



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

FREEDOM OF INFORMATION ACT REFERENCE GUIDE

(February 2019)

I. Introduction

This Freedom of Information Act Reference Guide is designed to help members of the public understand how the Freedom of Information Act (“FOIA”) process works, so that they can be better informed about the operations and activities of the federal government in general and those of the Administrative Conference of the United States (“ACUS”) in particular.

Generally speaking, FOIA provides that any person has the right to obtain access to federal agency records except to the extent that those records are protected from disclosure under FOIA or by some other statute. However, formal FOIA requests are unnecessary if you are seeking information that is readily available to the public. Therefore, before making a FOIA request you should view the information and records already posted on the ACUS website in order to be sure that what you are interested in is not available to you there. ACUS’s FOIA website, which contains this Reference Guide, can be found at www.acus.gov/foia.

FOIA applies to records of the executive branch of the federal government, but it does not provide access to records held by Congress, by the federal courts, by inner advisory offices of the President, by state or local government agencies, or by private businesses or individuals. All states have their own statutes governing public access to state and local government records; state agencies (or a State Attorney General’s Office) should be consulted for information about obtaining access to their records.

This Reference Guide is designed to familiarize you with the specific procedures for making a FOIA request to ACUS. Following the guidance below will make it more likely that you will receive the information that you are seeking in the shortest amount of time possible.

Initially, it is important to understand that there is no central office that processes FOIA requests for all federal departments and agencies. Each federal agency responds to requests for its own records. Therefore, before sending a request to ACUS you should determine whether ACUS actually is likely to have the records that you are seeking. Each federal agency is required to provide reference material to assist those who wish to request records from it, so you should view the website of any particular agency that might have the records in question. By doing so you will learn what records are already available on that website and you will also be able to determine which agency is likely to maintain the records you are seeking. Information about FOIA submissions for other federal departments and agencies is available at www.FOIA.gov, the government's central website for FOIA.

The formal rules for making FOIA requests to ACUS are set forth in Part 304 of its regulations (1 CFR Part 304). These regulations are available on ACUS's FOIA website (www.acus.gov/foia) under "FOIA Resources" (click on "ACUS FOIA and Privacy Act Final Regulation"). In most cases, though, this Reference Guide should provide you with all the basic information that you will need for submitting a FOIA request.

II. Access to ACUS Records Without a FOIA Request

ACUS's website (www.acus.gov) should be the starting point for anyone interested in the work of the agency. It contains information about ACUS recommendations and reports, current research projects, meetings and other public events, and information about the organization, budget and governance of the agency. The website contains a schedule of activities plus information about how to participate in the work of the Conference. Also available are links to a substantial amount of information from the Conference's prior life (1968-1995), including records of ACUS past research and recommendations.

Formal FOIA requests are unnecessary if you are seeking publicly available information. If you are unable to find the document you are seeking on our website, please contact us for assistance prior to filing a formal FOIA request. You may contact David Pritzker, the FOIA Public Liaison for the Administrative Conference, by e-mail at dpritzker@acus.gov. By seeking assistance prior to filing a formal request, the response time may be faster.

III. How to Make a FOIA Request

A FOIA request can be made for any agency record. You may make a request for ACUS records by using the request form on the ACUS website (go to www.acus.gov/foia and click on "Submit a formal FOIA request to the Administrative Conference"). You may also send a written request letter to the agency (1) by mail addressed to ACUS FOIA Public Liaison, 1120 20th Street, NW, Suite 706 South, Washington, DC 20036, or (2) by fax delivery to (202) 386-7190.

As a FOIA requester, your primary obligation under the statute is to "reasonably describe" the records to which you seek access -- which means that you must describe them in enough detail to enable agency personnel to locate them with a reasonable amount of effort. So in making your request, please be as specific as you possibly can when describing the records that you are seeking. It is not necessary for you to provide the name or title of a requested record, but the more specific you are about the records or types of records that you seek, the more likely ACUS will be able to locate those records. In this regard, you should be aware that FOIA does not require agencies to do research for you, to analyze data, to answer written questions, or to create records in response to a request.

In order to protect your privacy as well as the privacy of others, whenever you request information about yourself, you must include in your request your full name, current address, and date and place of birth. You must also provide either a notarized statement or a statement signed under penalty of perjury stating that you are the person who you say you are. You can meet this requirement by either (1) having your signature on your request letter witnessed by a notary, or (2) including the following statement immediately above the signature on your request letter: "I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]." If you request information about yourself and do not follow one of these two procedures, your request cannot be processed. This requirement helps to ensure that personal information about you will not be inappropriately disclosed to anyone else. Similarly, if you request records about another person and disclosure of the records would invade that person's privacy, those records ordinarily will not be disclosed to you.

