

The Handbook on How to Use the **FREEDOM OF INFORMATION ACT**



Holding the Government Accountable for Its Actions

Published as a public service by the Church of Scientology



‘T*he real security of a nation is the intelligence and understanding of its people. Every effort should be made by government — the servant and not the master — to assure that maximum information be available to the people who are the ultimate power under the Constitution.*

“No agency, no department, no individual has demonstrated a need so great as to avoid accountability for actions taken — for decisions made.”

**Representative John E. Moss, Ret.
Father of the U.S. Freedom of
Information Act**



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Accountable for Its Actions*

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This handbook is offered
as a public service
by the Church of Scientology.

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includes postage and handling. Make checks payable
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This handbook does not contain legal advice,
which can only be given by an attorney. It is
intended to help persons make Freedom of Informa-
tion requests and obtain access to records simply and
directly as intended by Congress, and thereby help in
maintaining a democratic form of government.

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INTRODUCTION

by Quinlan J. Shea Jr.

Freedom of Information Act: Public Access to Government Information

An earlier version of this valuable handbook correctly praised the Freedom of Information Act as one of the most powerful tools ever put into the hands of the people of a country seeking to ensure integrity in their government.

Before the Act was passed in 1966, there was no law that provided for public access to government information. You could ask for

information, but, far more often than not, those requests were denied or ignored.

In practice, however, there was much dissatisfaction with the original statute, and it was substantially strengthened in 1974.

Just what is the Freedom of Information Act?

In essence, this law provides that any person

can request access to any records of the executive branch of the federal government, and that those records must be released unless protected from mandatory disclosure by some provision of the Freedom of Information Act itself, or of some other federal law.

If only part of a record is exempt, that portion may be excised, but the remainder must be released. This right of access is enforceable, if necessary, by filing suit in United States District Court, where the government must carry the burden of proving that the denied material is exempt.

Why do we need a Freedom of Information Act?

Simply stated, we need it to help us learn what is going on inside our government. Any government, regardless of the political party in power, will seek to conceal some of the things it does and, more frequently, the reasons for actions taken or not taken.

Some small part of that secrecy can be justi-

fied, at least for a time, but the recent history of this country is replete with examples of secrecy beyond any possibly legitimate need, in terms of both scope and duration.

It makes sense that some information pertaining to intelligence and law enforcement activities must be kept secret, and the personal privacy of individuals must not be wrongly invaded. The exemptions in the act cover these areas, and others.

They make sense in theory, but not as applied by the government. Even so, the Freedom of Information Act has helped us learn about COINTELPRO,¹ Watergate, the assassinations of President Kennedy and Dr. Martin Luther King Jr., the toxics poisoning our land, water, air, and bodies, the FBI's CISPES² investigation and Library Awareness Program,³ and the Iran-Contra affair.

The Church of Scientology, for still another example, used the act to obtain access to documents about bacterial testing conducted by the Army and the CIA, and directed against unsuspecting travelers in the Washington, D.C., area and perhaps in Chicago, New York, San Francisco, and other American cities as well (the released records were heavily excised).

Secrecy is the mortal enemy of democracy. The relationship between them is simple and direct: the more secrecy, the less democracy. The more that citizens are told that they must trust their government — take on faith its integ-

¹ COINTELPRO: Counter-Intelligence Program. An FBI program that included the use of illegal surveillance and dirty tricks in the 1960s and 1970s.

² CISPES: An acronym for the Committee in Solidarity with the People of El Salvador. CISPES is a U.S. political group which the FBI began investigating in June 1981. According to a July 14, 1989, report by the Senate Select Committee on Intelligence, "The Committee and the FBI Director reached the same basic conclusions: the FBI international terrorism investigation of CISPES was initiated primarily on the basis of allegations that should not have been considered credible."

³ Library Awareness Program: An FBI program wherein the bureau monitored the use of libraries by individuals in certain cities.

"What can you do? First and foremost, use the Act. It may be flawed, but it is still the best tool available to us as we try to learn what our government is doing, and not doing, and why."

rity, and the societal value of what the government is doing and why it is doing it — the greater is the tendency away from democracy as we would like to see it.

Instead, the tendency is, potentially at least, in the direction of a society in which the people lose any right to know, and even the right to question or challenge the actions of the government.

We have yet to experience in the United States anything like a true golden age of citizen access to government information.

The period from 1975 to 1981 is as close as we have come. In 1981, however, the tide began to run strongly in the wrong direction. A relentless onslaught was directed against the people's right to know in every possible sense, not just attacks on the Freedom of Information Act. The hostility to citizen awareness differed in kind, not just degree, from that manifested by previous administrations, both Republican and Democratic.

Career bureaucrats and executive appointees sought, beginning in 1981, to reduce as much as possible the amount of information the government disseminated. They consistently increased the cost of whatever information was released. They simply abolished many government publications. They supported the passage of bills that would have gutted the Freedom of Information Act, and succeeded in passing bills that weakened the Act either directly or indirectly.

They slowed the processing of FOIA requests, while substantially eliminating releases of exempt material as a matter of government discretion.

The practice of putting out disinformation became more widespread than ever before, and concern for "spins"⁴ on the news often treated truth as an irrelevancy.

⁴ Spins: Jargon describing a form of media manipulation wherein a news story is disseminated by an agency or entity with a certain emphasis, i.e., with an angle or "spin," to ensure it gets used by the media, to the advantage of whoever puts it out. This is often done without regard for the actual truth of the story.

