

CHAPTER 7

FREEDOM OF INFORMATION*

A. Introduction

This Chapter describes laws that allow you to request copies of government documents and files. There are several reasons why these documents might be useful to you: you may want to review copies of your files and rap sheets to make sure they are accurate and complete; you may want to get copies of internal paperwork and manuals that explain procedures prison officials must follow; and, if you are preparing to sue the government, you can use a federal Freedom of Information request to gather support for your case.

All fifty states and the District of Columbia have passed some sort of open records law.¹ Many of these laws are modeled on the federal Freedom of Information Act, but remember, the Freedom of Information Act itself is a *federal* act, so it does not apply to state or municipal agencies, like state prison systems. Only *state* freedom of information laws grant access to state and local government records. In New York, for example, you would request state and local government records under New York's Freedom of Information Law ("FOIL").²

There are specific procedures that you must follow depending on the type of information you are requesting. Each agency has a different procedure for accessing information and it would take much more space than is in this Chapter to outline the steps for every single agency. Instead, this Chapter will give you an overview of what rights you have under the federal Freedom of Information Act ("FOIA") and the Privacy Act ("PA"), as well as an overview of how to request records from the Department of Justice ("DOJ"). Be sure to check the specific procedures for your particular request before filing an information request under any state or federal law.

Part B of this Chapter outlines the laws that allow you to get documents from the federal government under FOIA and the PA. While FOIA and the PA only apply to the federal government, many state's laws are modeled on these laws. **Appendix A** contains a list of state freedom of information laws. If you are requesting state or local government records, you should look up the state law listed in Appendix A and follow the required procedures under that law. **Appendix B** contains a form to use to request information from the DOJ and other federal agencies. **Appendix C** contains sample letters for filing a FOIA or PA request and/or appeal. **Appendix D** lists the addresses of organizations and federal government agencies that can provide more help regarding information requests.

B. The Federal Freedom of Information Act

1. Overview & History

You have a right to access many files of the United States government. This right is established by two federal laws: the Freedom of Information Act³ and the Privacy Act.⁴ These laws have been tremendously successful in enabling public access to government files. The Freedom of Information Act ("FOIA") allows you to request all public documents, including records that relate to you. The Privacy Act ("PA") deals *only* with personal files. It gives you the right to look at your own records and

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¹ See Appendix A.

² N.Y. PUB. OFF. LAW §§ 84–90 (McKinney 2021).

³ 5 U.S.C. § 552.

⁴ 5 U.S.C. § 552a.

to correct, change, or remove records that contain incorrect, irrelevant, or incomplete information about you. If your request is incorrectly denied or ignored, you can sue in federal court.

FOIA and the PA are intended to protect a basic principle of democracy—the public’s right to know what its government is doing. As written, FOIA gives access to all government records unless they fall into one of nine categories of materials that agencies are allowed to withhold.⁵ In practice, however, there are often administrative obstacles to getting records, and you will probably not get immediate access to everything you think you should be given access to.

2. What Agencies Are Covered & What Records Are Available

FOIA applies to documents held by federal agencies in the executive branch of the *federal* government. So, FOIA covers documents held by the following entities:

- (1) Executive departments
 - There are fifteen executive departments. These are the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, and Veterans Affairs.
- (2) Agencies and offices within executive departments
 - Each department is made up of various offices and agencies. For example, the Department of Justice controls the Federal Bureau of Investigation (“FBI”) and the Federal Bureau of Prisons (“BOP”).
- (3) Independent federal agencies
 - There are dozens of independent federal agencies that do not fall under an executive department. An example of an independent federal agency is the Environmental Protection Agency (“EPA”).
- (4) Government-controlled corporations,
 - There are several corporations controlled by the U.S. government. An example of a government-controlled corporation is the United States Postal Service (“USPS”).

FOIA does not apply to documents held by federal courts or by Congress.⁶ FOIA also does not apply to documents held by “the President’s immediate personal staff or units within the Executive Office whose sole function is to advise and assist the President.”⁷ FOIA does not apply to state or local governments, including state prison systems; these are usually covered by separate laws.⁸

FOIA allows you to look at almost all records under a federal agency’s control.⁹ The Supreme Court has defined an “agency record” as a document that is (1) either created or obtained by the agency, and (2) under the control of the agency at the time of the FOIA request.¹⁰ Agency records may include

⁵ 5 U.S.C. § 552(b). These exemptions are discussed in Section B(3) of this Chapter.

⁶ 5 U.S.C. § 551(1)(A)–(B).

⁷ *Kissinger v. Repts. Comm. for Freedom of the Press*, 445 U.S. 136, 156, 100 S. Ct. 960, 971, 63 L. Ed. 2d 267, 285 (1980), (quoting H.R. Rep. No. 93-1380, at 15 (1974) (Conf. Rep.) (finding that telephone notes taken by Secretary of State Kissinger in his capacity as presidential advisor did not constitute “agency records” under FOIA); *see also* *Jud. Watch, Inc. v. U.S. Secret Serv.*, 726 F.3d 208, 228–229, 406 U.S. App. D.C. 440, 460–461 (D.C. Cir. 2013) (holding that logs of visitors to the Office of the President are not agency records covered by FOIA); *Sweetland v. Walters*, 60 F.3d 852, 855 (D.C. Cir. 1995) (holding that the Executive Residence is not an agency under FOIA as it does not exercise independent authority); *Meyer v. Bush*, 981 F.2d 1288, 1293 (D.C. Cir. 1993) (holding that the determination of whether an entity is an “agency” depends on how closely it operates with the President, the nature of its delegation from the President, and whether it has a self-contained structure).

