

How to FOIA

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Introduction

This document is a guide to accompany a training workshop “How to File a FOIA” to celebrate the University of Washington Center for Human Rights’ 10th Anniversary Celebration in May 2019. The guide includes information on researching, writing, submission, and tracking of FOIA requests, and was created by UWCHR graduate research fellow, Emily Willard in May 2019 based on previous drafts of training manuals for UWCHR interns. This training guide for anyone who is interested in filing a FOIA related to public interest.

The Freedom of Information Act (FOIA)[i] was enacted in 1966 by congress establishing the right of people and organizations to access government information. The U.S. federal government must provide the information, however, there are nine exemptions for why the government cannot provide this access. There are no citizenship restrictions. Anyone can ask.

“The principle underlying the FOIA is inherent in the democratic ideal as urged by Thomas Jefferson and other founders of our Republic – to ensure an informed citizenry, vital to the functioning of a democratic society.” (CIA Website)

How much the government is willing to share depends on the president, who usually issues executive orders at the beginning of their term. For example, in 2001 President G. W. Bush restricted access[ii] to the records of former presidents. On his first day of office, President Obama revoked the order and was restored to a 5- or 12-year limit (depending on the record). President Obama’s executive order also called for a “presumption of disclosure,” saying that the government should always assume people have maximum access, except in the case one of the 9 exemptions applies.

Alternatively, a president could promote a policy in which more limited amounts of information is released. For example, recently the Department of State[iii] was found to be over using the B(5)

exemption (pre-decisional information) in order to withhold information that would prove to be embarrassing to the agency. However, there is no exemption to releasing embarrassing material.

Across the United States, grassroots movements to policy advocacy organizations, university law-clinics to legal advocates use the FOIA to obtain U.S. government information key to social justice, human rights, environmental justice, and civil rights efforts. There is a high level of public interest in this type of information, especially regarding evidence of crimes against humanity and human rights violations by state and military officials. Access to this information can shed important light in cases where the U.S. government played a key role in supporting dictatorships, training militaries,[iv] and conducting secret bombing campaigns[v] across the globe, as well as monitored and surveilled civil rights leaders here in the United States,[vi] among others. In the cases of forced disappearance,[vii] the withholding of information by the government continues the crime and prolongs the suffering of the families of the disappeared. Access to government information in these cases are paramount. Access to information is a human right.

Other countries[viii] also have public access to information laws, however the U.S. has one of the oldest and most well-functioning laws. Many other laws[ix] around the world have a “human rights clause” which says that human rights information cannot be withheld under concerns for national security. This is a very powerful clause, but many of the new laws that include this clause have yet to be tested to their fullest extent.

While this guide only covers use of the FOIA, which applies to only U.S. federal government records, many states provide access to public records, sometimes known as “sunshine” laws. It can often be a good strategy to combine a series of both local and federal requests about a topic to approach from multiple avenues.

One thing to remember is that while the FOIA states your rights clearly, you have an appeal process and the government panels and lawyers are supposed to carry out the letter of the law in service of you, ultimately, the agencies only give you what they want to. When

they search and release information, they have a lot of the power, but if we keep asking, we keep knocking on their door, they can't ignore it forever. So, we keep knocking, and keep asking.

[i] Text of FOIA Law, Cornell University:
<https://www.law.cornell.edu/uscode/text/5/552>

[ii] Text of Executive Order 13233 (2001): <https://www.govinfo.gov/content/pkg/FR-2001-11-05/pdf/01-27917.pdf>

[iii] “The Next FOIA Fight: The B(5) “withhold it because you want to” exemption,” <https://unredacted.com/2014/03/27/the-next-foia-fight-the-b5-withhold-it-because-you-want-to-exemption/>

[iv] “La Quesera Massacre: Declassified documents open window into US awareness of wartime atrocities,” <https://unfinishedsentences.org/reports/foia-la-quesera/>

[v] “Fighting the War in Southeast Asia 1961-1973,” <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB248/>

[vi] “ACLU and Center for Media Justice Sue FBI for Records on Surveillance of Black Activists,” <https://www.aclu.org/news/aclu-and-center-media-justice-sue-fbi-records-surveillance-black-activists>

[vii] The Endless Search for Justice in Guatemala,” <https://www.amnesty.org/en/latest/news/2012/11/endless-search-justice-guatemala/>

[viii] <http://freedominfo.org/>

[ix] “Brazil takes steps on truth, human rights, and the right to know,” <https://unredacted.com/2011/11/22/brazil-takes-steps-on-truth-human-rights-and-the-right-to-know/>