Quinlan J. Shea Jr. is a retired senior government official. He was director of the U.S. Justice Department's Office of Privacy and Information Appeals during the administrations of Presidents Ford and Carter. He is now a consultant on access to government information, and serves as special counsel to the National Security Archive, a private foundation-funded scholarly research facility and library.



None of this was an accident. None of it was the to-be-regretted consequence of budgetary hard times. These people knew precisely what they were doing. Their actions were planned, deliberate, coordinated, and fully intended to keep the American people much less informed about what their government was doing.

Hypocrisy was as prevalent as secrecy. The most reactionary disciples of secrecy professed to be friends of openness in government, to believe in the people's right to know and the Freedom of Information Act.

This handbook is intended to help each reader use the Freedom of Information Act successfully by making it a little harder for government officials to deny rights guaranteed by the Act. But don't make the mistake of assuming that the Act is likely to enable you to obtain access to all of the government information you would like to have. The exemptions in the law are written more broadly than necessary, and are applied even more broadly by political appointees and career bureaucrats trying to thwart the people's right to know.

What can you do? First and foremost, use the Act. It may be flawed, but it is still the best tool available to us as we try to learn what our government is doing, and not doing, and why.

Second, help to protect the Act against efforts to narrow its scope, and to broaden the exemptions to access. Lastly, work both to strengthen the Act and to improve its administration so that it can be even more valuable in the future than it has been in the past.

I commend the Church of Scientology for reissuing this very useful handbook. Doing so is indeed a public service.



“A popular Government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps, both. Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives.”

James Madison, 1822

The Purpose of the Freedom of Information Act

► *This chapter covers how the Freedom of Information Act (FOIA) helps accomplish the purposes of our democratic form of government, including how the FOIA came into being, and how it has been used to advance the cause of a free and open government “Of the People, By the People, For the People.”*

The Relationship of Government to Citizens

A democratic¹ government depends on a free flow of information between government and those governed.

¹ Democratic: Of or like a government run by the people who live under it. In a democracy, the people rule either directly through meetings that all may attend, or indirectly through the election of certain representatives to attend to the business of running the government.

An informed citizenry is capable of making intelligent decisions concerning its own future.

The Freedom of Information Act is a vital means by which to discover what the government is doing that affects you.

Our Founding Fathers rejected the notion that people had to be “ruled” against their wishes. Instead, this country was founded on a very unique notion for the governments of this planet: Government was to be the servant, not the master. Our Founding Fathers observed very early that citizens had a need to be kept accurately and truthfully informed. Thus, the First Amendment to our Bill of Rights deals with freedom of the press, the main channel of

information to the citizens of the United States. The idea was that people could decide for themselves, if adequately informed.

How the Freedom Of Information Act Came to Be

During and shortly after World War II, some government officials came to believe in the need for ever-increasing secrecy. The OSS² (later CIA) came into being. The “cold war”³ with Russia, McCarthyism⁴ and other crises created an environment that allowed the government to secretly pursue policies without the knowledge or support of the public. While some secrecy is necessary for the security of our country, excessive secrecy defeats the democratic principles upon which our country was founded.

Thus, our government began to slip from the high ideals on which it had been founded.

In 1966, as members of Congress became aware of the ever-increasing secrecy, a law was passed giving people a right to see and know what was in secret government files. This was the original Freedom of Information Act.

It was signed into law on July 4, 1966, by then-President Lyndon B. Johnson, who

² OSS: Office of Strategic Services. Forerunner to the CIA, founded during World War II.

³ Cold War: A term used to describe the diplomatic, economic and psychological conflict between Russia and the United States starting shortly after World War II.

⁴ McCarthyism: The public investigation of Communist activities in the United States in the early 1950s, characterized by sensational public hearings, blacklists, and public scandal.

stated that “a democracy works best when the people have all the information that the security of the nation permits. No one should be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest.”

Watergate proved to Congress, the news media, the public, and the world that there existed a need, greater than ever, for a Freedom of Information Act with teeth, one which would provide citizen access to government records, making it possible to expose government corruption.

Thus, in 1974, a rare combined effort by the Democratic and Republican parties produced a stronger, more effective Freedom of Information Act. The new FOIA was vetoed by then-President Gerald Ford, but the veto was overridden by another show of congressional strength.

In the years since 1974, a 1982 Executive Order⁵ and a series of 1986 amendments to the FOIA have served to weaken citizen access to government records through the FOIA.

How Congress Intended the FOIA to Be Used

The FOIA is intended to be used generally for public access to the records of government. Thus, the FOIA can be used by:

- A. Individuals seeking information concerning decisions of the government that affect themselves or are of public interest.
- B. Public interest or “watchdog” groups

⁵ Executive Order: An order from the president of the United States to executive departments and agencies, setting policy or establishing guidelines for the administration of these agencies.

seeking information on the operation of government. This allows for effective and informed public oversight of the operation of government, as occurred during Watergate.

C. Media, including press, television and radio, seeking to gather information for public dissemination.

D. Consumer groups⁶ seeking access to information in the files of government agencies to inform consumers of information important to their well-being and to ensure that special interest groups do not unduly and unfairly influence government decisions.

E. Historians seeking access to information to inform the public of important events that shaped America's history.

While this is by no means a complete list, it is representative of some of the more public-minded uses of the FOIA.

