

# **FREEDOM OF INFORMATION ACT REFERENCE GUIDE**



**NATIONAL COMMISSION ON MILITARY,  
NATIONAL, AND PUBLIC SERVICE**

**2018**

## INTRODUCTION

The Freedom of Information Act (FOIA) generally provides that any person has a right to obtain access to federal agency records, except to the extent that any portion of such records are protected from public disclosure by a statutory exemptions or exclusions. This reference guide defines and outlines the process that the public and the Commission will follow during the requesting and processing stages of a FOIA request.

The formal rules for processing a FOIA request with the National Commission on Military, National, and Public Service are set forth in 1 CFR part 426 and can be accessed at <https://inspire2serve.gov/content/freedom-information-act-foia>

## ROLES AND RESPONSIBILITIES

As required under the FOIA statute, certain key personnel within the Commission have assumed responsibilities for processing FOIA requests.

Chief FOIA Officer	The Chief FOIA Officer reviews and approves all responses to the requester before they are sent. The Chief FOIA Officer also assists FOIA Officers assess whether they have found responsive records and if FOIA exemptions apply. Currently, the Deputy General Counsel of the Commission serves as the Chief FOIA Officer.
FOIA Public Liaison	The Public Liaison answers the public’s questions about the FOIA process, such as where to find things on the website and what kinds of records the Commission maintains. Currently, Katie McSheffrey serves as the Commission FOIA Public Liaison and can be reached at <a href="mailto:FOIA@inspire2serve.gov">FOIA@inspire2serve.gov</a> .
FOIA Officers	Officers search for and identify responsive documents, review documents for potential exemptions, and assist the Chief FOIA Officer in communications with the requester.
FOIA Appeals Officer	In all cases where a requester challenges a FOIA decision, the FOIA Appeals Officer reviews the case file and determines whether the Chief FOIA Officer made the correct decision. Currently, the Chairman serves as the FOIA Appeals Officer, but he may delegate this authority.

## PROACTIVE DISCLOSURES

All agencies are required by statute to make certain types of records available electronically. These records may be accessed through the Commission's website at <https://inspire2serve.gov/ncos-documents>. Additionally, the Commission has a FOIA Public Liaison who can assist individuals in locating records. She can be reached at [FOIA@inspire2serve.gov](mailto:FOIA@inspire2serve.gov).

The following types of records shall be available routinely on the website, without resort to formal FOIA request procedures:

- 1) Any formal report issued by the Commission;
- 2) Testimonies and presentations submitted to the Commission;
- 3) Schedules for public meetings and hearings of the Commission along with transcripts or notes of such public meetings and hearings;
- 4) Press statements;
- 5) Substantive rules of general applicability adopted by the Commission, procedural rules governing the Commission's general operations that may affect the public, and statements of general policy or interpretation of general applicability formulated and adopted by the Commission.

The Commission keeps copies of all records, regardless of form or format, that have been released previously to any person under 5 U.S.C. 552(a)(3), and that the Commission determines have become or are likely to become the subject of subsequent requests for substantially the same records. When the Commission receives three or more requests for substantially the same records, then the Commission shall make the released records available on the Commission's website.

## WHERE TO MAKE FOIA REQUESTS

Many documents are available on the Commission's website and the Commission encourages requesters to visit the website before making a formal request for records. Except for records already available on the website or subject to the FOIA exemptions and exclusions, the Commission will promptly provide records to any person in response to a request that conforms to the procedures outlined in this reference guide. Requesters may contact the agency's FOIA Public Liaison to discuss the records they seek and to receive assistance in describing the records in their formal request.

Requesters wishing to obtain information from the Commission should submit a written request to the Commission. It may be submitted by mail or via the internet (website or email). As there may be delays in mail delivery, it is advisable to send the request via email to [FOIA@inspire2serve.gov](mailto:FOIA@inspire2serve.gov).

A request by mail must be addressed to: *FOIA Request, National Commission on Military, National, and Public Service, 2530 Crystal Drive, Suite 1000, Box No. 64, Arlington, VA 22202*

The Commission will communicate with the requester by email unless he or she specifies otherwise. Requesters may specify the preferred form or format for the records sought, and the Commission will accommodate the request if the record is readily reproducible in that form or format.