PART I
HOW THE FOIA WORKS

I. What kind of information can I FOIA?

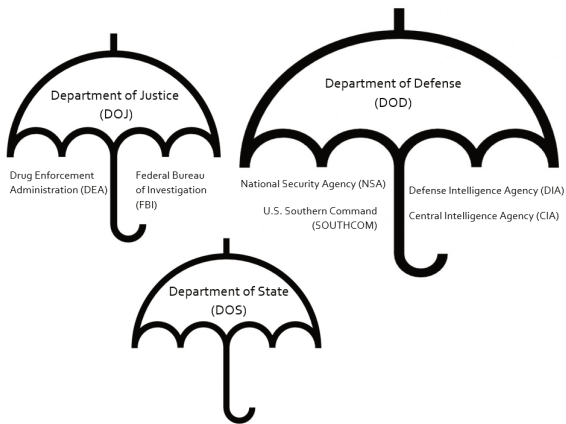
The FOIA allows you to request information from any U.S. government executive agency. Usually the heads of executive agencies are appointed by the President of the United States. Think, Department of State (DOS), Department of Justice (DOJ), Department of Health and Human Services (DHHS), Department of Veteran (the VA) Affairs, Federal Aviation Administration (FAA), etc. and also more obscure agencies like the Merit Systems Protection Board. Often these agencies are referred to by their acronyms. These also include the branches of the U.S. military, which are housed in the Department of Defense (DOD), such as the Army, Navy, and Special Forces, with the exception of the U.S. Coast Guard (USCG) which was moved to the Department of Homeland Security (DHS) when DHS was created after 9/11. These agencies within agencies are called components.

When you are thinking of what you want to FOIA, you want to learn a little bit about what part(s) of the U.S. federal government is in charge of your topic/subject of interest. You may want to do some research on the agencies themselves. It can be helpful to have a question that you want to answer. For example, if you see patterns of enforcement or concerning government official behavior and you want to know more about how and why certain policies are being enforced. You may have an interest about how certain policy decisions are being made—who is making them and why—in order to help you advocate or lobby for a change in the policy. You may be interested in how the government is structured, and what kind of information it produces, and get access to that information (i.e. demographic statistics, monitoring of the environment, public health data). You may have questions about things that happened in

history, or that are happening and affecting your community right now.

Where do I submit my FOIA?

Some agencies are quite messy with multiple layers of components, like the DOD, the DOJ, and DHS, while others are very simple with no components, like the Department of State. It can be helpful to think of agencies as umbrellas, with the components underneath. For example, under the DOD umbrella is the Army, Navy, Special Operations Command, and the U.S. Southern Command, among MANY others. While you could send the request to the main DOD office (the Office of the Secretary of Defense), it would likely get re-routed to the relevant component, adding time, paper-work, and the chance that it will get lost. Some of the hardest work is figuring out which agency office will likely have the information you seek!



A simple sketch of three umbrellas of varying sizes have the name of an agency inside each: Department of Justice (DOJ), Department of Defense (DOD), and Department of State (DOS). Underneath the DOJ umbrella, component agencies are listed: Drug Enforcement Administration (DEA) and Federal Bureau of Investigation (FBI). Under the DOD umbrella, component agencies are listed: National Security Agency (NSA), U.S. Southern Command (SOUTHCOM), Defense Intelligence Agency (DIA), and Central Intelligence Agency (CIA). The DOS umbrella has

*no
component
agencies
listed
underneath
it.*

2. The FOIA, step-by-step

Step 1: research, draft, and submit your request

Step 2: agency will acknowledge they received your request, and might ask for clarification, and/or respond to your fee waiver request

Step 3: agency will provide a “determination” in which they will say that they can locate no responsive records, records are released in full, released in part, or withheld in full. If you are happy with the result, case is closed, if you are unhappy, go to step 4.

Satisfied? If yes, case closed. If no, proceed to step 4.

Step 4: Write an appeal to the agency, arguing why the information should be released.

Step 5: The agency will respond to your appeal, sometimes releasing additional information. If you are satisfied, the case is closed. If not, you have the choice to litigate against the agency.

Satisfied? If yes, case closed. If no, proceed to step 6.

Step 6: If you have exhausted all of your appeal

rights, you may file litigation, arguing that the agency improperly applied the FOIA in your case.

3. Exemptions

According to the law, the government is required to release all government information to you, except if the information falls under one of these exemptions:

Freedom of information Act Exemptions

B(1): Properly classified as secret in interest of national defense of foreign policy

B(2): Internal personnel rules and practices

B(3): Exempted from release by other laws (i.e. CIA operational files)

B(4): Trade secrets, confidential financial or commercial information

B(5): Privileged inter/intra-agency information (pre-decisional)

B(6): Personal or medical information (privacy)

B(7): Law Enforcement

- Interfere with law enforcement proceedings
- Deprive right to fair trial
- Unwarranted invasion of personal privacy
- Disclose identity of confidential source
- Disclose techniques or procedures of investigations
- Endanger life or physical safety.

B(8): Financial Institutions

B(9): Oil well data

The following are categories under which information is considered “classified” and not subject for release. The process of “declassification” is when material once considered classified (according to the categories below) is determined to no longer be a threat to national security and then can be released or “declassified.”

