

FREEDOM OF INFORMATION ACT & PUBLIC HEALTH ADVOCACY

Quick Facts



What is “FOIA”?

The Freedom of Information Act, or FOIA, establishes a statutory right to access many federal agency records.¹ FOIA compels agencies to automatically disclose certain documents and information, including frequently requested records.² The law also establishes exemptions protecting specific documents from disclosure.³

A FOIA request is an important tool that the public health community can use to maximize its impact on federal regulation of key issues affecting health. Access to agency information can help inform and improve the public health community’s engagement in the federal regulatory process. Learning how industry is interacting with the agency can enable public health professionals to counter industry arguments and rebut false or misleading information.



What should be included in a FOIA request?

A FOIA request can be made for any agency record.⁴ However, the agency may refuse to release records exempt from disclosure by law.⁵ FOIA does not require an agency to do research, analyze data, answer written questions, or create records in response to a request.

Requesting records under FOIA is simple and informal:

- The request must be in writing and “reasonably describe” the records being sought.⁶
- Requesters may also specify the format in which they wish to receive the records.⁷

What does the FOIA process look like?

Filing: The request must be submitted directly to the agency subject to the request. Review the agency’s website for agency-specific FOIA requirements prior to filing.

Fees: While no initial fee is required to submit a FOIA request, the law allows agencies to charge fees for record searches and duplication.⁸ If the request is made by news media or an educational or noncommercial scientific institution for noncommercial research purposes, an agency may charge fees for document duplication only.

Agency response: Responses to record requests are sent via U.S. mail unless you have requested another form of delivery. Federal agencies are required to respond to FOIA requests within 20 business days and must notify the requester if unable to fulfill the request in that time.⁹

Appeals and litigation: If you are not satisfied with an agency’s response to a request, you can contact the agency’s FOIA contact to assist in resolving the dispute. If the dispute cannot be resolved through informal means, the next step is to file an administrative appeal.¹⁰ If the appeal is unsuccessful, you could pursue mediation or enlist the assistance of a member of Congress to contact the agency on your behalf.¹¹ If all else fails, you could consult with legal counsel regarding the possibility of going to court to force the agency to release the documents.¹²

Need Help? Contact the Public Health Law Center.

If you would like technical assistance with submitting a FOIA request or resolving a FOIA dispute, please contact a staff attorney with the Public Health Law Center at (651) 290-7506 or email publichealthlawcenter@mitchellhamline.edu.

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Endnotes

- 1 5 U.S.C. §§ 552 et seq.; see *generally* U.S. Dep't of Justice, United States Department of Justice Guide to the Freedom of Information Act, at Exemption 5 (updated 2019), <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.
- 2 *Id.* FOIA applies to any "agency records" that are documents (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request. U.S. Dep't of Justice v. Tax Analysts, 492 U.S. 136, 144-45 (1989). The 1996 amendments to FOIA explicitly indicate that the term "record" and any other term used in FOIA in reference to information includes "any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format."
- 3 5 U.S.C. § 552(f)(2).
- 4 5 U.S.C. § 552(a)(3)(A).
- 5 5 U.S.C. § 552(f)(2).
- 6 5 U.S.C. § 552(a)(3)(A). Identifying the records as specifically as possible may reduce copying costs, increase accuracy of the results, and may be processed more quickly than a general request for "all information" on a particular subject.
- 7 5 U.S.C. § 552(a)(3)(B).
- 8 5 U.S.C. § 552(a)(4)(A).
- 9 5 U.S.C. § 552(a)(6)(A).
- 10 Agency regulations governing appeals vary; take careful note of the instructions for filing an appeal in the agency's response to ensure that your appeal is timely. For example, an adverse determination by the FDA must be appealed to the Department of Health and Human Services in accordance with its regulations regarding the appeal process. 21 C.F.R. § 20.49; 45 C.F.R. §§ 5.61-.63.
- 11 Once the administrative appeal process is complete, the requester also has the option to seek mediation services from the Office of Government Information Services at the National Archives and Records Administration. 5 U.S.C. § 552(h)(3). Although such a contact would not typically constitute lobbying, before contacting a member of Congress it is always useful to consider any restrictions on your organization's activities under law or pursuant to your funding agreements.
- 12 5 U.S.C. § 552(a)(4)(B) ("the district court ... has jurisdiction to ... order the production of any agency records improperly withheld from the complainant"); 45 C.F.R. § 5.64 ("Before seeking review by a court of an adverse determination, you generally must first submit a timely administrative appeal.").