IV. Response Times

Under the FOIA, all federal agencies are ordinarily required to respond to a FOIA request within twenty business days, excluding Saturdays, Sundays, and federal holidays. This time period generally begins when the request is actually received by the FOIA office of the agency that maintains control of the records sought. An agency is not required to send any releasable documents to you by the last business day; it can send you a letter informing you of its decision and then send you the documents within a reasonable time afterward. Prior to that time, ACUS ordinarily will send you an acknowledgment letter that contains basic information about the handling of your request, such as the agency's tracking number that you can use for it and a confirmation of your willingness to pay applicable fees up to a certain dollar amount as described in Section VI of this Reference Guide.

Although ACUS makes every effort to respond to FOIA requests as quickly as possible, in some cases it might not be possible to do so within the specified time period. This may be due to the volume and/or complexity of records involved in a given request or to a temporary backlog of previously received requests of such nature. Under FOIA, an agency may extend the twenty-day response time for an additional ten business days when "unusual circumstances" exist, including the following situations: (1) the agency needs to collect responsive records from separate locations; (2) the request involves a "voluminous" quantity of records that must be located, compiled, and reviewed; or (3) the agency needs to consult with another agency that has a substantial interest in the requested information. When such a time extension is needed, ACUS will notify you of this in writing and offer you the opportunity to modify or limit the scope of your request. Alternatively, you may agree to a different timetable for the processing of your request. ACUS's FOIA Public Liaison can assist you with this.

V. Expedited Processing

Under certain conditions you may be entitled to have your FOIA request processed on an expedited basis. First, expedited processing will be granted if the lack of expedited treatment could reasonably be expected to pose a threat to someone's life or physical safety. Second, we will expedite processing if the request is made by a person primarily engaged in disseminating information to the public and the information is urgently needed to inform the public concerning some actual or alleged federal

government activity. In its discretion, ACUS may also recognize other circumstances warranting expedited processing.

A request for expedited processing must be accompanied by a statement setting forth the reasons why your request (or appeal) should be expedited. You should certify that the reasons you have given are true and correct. The agency will be required to notify you of its decision whether to grant or deny expedited processing within ten calendar days after receiving your letter. If the agency denies your request for expedited processing, you will be advised of your right to submit an administrative appeal of that denial, which itself will be handled expeditiously. (For information about filing administrative appeals, see Section IX of this Reference Guide, below.)

VI. Fees

There is no initial fee required to submit a FOIA request; in fact, for most of the FOIA requests that are made to ACUS, no fees are ever charged. FOIA does, however, provide for the charging of certain types of fees in particular circumstances, and in some cases the applicable fees can be considerable.

For purposes of fee assessment only, the FOIA divides requesters into three categories, for which different rules apply. In all cases, if the total fee does not exceed a minimum amount, currently \$20, ACUS will not charge any fee at all. The following table summarizes the applicable fee provisions. The agency's FOIA regulations (available at www.acus.gov/foia) provide further detail about applicable fees.

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| Commercial use requests | Fees will be charged for staff time required to search for the requested information, to review it to determine whether a FOIA exemption from disclosure applies, and to redact any content exempt from disclosure. Fees will also be charged for the cost of duplication at the rate of 10 cents per page if the information is released on paper. Duplication fees for information released in other forms or formats will be based on direct costs to the agency including computer programming or operator time. |
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| Requests by educational institutions, noncommercial scientific institutions or representatives of the news media | Fees will be charged for duplication of material in excess of 100 pages at the rate of 10 cents per page (or the cost equivalent if the information is to be supplied in a different form or format). No fees will be charged for searching or for reviewing or redacting exempt information. |
| All other requesters | Fees will be charged for duplication of material in excess of 100 pages at the rate of 10 cents per page (or the cost equivalent if the information is to be supplied in a different form or format). Fees will be charged for staff search time in excess of two hours. No fees will be charged for reviewing or redacting exempt information. |

You may include in your request a specific statement limiting the amount that you are willing to pay in fees. If you do not do so, ACUS will assume that you are willing to pay fees up to a certain amount, currently \$50. If ACUS estimates that the total fees for processing your request will exceed \$50, it will notify you in writing of the estimate and offer you an opportunity to narrow your request in order to reduce the fees. If you continue to seek all of the records involved, you will be asked to express your commitment to pay the estimated fees, and the processing of your request will be suspended until you agree to do so.

You ordinarily will not be required to actually pay the fees until the records have been processed and are ready to be sent to you. If, however, you have failed to pay fees within thirty days of billing in the past, or if the estimated fees exceed \$250, you may be required to pay the estimated fees in advance -- that is, before the records are even processed. If you agree to pay fees and then fail to do so within thirty days of billing, you may be charged interest on your overdue balance and ACUS will not proceed with any further FOIA request received from you until payment in full has been made. If you agree to pay fees for a records search, be aware that you may be required to pay such fees even if the search does not locate any responsive records or, if records are located, even if they are determined to be entirely exempt from disclosure. If you have any questions about a fee estimate or assessment, you should feel free to

contact ACUS's Freedom of Information Act Public Liaison at dpritzker@acus.gov.