Executive Order 13526 – Classified National Security Information

Sec. 1.4. Classification Categories. Information shall not be considered for classification unless its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security in accordance with section 1.2 of this order, and it pertains to one or more of the following:

- (a) military plans, weapons systems, or operations;
- (b) foreign government information;
- (c) intelligence activities (including covert action), intelligence sources or methods, or cryptology;
- (d) foreign relations or foreign activities of the United States, including confidential sources;
- (e) scientific, technological, or economic matters relating to the national security;

(f) United States Government programs for safeguarding nuclear materials or facilities;

(g) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security; or

(h) the development, production, or use of weapons of mass destruction.

4. Fee waivers

For an individual to submit a FOIA request on their own, it is quite an expensive process, however there are several options to apply for a fee waiver. There are several categories that a requester can fall under:

- An individual seeking information for personal use and not for commercial use
- A representative of the news media seeking information as part of a news gathering effort and not for commercial use
- Affiliated with an educational or noncommercial scientific institution seeking information for a scholarly or scientific purpose and not for commercial use.
- Affiliated with a private corporation and seeking information for use in the company's business

It is best to be affiliated with a news-media organization or an educational or scientific institution. If you are, you will not have to pay search and review fees (which can sometimes amount to thousands of dollars), and you only pay copying fees that exceed \$100.

The reason why they allow for fee waivers is because as a news media organization or educational institution it is understood that you are doing a service to the public. The central idea is that any information you obtain through the FOIA (which is in theory public to everyone, not just you) you make widely available to other people. It is understood that under these two categories, you do not make money from or sell the information.

If you are a staff, student, or faculty at a university, it might be best to affiliate with a center or organization on campus. If you are not connected to a university, try to connect with a local non-profit or NGO doing similar work, and you could try to argue that the organization is a news media organization doing a public service

by publishing the information on the website, a blog, or through a newsletter.

You will want to have a fee waiver request letter on hand, and file it with every FOIA request you submit for a while until the agency becomes familiar with you. The letter should be signed by the director of your organization, center, or department and address the following points:

- Clearly state your affiliation (student, researcher, volunteer, faculty, paid staff) with the organization or university.
- State if you are affiliated with a “news media organization” or “educational institution” making it clear which category you are arguing to fall under.
- Explain how your topic is of great public interest, with examples. Explain how you will use the information to benefit the public. Connect it to your work at the educational institution or news media organization.
- How you will make the information available to the public, including existing examples/connections to a website, blog, or other outlet for sharing the information. It is best to have solid, concrete evidence of an existing publishing platform.
- How you are qualified to do the research and disseminate. This can be explaining your expertise in the subject area, your academic and professional qualifications, etc.

If your fee waiver request is denied, you can appeal the decision and provide additional supporting evidence. You could include any previous web publications, previous FOIA litigation cases in which fee waivers were argued and won, or additional letters from a Dean at your university, for example.

PART II
HOW TO FOIA

5. Researching before you file

Conduct research

What documents and information on the topic/incident can you find? You want to see what already exists, where you need more information, and if there are other groups or projects doing similar work. Keep in mind that you are building a case for why the agency should have the information, and then why they should release it to us. Download and save copies of the documents you find! Sometimes documents move or disappear from websites, especially government ones!

Agency Electronic Reading Rooms

These are a great place to start. Many agencies preemptively release commonly requested information, and/or post information released under other people's FOIA requests. Each agency generally has an "electronic reading room" or a "FOIA reading room" that you can find by googling. Some agencies have vastly more helpful reading rooms than others.

- Department of State: <https://foia.state.gov/search/search.aspx>
- Central Intelligence Agency: <https://www.cia.gov/library/readingroom/what-electronic-reading-room>
- Department of Homeland Security: <https://www.dhs.gov/foia-library> and <https://www.dhs.gov/immigration-statistics/readingroom>
- Environmental Protection Agency: <https://www.epa.gov/foia/>

foia-online-libraries

- Federal Bureau of Investigation: <https://vault.fbi.gov/>
- And many more!

Research Databases

There are currently two online research databases but require a membership/subscription: The Digital National Security Archive, published by ProQuest, and U.S. Declassified Documents Online, published by Gale. The University of Washington has subscriptions to both of these.

1. The *Digital National Security Archive* is a series of collections of declassified U.S. government documents obtained by the National Security Archive, a non-governmental research institute located in the George Washington University Gelman Library in Washington, D.C. The majority of these documents were obtained through FOIA requests, and archival research at the National Archives and presidential libraries. Each document is hand selected and indexed for inclusion in the document collections. These documents are mainly about U.S. foreign policy and Cold War history. The documents are not full-text searchable.
2. The *U.S. Declassified Documents Online* documents mostly seem to be copies from presidential libraries and other executive agencies. The description of the database says that collection editors closely monitor releases by the agencies and libraries for inclusion of the records in the database. They appear to be full-text searchable. They do not seem to be the result of FOIA requests. They also mostly seem to be about U.S. foreign policy.