Individuals do not need to prove their right to the information they request. The information is presumed available, unless it falls into one of nine possible, limited exemptions under which information may be denied.

Requests under the FOIA tend to fall into three major categories:

1. Individual Files: These files concern individuals on whom the government has compiled information.

2. Organizational Files: These files relate to organizations on which the government has compiled information.

3. Subject Matter or Event Files: These include files concerning specific events, or subject matters. "Student demonstrations in Westwood on April 3rd, 1976" is an example of an event. "Testing of the drug aspirin" would be an example of subject matter.

⁶ Consumer Groups: Groups, such as the Consumers Union, which publishes *Consumers Digest*, that represent the interests of American purchasers of goods and services both to business and to the government.



How the FOIA Has Been Abused By Government Agencies

The FOIA was created to assure public access to records, since federal agencies tended to favor operating in secrecy.

They still do.

Thus, they often seek to circumvent the FOIA through excessive withholding of records.

For example, the vast majority of the millions of files compiled by the Internal Revenue Service (IRS) are routinely withheld from the public by the IRS on the claim that the records are "tax return information." The IRS defines this term to include virtually all of its records. This is disturbing due to the history of IRS abuses;

the tax agency has frequently engaged in harassment of political enemies, intelligence gathering, and other non-tax-related functions. More than most agencies, the IRS requires congressional and public oversight.

An IRS memorandum obtained in 1989 by FREEDOM Magazine, published by the Church of Scientology, provides an example. The memorandum, written by a senior official at the IRS national office, was distributed to IRS regional offices and stated, "Please note that the information contained in this memorandum should not be made available to the public under the Freedom of Information Act, as the list identifies specific organizations either presently under examination or contemplated for examination."

The subject of the memorandum was "Quarterly List of Churches." Attached to the document was a 16-page list of churches and other religious organizations, including Baptist and Assembly of God congregations, to be singled out for special harassment and discriminatory audits.

The document shows how the IRS seeks to circumvent the Freedom of Information Act, and demonstrates the need for oversight.

The FBI has refused to release files, citing "national security" or other reasons. In one case, release of a file was denied by the bureau even though the file related only to a 12-year-old student and his personal project concerning the nations of the world.

The student, Todd Patterson of North Haledon, New Jersey, became interested in other lands as a result of a seventh-grade research project on Canada. Over the summer, he began writing to other countries, asking for information, until he had written to a total of 169 different nations.

The FBI started an investigation to determine to whom the foreign mail had been addressed. Among other things, an FBI agent visited the home of Todd and his parents.

Todd has sought to obtain his file from the FBI under the FOIA, but the bureau said his file was confidential because of "military state secrets."

Other agencies delay releasing information for so long that the information is effectively denied, or is no longer of use for the purpose for which it was originally sought.

For example, the U.S. office of Interpol⁷ (known as Interpol's U.S. National Central Bureau or USNCB) has regularly delayed its FOIA responses for many months.

The consequences of these delays on effective oversight are far-reaching. This is especially true since Interpol shares computerized dossiers with member countries around the world, including communist nations such as Romania, Hungary, Yugoslavia and Cuba, and countries that have supported terrorism, such as Iran and Libya.

Information on American citizens can be transmitted via Interpol to these countries. As Interpol has been notorious for distributing false or inaccurate information to foreign police and government agencies, this can result in harassment or imprisonment of Americans traveling abroad.

With its long delays in handling FOIA requests, Interpol's USNCB has made outside review of its actions in transmitting information on private individuals difficult to enforce.

There is another reason for concern over Interpol's unique position of being able to gather sensitive information on individuals with no checks on how the organization uses or spreads such data: Top Interpol officials in several countries, including Mexico, Panama and Bolivia, have been linked to international drug trafficking and other illegal activities.

⁷ Interpol: The International Criminal Police Organization, a private group headquartered in France, with 146 member nations.

For example, Interpol's chief executive in Panama since 1983, Lieutenant Colonel Nivaldo Madrinan, was reported in the Panamanian press and elsewhere as being responsible for killing a well-known Panamanian civic leader, Serafin Mitrotti, in 1983, just after Mitrotti had begun a major anti-drug campaign.

Madrinan told Mitrotti's family that the death had been a "suicide," even though both of Mitrotti's wrists had been cut to the bone, severing all tendons and muscles.

The National Commission on Law Enforcement and Social Justice (NCLE), a citizens' rights group established by the Church of Scientology, reported that Col. Roberto Diaz Herrera, the former second-in-command of the Panamanian Defense Force, said Madrinan ordered that Mitrotti be killed to silence his anti-drug efforts.

According to other information obtained by NCLE, drug-trafficking reports have been transmitted from Interpol headquarters in France to Interpol in Panama, and have been used by the Interpol staff in Panama to identify drug traffickers so that the Interpol staff could then take a cut of the drug profits.

Also in Latin America, Klaus Barbie,⁸ the notorious Nazi war criminal, was reported to have frequented the Bolivian Interpol office in the late 1970s and early 1980s, and to have been granted free access to telexes and dispatches in the office. At the same time, Barbie ran a terrorist organization called the Bridegrooms of Death. His job: to protect the cocaine lords of Bolivia and to stamp out their competition.

In view of the evidence of Interpol's complicity with drug trafficking, the fact that information on drug enforcement agents, other government officials and private citizens who are anti-drug could easily

⁸ Barbie was known as the Butcher of Lyon due to his gory deeds as second-in-command of the Gestapo in Lyon, France, during World War II.



wind up in the hands of major drug traffickers is of international concern.