## HOW TO MAKE A FOIA REQUEST

Requests must include the following:

- 1) The requester's full name, mailing address, a telephone number at which the requester can be reached during normal business hours, and an email address for the requester, if the requester has one;
- 2) A description of the records sought in enough detail to allow the records to be located with a reasonable amount of effort. To the extent possible, requesters should include specific information, such as the date, title or name, author, recipient, and subject matter of the records sought. If known, the requester must include any file designations or descriptions for the records requested;
- 3) If submitting the request as an educational institution, a non-commercial scientific institution, or a representative of the news media, information to support being placed in that category of requester (see pages 5-6 of this Guide);
- 4) If applicable, a fee waiver request (see pages 6-7 of this Guide);
- 5) If it is being requested, a statement explaining why expedited processing is necessary, (see page 7 of this Guide); and
- 6) Where the requester is making a request for records about himself or herself, verification of the individual's identity (please see the Commission's Privacy Act regulations at 1 CFR part 426, subpart A), such as copies of government issued identification or a notarized signed certification of one's identity. In these cases, the FOIA officer will contact the individual to clarify what verification is needed.

*Date Received.* The Commission shall deem itself to have received a request on the date that it receives a request containing all of the information required. If after receiving a request, the Commission determines that it does not reasonably describe the records sought, the agency must inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the FOIA Public Liaison.

## RESPONSE TIMES

*Acknowledgement Notice.* The Commission will provide an acknowledgment notice with an individualized tracking number, the date of receipt of the request, a confirmation of a waiver or reduction of fees (if requested), and a summary of the records requested to each requester.

*Standard Processing.* Generally, within 20 work days from the date the request was received, the Commission will send a response letter. The letter will explain what responsive records were found and whether the request to release those records will be granted, denied in part, or denied in full. The response letter will also outline the fees and when records will be released.

*Extensions.* If the request is very onerous, the Chief FOIA Officer can notify the requester that there are “unusual circumstances” or that it is in the “complex process track.” The notice will inform the requester that they can reformulate the request to get documents faster, and that FOIA Public Liaison may assist them.

## ASSESSING FEES

The Commission shall charge the requester for processing a request under the FOIA in accordance with the Office of Management and Budget (OMB) guidelines. No fees shall be charged if the amount of fees incurred in processing the request is below \$25. The Commission ordinarily collects all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

For purposes of assessing fees, the FOIA establishes different categories of requesters

- *Commercial use* - request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation.
- *Non-commercial scientific* - that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry
- *Educational institutions* - any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.
- *News Media* - any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and

publishers of periodicals that disseminate news and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news- dissemination function of the requester will not be considered to be for a commercial use. “Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Commission can also consider a requester’s past publication record in making this determination.

- *Other* – anyone who does not fall into the above categories

Fees can be assessed for the time and resources required to search for records, review records, and duplicate records. Different fees are assessed depending on the category the requester falls into. To resolve any fee issues that arise under § 426.210(f), the Commission will contact a requester for additional information.

	<b>Search</b>	<b>Review</b>	<b>Duplication</b>
<i>Commercial</i>	Full cost	Full cost	Full cost
<i>Science/News/School</i>	None	None	First 100 pages free
<i>Other</i>	First 2 hours free	None	First 100 pages free

## HOW TO REQUEST A FEE WAIVER

- 1) A requester may request a waiver or reduction of fees otherwise applicable to a FOIA request in writing during the initial FOIA request. The waiver must demonstrate that the fee reduction or waiver is in the public interest because it furnishes information that is likely to contribute significantly to public understanding of the operations or activities of the Commission, and the information is not primarily in the commercial interest of the requester.
- 2) Where only some of the records to be released satisfy the requirements for a waiver or reduction of fees, a waiver or reduction shall be granted for those records.
- 3) The Commission shall notify the requester in writing regarding its determination to reduce or waive fees.
- 4) If the Commission denies a request to reduce or waive fees, then the Commission will advise the requester, in a denial notification letter, that the requester may incur fees as a result of processing the request. In the denial notification letter, the Commission will advise the requester that the Commission will not proceed to process the request further unless the requester, in writing, directs the Commission to do so and either agrees to pay any fees that may apply or specifies an upper limit that the requester is willing to pay. If the Commission does not receive this written direction and

agreement within 30 days of the date of the denial notification letter, then the Commission shall deem the FOIA request to be withdrawn.