National Archives and Records Administration (NARA)

If you happen to live near or have access to a NARA location, you can go into their public, physical reading room (in College Park, Maryland) and get help from both civilian and military archivists. You can also search the website to try to find online descriptions or possibly even scanned copies of the documents. However, NARA only has information (generally) that is 25 years or older. After 25 years, agencies are supposed to transfer their records to NARA, however this is a very blurry line. If the information you are looking for falls between 20 and 35 years, it is still worth asking the agency, though they may refer you to NARA. If both NARA and the agency says they don't have it, the records might be in "document purgatory."

Depending on your research interests searching the NARA website and finding aids might be helpful, but in most cases, it is very cumbersome, and most things are not available digitally. Unless you have well-known, easily accessible topics like WW2, the Vietnam War, or the JFK Assassination, for example, I don't recommend spending a lot of time pursuing this option. If your topic/issue is newer than 25-30 years, NARA won't have the information anyway!

Presidential libraries are part of NARA and are also subject to the FOIA. You can visit the locations, access documents, request finding aids, and submit FOIA requests. These can be excellent sources for White House information, for example from the National Security Council, or Presidential Daily Briefs.[1] It is important to note that presidential records can be exempt from disclosure for 12 years after a president leaves office, according to the Presidential Records Act.

Building on other FOIA projects

It is good practice to search around and see if there are other groups doing similar research. For example, in the case of requests to Department of Homeland Security regarding immigration enforcement, many organizations and university law clinics have submitted requests, and even filed litigation for the release of information. Lots of times organizations will actually publish copies of their FOIA correspondence with agencies, and original request language. You can file similar or identical requests. You can also potentially get in touch with the group or organization and get their advice, and potentially even collaborate on your work.

If you use the same wording but tweak the geographical area, or date range, you have lots of good resources for how to fight for the release of the information in appeal arguments later on. This is true particularly if similar information was already released, or won through litigation. For example in the case where you are conducting research about ICE practices in Texas, and someone else won information through litigation about information in Massachusetts, you can file the exact same request language. Then, if you are denied for any reason, you can cite the Massachusetts case and argue that you used the identical language. This builds one of the strongest appeal cases possible.

News & Media

You can scour news articles and other media for information that government officials have said publicly that could shed light on your issue and point to which agency might have the information. Also, in your request (and any future appeals) you can make the argument that the information, or similar information, is already public. It can also help you prove that the information exists at all. Additionally,

more and more news agencies are explicitly saying that they got information through the FOIA. You can file similar requests that they did or use it as leverage saying that information has already been released.

Document Purgatory

If both NARA and the agency say that they don't have documents, request from the agency an SF-135 which is the form the agency has to fill out to send the documents to NARA. This should prove whether or not the documents were sent to NARA, and where they are. It is possible also that the documents are languishing in "document purgatory" also known as a federal records center, or in an "off-site storage facility." The documents live here while they are in the process of being handed over to NARA for accessioning. At this point, they are still in the official custody of the agency, though in a NARA facility.

SF-135 forms can also be a gold mine for new FOIA requests. You know the documents exist, and where they are located, and they are usually described down to the folder-level of detail. It might be a good strategy to request a sample of them (i.e. one box), see if they are relevant, and then request additional boxes later if needed.

[i] "Presidential Daily Briefs from Kennedy and Johnson Finally

Released,” September 16, 2015, *National Security Archive*,
Washington, D.C., [https://nsarchive2.gwu.edu/NSAEBB/
NSAEBB530-Presidents-Daily-Briefs-from-Kennedy-and-Johnson-
Finally-Released/](https://nsarchive2.gwu.edu/NSAEBB/NSAEBB530-Presidents-Daily-Briefs-from-Kennedy-and-Johnson-Finally-Released/)

6. Writing requests

Target your Request

First and foremost, you want to figure out which U.S. government agency is most likely to have the information you seek. This might require some background research in the functioning of the agency, and what types of information they produce. Through trial and error, you can get quite creative; it is also a good strategy to use the same request language for multiple agencies, especially if you aren't sure exactly what is out there about your topic. Once you start getting information, you can narrow, and more specifically target your requests to specific offices in agencies, and types of documents. Remember, the FOIA is only good for the United States federal government executive agencies. FOIA.gov has a handy search tool to find the agency, the component agency, and contact information of which agencies are subject to the FOIA: <https://www.foia.gov/#agency-search>.

Draft Request

Ensure that the draft has all of the key parts, balancing clarity and including enough background information. Include supporting evidence such as previously released documents, news clippings, or excerpts from books, articles, or from any other publicly available information. You want to prove that the information exists, the agency likely has it, and that it is of interest to the general public.