As many of the agencies most needing oversight, like Interpol's U.S. National Central Bureau, have become the most fervent enemies of "free and open government," a strong Freedom of Information Act with effective means for oversight is imperative.

How the FOIA Has Been Used to Help Ensure the Government Is Abiding by the Law

The FOIA has been extensively used by the press and the public to expose government corruption and wrongdoing. Such exposure is val-

uable as it places citizens in a position to demand that the government abide by the law.

The Church of Scientology, for example, used the FOIA to uncover previously secret government-run chemical and biological warfare experiments in the United States on unsuspecting citizens. The information obtained by Scientologists received extensive publicity and resulted in a far greater awareness of the dangers of such testing.

Many other public interest groups have used the FOIA to discover such information as:

- Documents revealing the establishment of political intelligence and harassment programs by both the IRS and the FBI.
- Reports on the treatment of prisoners

of war in Vietnam.

- Information revealing dangerous side effects of over-the-counter drugs.
- Withheld evidence of the 1942 internment of Japanese-Americans.
- Nuclear Regulatory Commission reports on the safety of nuclear power plants.

Under the FOIA, a Portland, Oregon, newspaper, *The Oregonian*, revealed that a federal project in Washington state was dumping hazardous chemicals into the ground. Disclosure of this information helped to stop the dumping.

These are just a few examples of valuable information that has been revealed under the FOIA, exposing government corruption and thereby enabling citizens to demand and ensure the government is abiding by the law.

Overview of How the FOIA Works

► *This chapter provides an overview of how the FOIA works, including a discussion of strategic use of the FOIA.*

To Whom Do I Write?

The FOIA permits you to ask for certain types of information from any federal "agency." The term "agency" includes any executive or military department or office, government corporation or other establishment in the executive branch of the government. Independent federal regulatory agencies¹ such as the Environmental Protection Agency, and government-controlled corporations such as the Postal Service are also included.

Many state governments have similar Freedom of Information laws. Although they are mostly patterned on the federal legislation, there are some differences from

state to state. (This handbook concerns the federal Freedom of Information Act only; information regarding any particular state's laws can be obtained by writing to that state's attorney general.)

There is no central government FOIA office. Therefore, FOIA requests should be directed to the specific agencies or areas of government most likely to contain the information you seek. Use the list of government agencies, included in the appendices on page 42, to aid you. The U.S. Government Manual, available at most libraries or from the U.S. Government Printing Office, may also help.

One large agency (such as the Treasury Department) may itself contain several components (such as the IRS, Customs, and others). Do not consider that one request to "The Secretary of the Treasury" will reach the IRS, Customs, etc. Write to the specific component whenever possible, and determine whether the information you seek is contained in the files of local federal offices (in all the states), or at their headquarters in Washington, D.C. A phone

¹ Regulatory agency: An agency that enforces specific sections of federal law (such as the Environmental Protection Agency), as opposed to one that enforces all federal laws broadly (such as the FBI).

call to the agency's FOIA office in Washington can help to determine this.

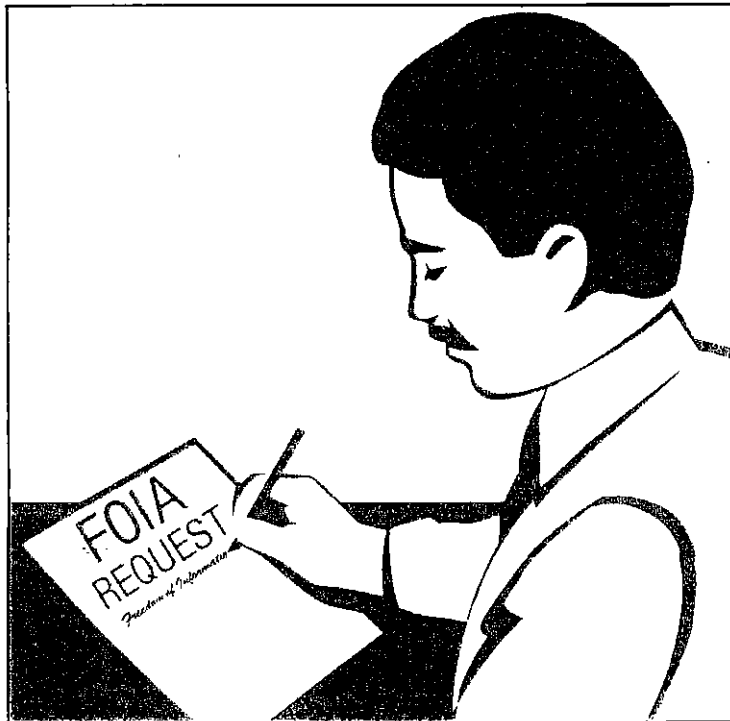
The more focused your requests, the more likely you are to hit your target.

This does not mean, however, that you should restrict yourself to sending only one request. Governments have a fondness for paperwork. The tendency of government agencies is to make multiple copies of reports and spread them to other agencies.

Thus, one agency may deny access to all or part of a report. Another agency, less possessive or perhaps less jealous of other agencies' secrets, may release more of that same document to you.

One agency may release partial information, or give clues as to the existence of other information. With the partial information released by one agency, you may be able to make requests to other agencies more specific, and thus more effective.

