide is provided as a tool to assist you in making Freedom of Information Act Requests for information resources owned by the 55th Wing and supported tenant organizations. The guide provides basic information on the processes, your rights, and the fee-for-service associated with the Freedom of Information Act. This guide complements DoD 5400.7R, DOD Freedom of Information Act, and related Public Law. This guide is not intended to serve as substitute for established law and policy. You may view the referenced doctrine on the World Wide Web by logging on to <http://www.defenselink.mil>, clicking on publications and then FOIA program. Printed copies of DoD 5400.7R can be purchased from the National Technical Information Service (NITS), 5285 Port Royal Road, Springfield VA 22161.

**What is the Freedom of Information Act (FOIA) program?** The FOIA program is a federal law (referred to as U.S.C. 552) that establishes the general public's right to request existing records from Federal Government agencies.

**What is a record?** A record consists of the compilation data such as all books, paper, maps, charts, machine readable materials to include electronic records, and other documentary materials, regardless of characteristics or physical media made or received by agency of the United States Government in connection with the activities or business transactions of public business under possession and control of the DOD at the time a FOIA request is submitted.

**Is there a difference between a FOIA request and a Privacy Act request?** Yes. A FOIA is a request from the general public (military or civilian) for copies of specific records. A Privacy Act (PA) request originates from the subject (SUBJECT REFERS TO PERSON) of a record maintained and retrieved in an approved system of records using a personal identifier (SSN). When individuals request information about themselves contained in an approved PA system of records, the request should be handled under the Privacy Act. Requested records about an individual not contained in an approved system of records asked for under the Privacy Act will have their request processed under the FOIA, since no access rights exist under the Privacy Act. Requests which cite neither act, but one or both are implied, will be processed under the Act granting the widest scope of access. However, if any portion is to be denied, then it will be processed as a FOIA.

**Which type of request provides for more information when making a request for records?** This depends on who is making the request and type of information being asked for. Generally, the act that provides the broadest scope or application to the information being sought is applied. The enclosed table identifies how each act applied to specific requests for records.

**Who can submit a Freedom of Information Act request?** Any person can submit a FOIA request to include U.S. citizens, foreign nationals, organizations, universities, business, and state and local governments.

**Can Federal Agencies submit FOIA requests?** No. Federal agencies by virtue of their requirement to share information in the transaction of business and decision making do not have to initiate FOIA requests. There is a legitimate "need to know" in using other agency's information resources.

**Can requesters ask questions under the Freedom of Information Act?** The FOIA does not require Federal Agencies to respond to questions, render opinions, or provide subjective evaluations.

**How does an individual submit a Freedom of Information Act request?**

- A printed request (email, letter, fax, etc.) must be submitted to the Freedom of Act Office at the location of the records being requested. A sample of a written request is provided for you in this guide at Attachment 2.
- The request must meet three criteria in order to be processed by the FOIA office.
- There must be a clear description of the records being asked for. Requesters should also identify the type of media the records are to be furnished, if releasable. If the records are to be furnished on a diskette, the requester should identify the language that is compatible with the requester's resources.
- There must a statement that identifies a willingness to pay applicable fees, Some of the fee assessments are partially or totally waived, depending on which category the requester is placed
- Requesters may identify a "compelling need" or "expeditious processing" of the request due to unique circumstances such as life or death circumstances, urgency to inform the general public, or similar

events. A statement stating the special need must be included on the request and the signature of the requester certifies that this circumstance is true and valid to the best of their knowledge.

- Military members MAY NOT use government resources such as computers, fax machines, Base Information Transfer System, or other resources to submit requests. Requests can be hand delivered, sent through the United States Postal System (USPS), or faxed using self purchased means of obtaining the service.
- Requester must specify the specific format they wish to have any responsive records furnished in (i.e. MS Word, Excel, Adobe PDF, etc.) If no specific format is specified in the FOIA request, the FOIA Office will furnish any responsive records as an Adobe PDF “read only” file. If the PDF file is too voluminous to send via e-mail channels as the final response to the FOIA request, the PDF file will be copied to a DVD/CD-ROM disk and be sent via first class mail. In extraordinary cases where a requester has neither access to private or public computer resource, the records, upon request will be sent as paper media.