Narrowing your Request

While you can technically ask for “all documents regarding the Rwanda genocide” the agency will respond by asking you to narrow your request because the way it is written is “overly burdensome.” One of the best ways to narrow your request is by date range, and to a specific incident, meeting or event, or a type of document. So, for example, you could ask for: “All Presidential Daily Briefs regarding violence in Rwanda from April 1, 1994 to July 1, 1994.” Or, you could ask for, “All documents regarding meetings and conversations between U.S. Ambassador to Rwanda David Rawson and U.S. Representative to the U.N. Madeleine Albright from March 1, 1994 to May 1, 1994.”

One of the most helpful phrases in narrowing down your request, and also keeping a balance between keeping it open to include many documents, but also giving examples of what you do want is: “including but not limited to.” So, I could ask for: “All documents regarding meetings and conversations between U.S. Ambassador to Rwanda David Rawson and U.S. Representative to the U.N. Madeleine Albright from March 1, 1994 to May 1, 1994, including but not limited to briefings, memorandums of conversations, agendas, meeting notes, and after-meeting reports.”

Writing your Request

Each request should have the following components, (which are described more thoroughly in the color-coded “anatomy of the FOIA” guide on the next page):

1. Type of document(s)
2. Subject of your request (incident, person, event, meeting, etc.)
3. Location or country
4. Date of incident, meeting, or event (if applicable)

5. Date range
6. Background information and mention of supporting documents

7. Anatomy of FOIA request language

Each request should have the following components:

1. Type of document(s)
2. Subject of your request (incident, person, event, meeting, etc.)
3. Location, country or state
4. Date of incident, meeting, or event (if applicable)
5. Background information and mention of supporting documents
6. Any specific information (if applicable)
7. Date range

See detailed explanations and examples:

Type of Documents

You can say “all documents” or if you want to be more specific, say “all documents including but not limited to...” and list the types of documents that might contain the information you want. Think of what kind of documents an agency might have, like “intelligence reports” on a situation or “biographic reports” on a foreign official (DIA or CIA). Or if you are requesting about a meeting, there is likely documents preparing for the meeting, meeting minutes, and then post-meeting summaries or reports, so ask for “meeting briefing reports, memoranda, minutes, reports, summaries, memoranda of conversations, and transcripts.”

Subject of your request

You want to be as concise and non-confusing as possible. Get into the brain of the FOIA officer at the agency looking at your request language. If you were in their shoes, what are some search terms you would need? Where would you start? Are you being clear? Are all of the important points included if someone has never heard of what you are talking about?

Location, country or state

Which locations that the documents are about, if applicable. Especially if it is an incident, event, or operation. If it is about a person, include the person's nationality. If it is an incident, be sure to include the

Date

If it is an incident, be sure to include the date(s) when the incident took place, if known. However, this is different than the “date range”, see below for more information about the date range.

Background

Again, get in the brain of the person who will be researching your request. What important information will make their search easier and more fruitful? Sometimes this includes suggesting search terms. For example: “When searching for Guatemalan Special Forces, please also include “kaibles, kaibiles rangers, kaibiles ranger

unit, kaibil”, etc. in your search.” Also be sure to give possible Spanish-language search terms or both English and Spanish, for example: “Operación Limpieza”, also known as “Operation Cleanup.” Note that the military and civilians may have different names for operations and massacres, include as much information as possible.

Request for specific information

If you have a request about a general trend or theme, and you want all information, but also about specific incidents or people related to the theme, you can use the phrase “including but not limited to”. This may also help the person researching your request to know what type of information you are looking for. This is an optional part of the request. Also note that the agency may search for ONLY what you mention. In some cases, it might be good to submit a separate specific request, and a more general request.

Date Range

Some agencies (State Dept. and Dept. of Defense) require a date range for when the documents you seek were created. If you do not include a date range for these agencies, they will most likely contact you for clarification. If a date range is not included, agencies may make the argument that your request is over-burdensome, requiring you to clarify it. The Central Intelligence Agency (CIA) is especially known for making this argument. It’s good practice to always have a date range.

Building Rapport

Generally it is a good idea to build rapport with the FOIA officers working on your request. While it may feel adversarial at times, the process can be easier and more efficient if you help the FOIA officer understand what you are looking for, and find out how their internal organization systems work. If you are struggling with how to word the request, or are not sure which agency to ask, you can call the FOIA hotline. Each agency is supposed to have a customer service line for inquiries about requester's cases. You can find the agency contact information, including hotline telephone numbers at FOIA.gov.

Some agencies will respond to certain wording and request language differently. Intelligence agencies, and the CIA in particular, can be prickly when it comes to wording in your request. For example, in most cases, any request made about a person, place, or thing, the CIA will respond with what is known as a Glomar response, named after the GLOMAR explorer (this is an important FOIA history story!). The Glomar response essentially says that the CIA "cannot confirm nor deny the existence of the documents". This is the most difficult response to appeal. One way to avoid this is to ask about specific incidents. So, instead of asking for information about Jane Doe, ask for information about the assassination or disappearance about Jane Doe, and

all subsequent investigations into the assassination or disappearance. If asking about a paramilitary group, ask about the violence perpetrated by the paramilitary group in a certain time period. Also, do not use the phrase “related to” in CIA requests. The CIA won a lawsuit that says all documents could in some way be related to any topic. They will respond that the request is over-burdensome if you use that phrase.