A series of requests, directed with pinpoint accuracy to numerous subcomponents and offices, is far more likely to succeed than a broad request to just one



agency. Name the names of people who may be involved in originating, receiving, or storing the information you seek. Provide dates or time periods. Specify locations. The more precise your request, the less opportunity you provide for your documents to be "overlooked." Use of the FOIA can be very much like solving a complex puzzle.

Writing the FOIA Request Letter

Once you have determined exactly what you want, and who you want to request it from, write your first FOIA request letter(s). Keep a copy of all letters that you send. (Exactly how to prepare request letters is covered in the next chapter.)

Some agencies have specific regulations regarding the FOIA that may affect how you should direct your request. A phone call to the agency's FOIA office in Washington should be sufficient to obtain any specific information for that agency.

You can also go to your local library and look in the Code of Federal Regulations for the specific agency regulations that may affect your FOIA request.

Obtaining Agency Response

The FOIA states that agencies must respond within 10 working days, except in "unusual" circumstances. There have been scattered reports of compliance by some agencies, though

compliance within these time limits is rare.

If you receive no response by the end of 10 working days, a phone call to your agency's FOIA office is recommended. Take notes as to whom you spoke with, what was said, and the date of the conversation. Copies of your letter marked "second request," "third request" and so on, sent to the agency at regular intervals, may also be effective.

Once you receive a reply, you must then decide whether the response was adequate, or whether you feel more information should have been provided. In the latter case, an appeal is in order.

Appealing Inadequate Responses

An appeal usually needs to be filed within 30 days of receipt of the reply from the agency. The time period varies with each agency, however, so you should find out from the agency concerned what its time limit for appeals is.

When the agency finally responds to your original request, it will tell you where you may file an appeal. Routinely, appeal letters take roughly twice as long to process as the original request. By law it should only take 20 working days.

Remember: The burden is on the agency, not you, to establish the rightness of their decisions. You need not study law to tackle an agency head on. According to the Freedom of Information Act, information should be disclosed to you unless one or more of the nine limited exemptions apply. These exemptions are explained on page 21.

It is up to the individual at the agency who is handling your request to prove that



withheld documents and information are being rightfully withheld. Any information you may have to support your appeal will of course help. But you do not have to make any argument for an appeal to be heard. Your request for review is sufficient to bring your appeal to the attention of those in charge of FOIA review at an agency.

Getting Help

At some point, you may wish to seek outside assistance with your FOIA request.

Numerous groups exist that have

a strong interest in free and open government. Names and addresses of some of these groups are included in the appendices on page 45.

Further, you may wish to call your congressman or senators. They are your representatives in government. Someone on their staff may be willing to make an inquiry to an agency on your behalf.

Litigating To Obtain Compliance

Litigation is very straightforward under the FOIA and may be necessary if an agency does not comply with a rightful request. Litigation is often successful to some degree in at least forcing the agency involved to provide detailed descriptions justifying its decision to withhold documents.

This handbook, however, does not deal with litigation strategy under the Freedom of Information Act. You may wish to obtain "Litigation Under the Freedom Of Information Act and Privacy Act?" a book published by the Center for National Security Studies. The center's address is included in the appendices on page 45.

² Privacy Act: This act provides safeguards for individuals against invasion of privacy by federal agencies and permits individuals to see most records pertaining to them maintained by the federal government.

Fees

Your obligation to pay fees depends on who you are, and the reason you want the information.

A. Commercial Requesters: Commercial requesters (businesses or individuals acting in a business capacity) pay for search and review time, and for copying costs.

B. Public Interest Groups: These include news media, educational, and non-commercial scientific groups. Such groups pay for copying costs only.

C. All Others: Groups or individuals not falling into either of the two categories noted above are entitled to up to 100 pages of free copying, and up to 2 hours of free search time. Any time or copies beyond these limits are paid for by the requester.

Each agency differs in its charges for processing FOIA requests. Typical copy costs range between \$.10 and \$.25 per page. Search and review costs also vary, with the average being \$20 per hour. Some agencies, however, such as the National Security Agency, charge far more for search and review. Thus, it may be wise to request that the agency contact you with an estimate of costs if expected to exceed an upper limit set by you. (See sample letter, page 17.)

Agencies are not allowed to demand advance payment of fees unless (1) you have failed to pay an earlier bill on time or (2) your bill is going to exceed \$250.

Fees may be waived if the information sought is likely to be in the public interest. If your request for a waiver of the fee is denied, that too may be appealed.

How to Write an FOIA Request Letter

► *This chapter contains guidelines which will assist you in writing FOIA request letters.*

Your FOIA request letter needs to include the following basic information:

1. A clear statement that your request is being made under the Freedom of Information Act (and Privacy Act if you are requesting files on yourself as an individual).

In the sample letter shown on page 17, this statement is in the first paragraph, and also in the heading to the letter.

2. A description of the material being requested. The law requires that your request must “reasonably describe” the records you seek.

A. When requesting files or information on individuals, include any variations in spellings, nicknames, stage names, married and single names, titles, AKAs,¹ and the like. Also include specifics, such as birth dates, Social Security numbers, addresses, etc.

B. When requesting files or information

on groups, list any parent or junior organizations with which the group may be affiliated, any coalitions to which the group may belong, or any initials by which the group may otherwise be known (e.g., ACLU for American Civil Liberties Union).