**Can a legal representative request records under the FOIA on behalf of a client?** Yes; however, if the request involves privacy act information, the client must provide a release authorization allowing the attorney to access the records. The affidavit should be as specific as possible (i.e., I authorize my attorney, Mr. Xxxxxx access to my outpatient medical records and family advocacy records). If no affidavit is provided, the request will be treated as a third party request.

**Do requesters always receive the records they ask for?** No. There are certain reasons, as well as federal exemptions/statutes, that do not allow for the partial or total release of some documents.

### **Part I. Procedural Reasons.**

- The servicing FOIA Office because of incorrect mailing address or other postal error does not receive the written request.
- The owning Offutt AFB agency or activity does not have the record (s) being requested.
- The requester has previously requested records and has failed to pay the required fees for the records.
- The requested records have met their authorized retention and disposition standards set forth by the National Archives and Records Administration and have been destroyed.
- The requesters failed to reasonably describe the records being requested records to enable a reasonable search, retrieval and review by the owning agency.
- The requested records do not fall within the definition of the FOIA and DOD policy.
- The requested records are denied in part or whole using Federal exemptions or statutes as a basis for the denial action.

### **Part II. Federal Exemptions and Statutes**

**What are FOIA exemptions and what do they mean in regards to a FOIA request?** A requester is not entitled to certain records or documents that may cause harm to a particular interest of the Government. Exemptions have been created under Federal law that protects these interests. A brief summary of each is provided.

- (b)(1) Records currently and properly classified in the interest of national security.

- (b)(2) Records related solely to internal personal rules and practices, which if released, would allow for circumvention of agency functions.
- (b)(3) Records protected by another law which specifically exempts the records from public release.
- (b)(4) Trade secrets, commercial, or financial information obtained from a private source which would cause substantial competitive harm to the source is disclosed.
- (b)(5) Internal records that are deliberative in nature and are part of the decision making process that contain opinions and recommendations.
- (b)(6) Records, which if released, would result in a clearly unwarranted invasion of personal privacy.
- (b)(7) Investigative records or information compiled for law enforcement purposes.
- (b)(8) Records for the use of any agency responsible for regulation or supervision of financial institutions.
- (b)(9) Records containing geological and geographical information (including maps) concerning wells.

**Can denial, in part or whole, for records be appealed?** Yes. If any part or all of request is denied, you will be advised of your appeal rights and the proper procedures for submitting them. There is a 60 day window in which appeal rights must be exercised.

**How long does it take to process a FOIA request?** The government is given 20 workdays to respond to a FOIA request. Overall processing times can vary depending on the type of records being requested, the volume of the records, the determination to release or deny, and the number of requests. If your request is referred because the records being requested are not owned by the 55th Wing, or denial action in part or whole is determined, then additional processing time is required by the final disclosure authority. Special requests identifying urgent or compelling need also impact on the total processing time.

**Is there a cost associated with a FOIA request?** Yes, in some cases. Fees are assessed to certain requesters, but waivers of part or all fees can also be applied if the disclosure of the records is in the public interest. Public interest is defined information that significantly enhances the public's knowledge of the operations and activities of the DOD. Fees are charged to the requester when the dollar value exceeds \$15.00. However, requesters are not charged for the first 100 pages and first two hours of search. The following categories are used to place requesters in relation to fee assessments:

- **Commercial.** Requesters seeking information that furthers their commercial trade or profit interest. Commercial requesters pay all fees for search, review, and reproduction of requested records.
- **Educational.** Institutions of education such as preschools, elementary, and schools of higher learning qualify under this category. The requested records must be sought for the purpose of furthering scholarly research. Educational requesters pay only reproduction fees, unless it is determined that fees are waived or reduced under the definition of public interest. The first 100 pages of reproduction are provided to educational requesters at no cost.
- **Non-Commercial Scientific.** This category is defined as institutions operating solely for scientific research. Requested records must be used to further scientific research. This category of requester only pays only for duplication fees, unless it is determined that fees are waived or reduced in the public interest. The first 100 pages are provided at no charge.
- **News Media.** Requesters under this category are individuals who actively gather news for any entity organized and operated to publish or broadcast the news to the public. Requesters pay only duplication fees,

unless it is determined that the fees are to be waived or reduced in the public interest. The first 100 pages are provided at no cost.

- **Other Requesters.** Requesters who do not qualify for any of the stated categories are placed in the “other” category. Waivers are considered under the following circumstances:

**Can a requester refuse payment when the requested records are received?** Yes. However, not paying the requested fee will result in your name being placed on a command-wide FOIA delinquency listing and you will not be entitled to receive future records until payment has been made for all previous unpaid requests.

**Is there a directory of FOIA Offices within the DOD?** Yes. You may obtain a listing of the DOD FOIA Offices by accessing the World Wide Web site address provided in the introduction accessing the DOD Freedom of Information Handbook. You may also contact the installation where you feel the records you are seeking are located and ask for the mailing address of the servicing FOIA office.

**Is there an electronic reading room available for Offutt AFB records?** Yes. We have selected records that have been determined to be fully releasable to the general public. You may find these records on the Air Force Electronic FOIA Reading Room web page. You may access the Air Force Electronic FOIA Reading via the link provided on the Offutt AFB FOIA web site or via <http://www.foia.af.mil/reading/>. You may view or download the information at no charge. Records available for viewing will be updated periodically ensure accurate and current information is being made available.

**Does permission have to be granted from individuals who appear on requested listings released to the general public?** At the present time, listings containing the names of military and civilian personnel are not authorized for release to the general public under current Department of Defense guidelines establishing information security standards in the post 9/11 environment.

**Conclusion.** The Freedom of Information Act is intended to serve as a looking glass to the general public in order to evaluate the efficiency and decision making of the Federal Government. The broadest applicable access to accurate and timely information should be given to individuals when established rules have been followed. It is the Air Force’s policy to conduct business in an open manner consistent with the need to uphold security and other published law regarding protection of information resources.

*SAMPLE FREEDOM OF INFORMATION ACT REQUEST LETTER*

Date

Your Full Name

Street, City, State, Zip Code

Phone / Fax Number or e-mail address (Note: Information will be protected from unauthorized release under the privacy Act of 1974; see Privacy Act Statement below)

55 CS/SCXKF (FOIA)

201 Lincoln Highway

Offutt AFB NE 68113-2040

Dear FOIA Manager,

Under the provisions of the Freedom of Information Act, 5 U.S.C. 552, I am requesting records on **(provide a detailed description of the requested records Also, if a requirement exists for any responsive records to be provided in a specific format, the specific format desired must be identified in FOIA request. Requests which do not specify a specific format will have any responsive records provided in PDF "read only" format).**

I am willing to pay all fees applicable to my category (i.e., commercial, educational, all others).

or

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.

or

I am requesting all chargeable fees be waived. (NOTE: Specific justification must be provided in order for the FOIA Office to determine eligibility for fee waiver (i.e. requester is a member of the news media or the information has a specific and significant interest to the general public)

I am willing to accept releasable information. (option of the requester)

Sincerely,

Your Signature

**NOTE:** Requests submitted via electronic mail must contain an authentication of the originator (i.e., //signed//) to ensure proper identity of the originator. Also, please provide enough information to help us determine your fee category (i.e., "I am a representative of the news media affiliated with the \_\_\_\_\_ newspaper and this request is made as part of a news gathering and not for commercial use" or "I am seeking information for personal use and not for commercial use").