If you have repeated problems, it would not hurt to call the FOIA officer managing your case and get help over the phone on how to clarify your request. This can make everyone’s job easier because they don’t have to send multiple responses asking you to clarify, or narrow your request. It is also a good idea to be willing to compromise during the conversation. For example, you could agree to narrow the date range of your request. You might agree to ask first for a sample of a certain type of report you are looking for, then if you decide after reviewing the sample you need a larger set, you could later file a second request a batch of them. If you have a series of similar requests open, you could agree to combine them into one request, and close the other outstanding ones. In some cases, after rapport has been build, a FOIA officer might preemptively call you to give you advice about wording, or where to request to get better results. Extra effort to build rapport pays off in the long run.

8. Sample FOIA requests

Example 1

[type of documents]: All documents, related in whole or in part, [subject of request]: to the discovery of 72 foreign migrants found murdered in a mass grave at a Ranch near San Fernando in [location]: Tamaulipas state, Mexico [date of incident]: on August 25, 2010. [Background information]: The migrants are said to have been on their way to the United States, and it is suspected that the Zetas Cartel is responsible for the deaths. [Specific request for additional information]: This request also includes any information regarding an investigation into this incident. [Date range]: I am interested in all documents from August 18, 2010 to the present.

-This request could be sent to the Department of State and various components of the Department of Homeland Security and Department of Justice. You could also file a request under the Mexican Freedom of Information law because it took place in Mexico.

Example 2

All information [subject of request]: about the meeting between President Clinton and Monique Mujawamariya, a Rwandan human rights activist, [date of incident]: in December 1993 [location]: at the White House. [type of documents]: This request includes, but is not limited to, briefing memos, briefing reports, memorandum of conversation, meeting agenda and notes, after action reports, summaries of meeting, meeting reports, and any follow-up conversations. [Background information]: Mujawamariya's December visit was well publicized due to President Clinton's efforts to locate her after the start of the genocide in April 1994. [Date

range]: The date range of this request is November 1993 through February 1994.

-This request could be sent to the Clinton Presidential Library (operated by NARA, and has executive records) and the Department of State. It is a good strategy to request information about meetings between officials or important people, especially if you have an exact date of the meeting. You should ask for a window of time surrounding the meeting so that the request would include documents about the preparation before the meeting, and follow-up after the meeting.

Example 3

All documents related to [subject of request]: the creation, policies and operations of the Border Enforcement Security Task Force (BEST), and Operation Armas Cruzadas. [type of documents]: My request includes, but is not limited to, memos, reports, meeting agendas, memorandums of conversations, presentation slides, email communications, and memorandums of understanding with other agencies. [Background information]: BEST is a partnership among international, federal, state, and local law enforcement agencies that operate primarily on [location]: the southwestern border of the United States. The first BEST force was established in Laredo, Texas in [date of incident]: 2005. It has since expanded to several other cities and states. One of the larger operations was Operation Armas Cruzadas which was implemented in [date of incident]: July of 2007 in order to identify, investigate, and intercept weapons smugglers and pursue criminal prosecution. [Date range]: I am interested in all information from 2004 to the present.

-This request could be sent to various components of the Department of Homeland Security (ICE, CBP), components of the Department of Justice (ATF), and the Department of State, and possibly the Defense Intelligence Agency (if the U.S. also worked with the Mexican military). It might also be a good idea to submit a similar

request under the Mexican Freedom of Information law because of proximity to the border.

Example 4

All documents including but not limited to [type of documents]: to memos, briefings, internal statements and memos, cables, working papers, etc. related in whole or in part to [subject of request]: the murder of three Mexican mayors (detailed below) in the past month. [Specific request for additional information]: This request also includes information about the U.S. response to the murders and policy briefings related to the murders. [Background information]: Details about the three murdered mayors: Edelmiro Cavazos, mayor of Santiago, [location]: in the state of Nuevo Leon was murdered on [date of incident]: August 15, 2010. Cavazos's body was later found on [date of incident]: August 20, 2010. Marco Antonio Leal, mayor of Hidalgo, [location]: in the state of Tamaulipas, was murdered on [date of incident]: August 29, 2010. Alexander Lopez Garcia, mayor of El Naranjo, [location]: in the state of San Luis Potosi, was murdered on [date of incident]: September 8, 2010. [Date range]: I am interested in information from June 2010 through December 2010.

-This request could be sent to the Department of State, and various components of the Department of Homeland Security and Department of Justice. You could also file a request under the Mexican Freedom of Information law because it took place in Mexico.