When in doubt, consider this: agencies may not provide you with information dealing with a group or individual whose name you do not provide to them exactly as it appears in their files or documents. It is up to you to not permit them to use this loophole.

C. Use “and/or” to describe the different subject matters under request in order to ensure your request is all-inclusive.

D. Specifying the relevant time period can also help the agency personnel zero in on the records you are requesting. If you wish all records covering a five-year period, state “covering all records from 1985 to 1989 inclusive,” for example.

If an event occurred on a particular day, state the exact date, but also request all information generated prior to and subsequent to that date so as not to unnecessarily limit your request.

¹ AKA: “Also Known As.” A name commonly used instead of one’s real name. Example: Smith, Jones & Brown Company, AKA the Smith Company.

3. A request that the costs not exceed a limit without your authorization. If you wish a waiver of the fees, ask for this, but still state that you will pay the costs up to the limit you specify. This is to prevent the agency using questions about the fee-waiver issue as an excuse to withhold the documents. (See sample letters for language that can be used.)

4. You should include your phone number as some agencies may wish to call, either for more information or to simply let you know that they have received and are processing your request. Also, of course, include your return address.

5. If your request is for your individual files, your signature needs to be notarized. Most real estate offices, banks, savings and loans, and many tax preparers' offices either have a notary public or know where you can find one. You may also look in your yellow pages under "Notaries Public." Agencies may also require that you provide a photocopy of an identifying document, such as a driver's license or a Social Security card. This is especially true when dealing with FOIA requests to the IRS, as it is required by law that the tax agency ensure it is distributing taxpayer information to the correct person.

If your request is not for your individual files, your letter does not have to be notarized.

6. Your letter should be typed and dated. The envelope should state on the outside "Attention: Freedom of Information/Privacy Unit."

After writing your letter, make a copy of it before sending the original.

The appendices contain a list of some agencies and addresses to which you can address your requests. If the agency you

want is not in the appendices, directory assistance for Washington, D.C., (202) 555-1212, may be able to help you.

Important note: There are three agencies you need to pay special attention to:

A. Internal Revenue Service (IRS): If you are requesting files on an individual other than yourself, an affidavit from that person is required. This affidavit should authorize you to receive the files, and must delineate the "tax years" you want searched, otherwise it will be rejected by the IRS as an "invalid request."

If you are requesting access to your own records, you need to present an affidavit delineating the "tax years" you want searched, and you also need to establish your own identity by presenting either a notarized statement swearing to your identity, or a document, such as a passport, which bears your photograph, name and signature.

B. Federal Bureau of Investigation (FBI): Request letters should go to both the FBI headquarters and the FBI field office nearest the location of the individual, organization, subject matter or event. The FBI also requires that your request include your full name, address, date and place of birth, and Social Security number. The FBI further requires that your signature be notarized.

C. Immigration and Naturalization Service (INS): Original request letters should go to the district office nearest the location of the individual, organization, subject matter or event.

In general, original request letters should go to both the headquarters and the local office in your area.

A sample request letter follows.

The text contained in brackets is optional, or contains choices for you to make.

▶ Sample FOIA Request Letter

Date

Freedom of Information Office/
Public Affairs Office
Name and Address of Agency

Re: Freedom of Information Act [/Privacy Act] Request

Dear Sir or Madam:

This is a request for information made pursuant to the Freedom of Information Act [include "and Privacy Act" if applicable].

I hereby request copies of all records, notes, electronic information, or other information described as follows:
(Specify the files you want.)

I am requesting this information for [(choose one) my individual use/commercial use/non-commercial scientific or educational use].

Please obtain approval from me before incurring any expenses in excess of \$____. [You may select whatever dollar amount you wish.]

[If you are seeking a waiver of fees, include the previous paragraph and also include the following paragraph:

However, I request a waiver of fees. My interest in the records is not a commercial interest, and disclosure of the information to me will contribute significantly to public understanding of the operations and activities of our government. (Include further details here of how disclosure is in the public interest.)]

If you have any pamphlets or material which help explain your documents, or the symbols used thereon, I would appreciate a copy.

I would appreciate a response within the 10 working days prescribed by law. If for any reason your decision is to deny me any of the requested information, I request precise information as to why the requested information has been denied, as well as an explanation of my appeal procedure.

Thank you for your assistance.

Sincerely,

Your name
Address
Daytime telephone number

► Here is a second sample FOIA request letter

This was actually filed and resulted in the release of FOIA documents.

FREEDOM M A G A Z I N E

1404 N. CATALINA STREET, LOS ANGELES, CALIFORNIA 90027 (213) 663-2058

8 September 1988

United States Air Force
SAF/AA DADF
Washington, D.C. 20330
Attention: FOIA Request

Re: FOIA Request

Dear Sir:

I am the Editor of FREEDOM Magazine and a representative of the news media. Pursuant to the Freedom of Information Act, 5 U.S.C. 552, (FOIA), I hereby request certain records in the control or custody of the United States Air Force as described below:

Any and all records concerning the testing of amphetamines as described in the attached article in the Los Angeles Herald Examiner dated 7 September 1988. This would include, but not be limited to, any records, information or studies by the U.S. Air Force, Gregory Belenky, a Walter Reed scientist, Ben Smith of Walter Reed, or any other individuals or entities.

This search should include all files repositories which could reasonably contain records and information relating to the amphetamines or "speed" testing being done on students or U.S. military men by the United States Air Force or other entities or individuals. It should be limited to the years from 1983 to present.