VII. Fee Waivers

If you expect or are advised that a fee will be charged, you may request a waiver of those fees. Under FOIA, fee waivers are limited to situations in which a requester can show that the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. Requests for fee waivers from individuals who are seeking records pertaining to themselves usually do not meet this standard because such disclosures usually benefit the individual requester rather than increase the public's understanding of government operations and activities. In addition, a requester's inability to pay fees is not a legal basis for granting a fee waiver.

VIII. Initial Request Determinations

Once ACUS has processed your request and any fee issues have been resolved, the agency will send you a written determination. In most instances, ACUS will include all documents that can be disclosed along with the determination letter, though in some cases the documents themselves may be sent separately, within a reasonable time after the determination letter has been sent to you. The determination letter will advise you of whether any information is being withheld pursuant to one or more of the FOIA's exemptions. When a page of a record is being withheld in its entirety, ACUS ordinarily will specify the number of pages being withheld or make a reasonable effort to estimate the volume of the withheld information. Where a part of a page of a record is being withheld, the withheld portions of the page ordinarily will be specifically marked with the applicable exemption(s).

The FOIA's nine exemptions authorize federal agencies to withhold information covering:

- (1) classified national defense and foreign relations information;
- (2) internal agency rules and practices;
- (3) information that is prohibited from disclosure by another federal law;

- (4) trade secrets and other confidential commercial or financial information;
- (5) inter-agency or intra-agency communications that are protected by legal privileges;
- (6) information involving matters of personal privacy;
- (7) records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (8) information relating to the supervision of financial institutions; and
- (9) geological information regarding wells.

As a matter of policy, ACUS does not withhold information under a FOIA exemption merely because that exemption technically applies to the information. Rather, it considers whether disclosure of that particular information would cause “foreseeable harm” under that exemption. While this openness-in-government policy standard is not applicable in court adjudications, it leads to the disclosure of much information as a matter of administration discretion. Also, an agency is obligated to disclose all “reasonably segregable, non-exempt” information at the margins of exempt information segments. These two approaches work hand-in-hand to achieve maximum responsible disclosure of information in response to FOIA requests.

IX. Administrative Appeals

You may file an administrative appeal if you are not satisfied with the agency’s initial response to you. This means an appeal to the Chairman or the Chairman’s designee for review of a denial of any part of your request. You also may file an administrative appeal if you have requested expedited processing or a fee waiver and ACUS has not granted that request. You

may appeal a determination that what has been requested is not reasonably described, that a record does not exist or cannot be located, that a record is not readily reproducible in the form or format requested, that the requested information is not a record subject to the FOIA, or a determination regarding the charging of a fee. In short, you may appeal any adverse determination made by the agency, in which case the initial determination will receive an independent appellate review within the agency.

You will be advised of your right to file an administrative appeal in the agency response containing the adverse determination. Ordinarily, your administrative appeal must be received within ninety calendar days of the date of the agency's response denying your request. All appeals must be made in writing, by e-mail or letter. Mailed appeals should be addressed to: Administrative Conference of the United States, 1120 20th Street, NW, Suite 706 South, Washington, DC 20036. For the quickest possible handling of a mailed appeal, both the front of the envelope and the administrative appeal letter should contain the notation "Freedom of Information Act Appeal." E-mailed appeals should be addressed to: info@acus.gov and should contain the notation "Freedom of Information Act Appeal" in the subject line.

There is no specific form or particular language that is needed to file an administrative appeal. You should include the initial request tracking number that the agency assigned to your request and the date of its action. There is no need to attach copies of released documents unless they pertain to some specific point that you are raising in your administrative appeal. You should explain what specific action(s) by the agency you are appealing, and it is helpful to articulate why you think the action was wrong. Under FOIA, the agency is ordinarily required to make a determination on your administrative appeal within twenty business days of receipt.

X. Resolving Disputes

As mentioned above, ACUS has a FOIA Public Liaison whom you may contact with any question or concern at any stage of the FOIA process. The Public Liaison, who can be reached at dpritzker@acus.gov, might be able to assist you by explaining an adverse agency determination to your satisfaction, in which case you might decide not to proceed with an administrative appeal.

In addition, you might find it helpful to know that the Office of Government Information Services (“OGIS”), an office within the National Archives and Records Administration, offers mediation services to FOIA requesters. OGIS may be contacted at this address: Office of Government Information Services, National Archives and Records Administration -- OGIS, 8601 Adelphi Road, College Park, MD 20740-6001. You can also contact OGIS by e-mail at ogis@nara.gov, by phone at (202) 741-5770 (or toll-free at (1) (877) 684-6448), or by fax at (202) 741-5769.

Finally, the FOIA provides requesters with the right to challenge an agency’s action in federal court. Before doing so, however, you ordinarily will be required to have first filed an administrative appeal.