- 5) If the Commission denies a request to reduce or waive fees, then the requester has the right to submit an appeal in accordance with 1 CFR § 426.208.

## **EXPEDITED REQUESTS**

A request for expedited processing must accompany the initial request for records, and the request should be clearly marked “Expedited Processing Requested.” It must be a certified, written statement of compelling need for expedited processing, stating that the facts are true and correct. The Commission will decide whether to grant the request within 10 calendar days of its receipt and will notify the requester in writing.

If the Commission grants this request, then the Commission will give the expedited request priority over non-expedited requests. The Commission will promptly provide the requester written notice of the decision and explain what fees apply.

Denials of expedited processing requests can be appealed using the same procedures as denials of other FOIA requests.

## **EXEMPTIONS**

There are nine recognized FOIA exemptions. Exemptions permit agencies to withhold information from public release. The exemptions are for records that:

- 1) Include national security classified information;
- 2) Are related solely to the internal personnel rules and practices of an agency, which includes internal matters where there is no public interest in disclosure and substantive internal matters that would assist someone in evading the law;
- 3) Are specifically exempted from disclosure by another Federal statute (e.g., grand jury information, confidential responses to CIPSEA surveys);
- 4) Include trade secrets and commercial or financial information obtained from a person that is privileged or confidential;
- 5) Contain interagency or intra-agency information that would be normally privileged in the civil discovery context (e.g., deliberative process privilege, attorney-work product privilege, or attorney-client privilege);
- 6) Include information contained in personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- 7) Compiled for law enforcement purposes under one of six circumstances;
- 8) Contains information that may impede the regulation of financial institutions; and
- 9) Protects geological and geophysical information related to oil wells.

## ADMINISTRATIVE APPEALS

Anytime the Commission makes a full or partial denial of records, the requester can appeal. This includes determinations:

- To assign the requester to a particular fee category,
- To deny a request for a fee waiver,
- To deny a request for expedited processing, or
- That no responsive records could be found.

Requesters may appeal by sending a written notice to the Commission within 90 days of the decision. All appeal requests should be emailed to [FOIA@inspire2serve.gov](mailto:FOIA@inspire2serve.gov) and the subject line should note it is an appeal. Your appeal should explain why we should reverse our initial decision. If we were unable to find the records you wanted, explain why you believe our search was inadequate. If we denied you access to records and told you that those records were not subject to FOIA, please explain why you believe the records are subject to FOIA.

The FOIA Appeals Officer or his designee has 20 workdays after receipt of appeal to either affirm or reverse the initial determination (in whole or in part). This decision is sent in writing to the requester and communicated to the Chief FOIA Officer.

If the appeal is granted, the Chief FOIA Officer will notify the requester in writing and promptly process the request. If the appeal is denied (in whole or in part), the Chief FOIA Officer will notify the requester in writing of the decision, the reasons for the denial (including the FOIA exemptions relied upon), the name and title of the official responsible for the determination on appeal, and the provisions for judicial review and dispute resolution services offered by National Archives and Records Administration's Office of Government Informational Services. (NARA's OGIS).

## RESOLVING DISPUTES

In addition to an administrative appeal, the requester still has two options to pursue the records:

- 1) *Dispute Resolution* – The requester can ask NARA's OGIS to provide dispute resolution services. More information about this service is available at <https://www.archives.gov/ogis/mediation-program> or by contacting OGIS at [ogis@nara.gov](mailto:ogis@nara.gov) or (202) 741-5770
- 2) *Litigation* – The requester can bring a suit under FOIA for the records.