This request includes any computerized records, telexes, dispatches, archived materials, status reports, progress reports, drug protocols, or other materials or information.

FREEDOM is willing to pay the United States Air Force's reasonable duplication fees to comply with this request as long as these do not exceed the amount of \$100. However pursuant to the U.S. Air Force's standards for waiver of fees, fees should be waived since disclosure of the information is requested by a news

8 September 1988
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magazine and meets both of the following tests: (1) disclosure is in the public interest because it is likely to contribute significantly to the public's understanding of government operations and activities, and (2) is not primarily in the commercial interest of the requester.

FREEDOM Magazine is a periodical organized and operated to publish news to the public. It has been published for over 20 years and specializes in investigative reporting concerning current events or information that is of current interest to the public. FREEDOM is available for purchase and subscription by the general public throughout the United States.

If you determine to withhold any information, please segregate portions of non-exempt materials from those portions determined to be exempt under FOIA 5 U.S.C. 552 and supply me with those remaining non-exempt portions. Please also provide me with an index describing any documents withheld in whole or part.

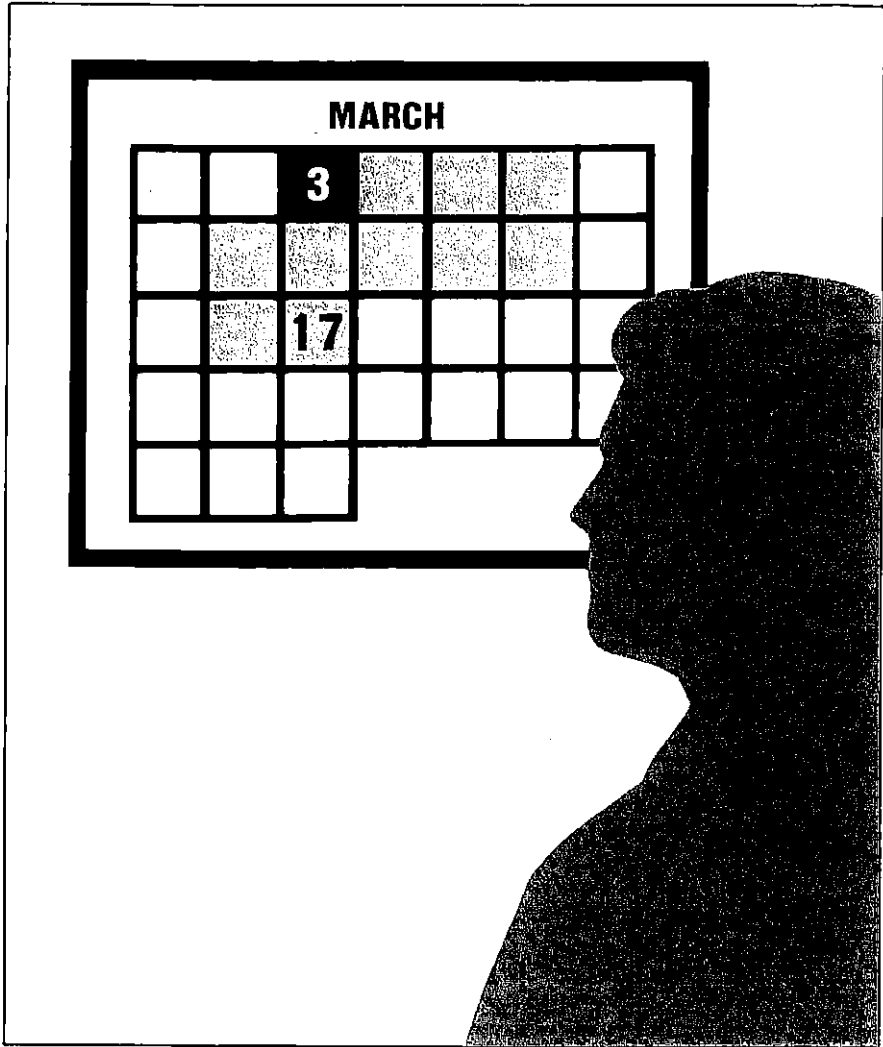
Please contact me at the address listed above, by phone or letter if you require further clarification of this request. I expect a response in ten working days.

Sincerely,



Thomas G. Whittle
Editor
FREEDOM Magazine
(213) 663-2058

TGW/ems
encl:



The Agency Response

► *This chapter examines what you should expect regarding the agency's response.*

The law requires your request to be responded to within 10 working days. Do not expect this, however. Responses can take months, even years, in some cases. You will generally receive a form letter from the agency within two weeks acknowledging receipt of your FOIA request, but asking for additional time to process it.

If the agency does not respond within the 10 working day period required by law, you may wish to consider your request as having been denied. In this way, you may go on to appeal without waiting. A prudent approach would be to wait some reasonable time before appealing. If your appeal is then not decided upon within a reasonable time after the 20 working day period required by law, you can sue the agency in court. (See next chapter.)

When the agency does respond, you will receive one of three answers:

1. Your request is granted in full.
2. Your request is partially granted. The reasons for withholding the balance of

the information are given, with exemption codes cited. The agency will also supply you with a definition of the exemption codes when they are withholding information.

3. Your request is denied in full. Again, the exemptions justifying why the agency is withholding the information will be given to you in a letter from the agency, along with the definitions of the exemption codes being used.