Example 5

We are seeking all records [type of documents]: (including, but not limited to, written documents, files, electronic communications, records or reports of any sort) [subject of request]: describing or reviewing the placement of detainees in segregation (including both

administrative and disciplinary segregation) [location]: at the Northwest Detention Center in Tacoma, WA, from [Date range]: September 2013 to the present. [Specific request for additional information]: This includes both notifications of initial placement in segregation as well as regular reviews performed in cases of extended segregation. We ask that documents be redacted to protect inmate privacy.

-This request would be sent to Immigration and Customs Enforcement.

Example 6

All copies of [type of documents]: Presidential Daily Briefs (PDBs) from [Date range]: November 1982 through January 1983 that mention [subject of request]: Guatemala. [Specific request for additional information]: This request includes, but is not limited to, information about a massacre on [date of incident]: December 6, 1982 in [location]: the small town of Dos Erres in Libertad, El Peten. Documents about this incident have already been made public, so I am seeking any additional information.

-This request would be sent to the Central Intelligence Agency and the Defense Intelligence Agency, two agencies that produced information which were included in PDBs. Recently, the CIA has been preemptively releasing some of them. It is reasonable to have a broadly defined subject in this case because the type of document and date range is so limited. If the agency responds that this is overly burdensome, you can limit the date range further.

9. Submitting requests

Now that you've got a solid draft of the request language. You want to submit your FOIA request! As previously mentioned, each agency has a FOIA requester center or office, which accepts and processes the requests.

Some agencies are quite messy with multiple layers of components, like the DOD, the DOJ, and DHS, while others are very simple with no components, like the Department of State. It can be helpful to think of agencies as umbrellas, with the components underneath. For example, under the DOD umbrella is the Army, Navy, Special Operations Command, and the U.S. Southern Command, among MANY others. While you could send the request to the main DOD office (the Office of the Secretary of Defense), it would likely get re-routed to the relevant component, adding time, paper-work, and the chance that it will get lost.

FOIA Requester Service Centers

By law, each agency must maintain a FOIA requester service center/office which manages all of the incoming FOIAs, conducts searches and reviews responsive records, and corresponds with requestors. There should be contact information for each office, including a telephone number, fax number, and snail-mail (USPS) address. You can access the contact information of the FOIA service centers/offices on FOIA.gov, or also looking at the agency's own website, however sometimes the information is conflicting due to lack of updates, and frequent changes. Many agencies now accept requests electronically through online portals. A key FOIA tip is to always make sure you keep documentation of all correspondence with an agency and try to keep it organized.

What happens after I submit a request?

The agency should send you an acknowledgement letter, confirming that they got your request and they are processing it. While the FOIA stipulates that an agency must respond within 20 days to all requests, it allows for extensions based on extenuating circumstances. Nearly every agency will say that it will not be able to respond to you within the 20-day statutory limit, which is normal. While it may be strategic in certain cases to appeal the failure to respond with responsive records in 20 days, usually people allow the agency an extension.

Usually it takes months, but sometimes even years, or decades,[i] to receive a final response to your request. It's a good idea to keep an eye out for correspondence and is totally fine to check in every once in a while.

What are those “black outs”?

In declassified documents, redactions are the infamous, dreaded black lines or white boxes that cross out, or cover up information that the government has determined it is not able to release. By law, the agency must tell you under which of the FOIA exemptions it is making the redaction. Usually there is a marking like B(1) or B(7)e, which points to the specific sections of the FOIA law that declares which information is exempt. Look up the exemption and see what kind of information is blacked out. It is often phrased that information was “withheld” or “exempt from disclosure.” Unfortunately, many researchers will find that it seems like the best material is likely lurking behind those blacked out spaces. Remember, the FOIA says that citizens have a right to access ALL government records, EXCEPT in certain cases. Those certain cases

are the exemptions, and the redactions are the marks, blacking (or whitening) out the information that is exempt.

[i] “25-Year-Old FOIA Request Confirms FOIA Delays Continue Unabated” <https://nsarchive.gwu.edu/foia-audit/foia/2019-03-08/25-year-old-foia-request-confirms-foia-delays-continue-unabated>

10. Appeal process

Once you have your final determination from the agency, you determine whether or not you are happy with it. Sometimes the agency finds documents, sometimes it doesn't. If the agency can find no documents, that is considered a "no documents" response. If it does find documents, an agency will respond one of three ways:

1. Released in full (all documents released; no information redacted)
2. Released/withheld in part (some information released, some redacted) or
3. Withheld in full (all information redacted, in this case they will often not even send documents, but simply a letter saying no information could be released).

You have the right to appeal an "adverse determination" which is when the agency says it finds no responsive documents, or when the information is redacted or withheld in full. The agency has to tell you why the information was redacted, and you can look up what the exemption to see what type of information was withheld. In your appeal letter you make your case for why the agency incorrectly applied the exemption and make an argument for why the information should be released.

For guidance on how to make your argument, you can look at existing FOIA case law according to the exemption on the Department of Justice website's "Department of Justice Guide to the Freedom of Information Act."^[1] You usually have a 90-day period of receiving your adverse determination in order to respond with an appeal.

The agency will respond acknowledging that they received your appeal and will eventually let you know if they have decided to uphold the original decision or release additional information upon a second review. You can check out chapter 5 in the National

Security Archive’s guide, “Effective FOIA Requesting for Everyone”^[ii] for more details on the appeal process, and how to develop arguments.

Once you have exhausted your appeal rights, you have the option to file a lawsuit against the agency for their failure to comply with the FOIA. Litigation is an expensive, laborious process, but much important information has been won through litigation, and it is a way to continue to hold the government accountable. See chapter 6 in the National Security Archive’s guide, “Effective FOIA Requesting for Everyone” for more information about the litigation process.

“No documents” Response

The fact that an agency is unable to locate and records responsive to your request is considered an “adverse determination.” You have a right to appeal this outcome, whether or not the agency tells you that you have this right. You can respond with an appeal just like you would for other adverse determinations, making the argument, and if you can, provide proof, for why the agency should have documents.

Remember, keep knocking, keep asking! It is our right, and our responsibility! Happy FOIA-ing!

[i] “Department of Justice Guide to the Freedom of Information Act,” <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>

[ii] “Effective FOIA Requesting for Everyone,” <https://nsarchive.gwu.edu/foia/effective-foia-requesting-everyone>

Additional resources

The following is a (short) list of resources to further hone your FOIA skills and get connected with other people doing FOIA work and advocating for government transparency:

- Federal Government's central location for FOIA information:
<https://www.foia.gov/>
- Department of Justice Guide to the Freedom of Information Act:
<https://www.justice.gov/oip/doj-guide-freedom-information-act-0>
- National Archives and Records Administration (NARA):
<https://www.archives.gov/>
- The University of Washington Center for Human Rights has a Access to Information Project working on justice in El Salvador, and immigration enforcement in Washington state, and publishes reports, documents and related local news:
<https://jsis.washington.edu/humanrights/projects/access-information-human-right/>
- The University of Washington Center for Human Rights publishes documents obtained through the FOIA in a permanent collection held by the University Library:
<https://digital.lib.washington.edu/researchworks/handle/1773/38709>
- National Security Archive (an NGO located at the George Washington University Library in Washington, D.C.) has done extensive FOIA work for nearly 35 years:
<https://nsarchive.gwu.edu/>
- National Security Archive developed a use guide for the FOIA, "Effective FOIA Requesting for Everyone":
https://nsarchive2.gwu.edu//nsa/foia/foia_guide/foia_guide_full.pdf

- National Security Archive blog, “UNREDACTED” to keep updated on all of your FOIA news:
<https://unredacted.com/>
- Muckrock, a website for sharing, tracking, submitting, and posting about FOIAs:
<https://www.muckrock.com/>
- Government Attic, a place to find declassified documents obtained via the FOIA:
<https://www.governmentattic.org/>
- Freedominfo.org, self-described as “the global network of freedom of information advocates”:
<http://freedominfo.org/>
- Open the Government is a government transparency advocacy group in Washington, D.C.:
<https://www.openthegovernment.org/>
- Jeffrey Richelson’s book, *The U.S. Intelligence Community*, is a great resource to know what agency in the intelligence community produces what kinds of documents and information over time: Richelson, Jeffrey. *The U.S. Intelligence Community*. Seventh ed. Boulder, CO: Westview Press, 2016.
- Project on Government Oversight, has news, document collections and more:
<https://www.pogo.org/>
- There are many, many more! See who is doing what in your community!

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- [6] “ACLU and Center for Media Justice Sue FBI for Records on Surveillance of Black Activists,” <https://www.aclu.org/news/aclu-and-center-media-justice-sue-fbi-records-surveillance-black-activists>
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- [8] <http://freedominfo.org/>
- [9] “Brazil takes steps on truth, human rights, and the right to know,” <https://unredacted.com/2011/11/22/brazil-takes-steps-on-truth-human-rights-and-the-right-to-know/>
- [10] “Presidential Daily Briefs from Kennedy and Johnson Finally Released,” <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB530-Presidents-Daily-Briefs-from-Kennedy-and-Johnson-Finally-Released/>
- [11] “25-Year-Old FOIA Request Confirms FOIA Delays Continue Unabated” <https://nsarchive.gwu.edu/foia-audit/foia/>

2019-03-08/25-year-old-foia-request-confirms-foia-delays-continue-unabated

[12] “Department of Justice Guide to the Freedom of Information Act,” <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>

[13] “Effective FOIA Requesting for Everyone,” <https://nsarchive.gwu.edu/foia/effective-foia-requesting-everyone>