Exemptions

The FOIA contains nine limited exemptions that permit (but do not necessarily require) the government to withhold information.

Remember, the information you seek is presumed releasable to you. It is not up to you to prove why you have a right to the information. The government must show

why the information falls under one of the nine exemptions. None of the exemptions permit the withholding of an entire document if the withholding of only a portion would satisfy the exemption. Since the exemptions are listed under Section 552(b) of the Freedom of Information Act, all of the exemption codes start with "(b)," then a number: e.g., "(b)(1)."

Exemption (b)(1):
National Security¹

Various Executive Orders define what information may be kept secret "in the interest of national defense or foreign policy."

Exemption (b)(2):
Internal Agency Rules
Information "related solely to the internal personnel rules and practices of an agency" need not be released under the FOIA. This covers such matters as parking regulations for employees of the agency involved.

Exemption (b)(3):
Information Exempted
By Another Federal Statute²

This exemption is designed to relieve any conflict between the Freedom of Information Act and other federal laws (such as laws dealing with the confidentiality of census data).

Exemption (b)(4):
Trade Secrets³

Trade secrets obtained by the govern-

¹ National Security: Of or pertaining to the safeguarding or protection of a nation against foreign attack.

² Statute: An act of legislature, an administrative regulation, or any enactment, from whatever source, to which the government gives the force of law. As used here, it means a section of federal law as passed by Congress and signed into law by the president.

ment are absolutely protected by this exemption. Commercial or financial information is likewise protected if the government can prove that the information is confidential and that its disclosure would impair the government's ability to obtain such information in the future.

Exemption (b)(5):

Internal Agency Memoranda

Information about an agency's internal decision-making processes is exempted. Thus, preliminary drafts and unfinished reports may be withheld, but the final decisions and memos may not. In addition, confidential communications between a client and an attorney, and documents prepared by an attorney for litigation are exempted.

Exemption (b)(6):

Personal Privacy

This exemption permits the withholding of information if its release would constitute "a clearly unwarranted invasion of personal privacy." Thus, personnel files, medical files, or other intimate information on third party individuals (not on organizations or yourself) may be withheld.

Exemption (b)(7):

Law Enforcement Records

Information compiled for law enforcement purposes may be withheld only to the extent that production could reasonably be expected to interfere with current or future proceedings, disclose a confidential informant's identity, invade a person's privacy unnecessarily, interfere with a person's right to a fair trial, disclose non-public investigative techniques or procedures, or endanger the life or safety of law enforcement personnel.

Exemptions (b)(8) and (b)(9):

³ Trade Secrets: Information relative to an industrial process or the conduct of a business, known only to the owner and those of his employees in whom it is necessary to confide, and not available to the trade or the public generally. The formula for Coca-Cola is an example of a trade secret.

"Government agencies are not ordinarily cooperative with regard to release of material under the FOIA. After all, the FOIA was passed by Congress because of the tendency for secrecy within government agencies."

These exemptions deal with the banking and oil industries, and generally have little relevance to most individuals and their FOIA requests. See the text of the full Freedom of Information Act in the appendices on page 37 for more information on these exemptions if desired.

How to Review Your Documents

Government agencies are not ordinarily cooperative with regard to release of material under the FOIA. After all, the FOIA was passed by Congress because of the tendency for secrecy within government agencies.

Therefore, you should expect to have to do more than merely ask for the documents you want.

Here are a few tips on how to make your FOIA actions maximally effective:

1. When you get a packet of documents back from an agency, before you do anything else with them, number them, in ink, on the back side. This forms a record of what you have received from the agency and will help you to keep track of your documents. You should also write down a separate inventory of what you received. Compare it to what the agency says it is releasing to you. If there is any difference between what the agency says it is releasing and what you see you have received, write at once to the agency and ask for the remaining materials.

2. Many agencies number their documents on the face of the documents. The numbering system can itself tell you something about your file. Such numbers are usually on the lower righthand corner of the first page of each document you receive.

For instance, an FBI document might be



marked "64-23312-19."⁴ This would indicate that it is the 19th document in the 23,312th file in a classification designated as 64.

This tells you that there are at least 18 other documents in that file, at least 23,311 other files in that classification, and at least 63 other related classifications.

If the numbers show that there are a certain number of documents in a file, and you received less than that number, it means that documents have been withheld from you, in which case an appeal should be made.

3. Look at the routing of the documents. Other agencies and officials included on the

⁴ This particular number was on an FBI document in the bureau's file on Ernest Hemingway, released to FREEDOM Magazine in 1983. A total of 120 pages were released to FREEDOM in that file. Seven pages were withheld.

routing provide you with clues as to where to send additional FOIA requests.

4. Likewise, look at any notations at the bottom of the documents, like "cc: Dept. of State" or any similar indication of where copies of the document may have been sent. Some agencies publish glossaries that help you determine what some of these notations mean. These notations also give valuable information as to where to file your next FOIA requests.

5. Lastly, the text of the documents themselves may include references to other documents, files, investigations, and so

forth. By examining your documents carefully, you may be able to make a list of other documents, not released to you, which are likely to be in government files. In this way, you can cross-check the agency's statement of how many documents it has withheld, and file additional requests for documents with the same or other agencies.

Remember, if you have a partially released document, and you feel you should see more of the document, you may have better success requesting the document from other agencies to which it was sent.