⁸ State government records can be obtained using state freedom of information laws. See Appendix A of this Chapter for a list of the freedom of information laws of all 50 states and the District of Columbia.

⁹ 5 U.S.C. § 552(a)(3)(A).

¹⁰ *See* *U.S. Dept. of Just. v. Tax Analysts*, 492 U.S. 136, 144–145, 109 S. Ct. 2841, 2848, 106 L. Ed. 2d 112, 125 (1989) (holding that court opinions that were a part of the agency files are “agency records” and should be made available under FOIA); *see also* *Jud. Watch, Inc. v. U.S. Secret Serv.*, 726 F.3d 208, 216–217, 406 U.S. App. D.C. 440, 448–449 (D.C. Cir. 2013) (explaining when files in control of an agency become “agency records”).

many different types of information, like papers, reports, letters, films, computer tapes, photographs, and sound recordings in the possession, custody, or control of an agency. Electronically stored information (like a file saved to a computer) counts as a “record” under FOIA.¹¹ In addition, when responding to a FOIA request, the agency must provide the records in any form or format you request, as long as the document is “readily reproducible” by the agency in that form or format.¹² The agency must make reasonable efforts to meet your request.¹³

FOIA does not allow you to demand answers to questions. The information you want access to must already be contained in an existing agency record. An agency is not obligated to create a new record, collect information it does not have, or research or analyze data to meet your request. Your request for records must “reasonably describe” the material you want.¹⁴ This does not mean you need to know a specific document or file number, but your request should be specific enough that a government agency employee familiar with the subject area of your request can locate the records with a reasonable amount of effort. Also, a records request under FOIA and the PA must be in writing and must meet other requirements.

The PA grants you the power to look at any record within an agency’s files that applies to you.¹⁵ Under the PA, as long as you are either a U.S. citizen or an “LPR,” an “alien lawfully admitted for permanent residence” (someone not from this country but legally allowed to live here), you may apply to look at any records about you that are kept in the executive branch of the federal government.¹⁶ In other words, a U.S. citizen or LPR can look at any records that are filed according to his or her name, social security number, or some other personal identifier. Detailed information about how to access agency records can be found in Section B(4) of this Chapter, “How to Make Your Request for Information from the Department of Justice.”

3. Exemptions to Record Availability Under FOIA and the PA

FOIA exempts nine categories of materials; in other words, the government does not need to disclose material fitting into any one of these nine categories. However, an agency may not withhold an entire file or document just because part of it is exempt. The agency can only withhold the specific parts of the record that are considered exempt.¹⁷ In addition, FOIA exemptions are not mandatory. Agency officials can choose to waive the exemptions and release the materials even if they are exempt, unless another law specifically limits or prohibits disclosure of that kind of information.

¹¹ 5 U.S.C. § 552(f)(2)(A) (defining “record” to include “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”). This language includes computer disks, CD-ROMs, microfiche, microfilm, and all other digital or electronic media.

¹² 5 U.S.C. § 552(a)(3)(B) (“[A]n agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.”). The current statute rejects *Dismukes v. Dept. of the Interior*, where the court held that an agency had no obligation under FOIA to accommodate the plaintiff’s preference for a specific form or format of the records. *Dismukes v. Dept. of the Interior*, 603 F. Supp. 760, 763 (D.D.C. 1984).

¹³ See 5 U.S.C. § 552(a)(3)(C) (“[A]n agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency’s automated information system.”); *Ancient Coin Collectors Guild v. U.S. Dept. of State*, 641 F.3d 504, 514, (D.C. Cir. 2011) (holding that an agency “fulfills its obligations under FOIA ‘if it can demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents’”); *Miller v. U.S. Dept. of State*, 779 F.2d 1378, 1383 (8th Cir. 1985) (noting that a department must only make reasonable, but not exhaustive, efforts to respond to a FOIA request); *Maynard v. CIA*, 986 F.2d 547, 559 (1st Cir. 1993) (holding that the agency should issue an affidavit that describes how the search was conducted and how the agency’s filing system would make further search difficult when the adequacy of an agency’s attempt to respond to a FOIA request is at issue).

¹⁴ 5 U.S.C. § 552(a)(3)(A).

¹⁵ For exemptions, see 5 U.S.C. § 552a(j)–(k).

¹⁶ 5 U.S.C. § 552a(a)(2); 5 U.S.C. § 552a(d)(1). This is different from FOIA, which gives access rights to “any person” regardless of citizenship status. 5 U.S.C. § 552(a)(3).

¹⁷ 5 U.S.C. § 552(b).

Seven important FOIA exemptions are:¹⁸

- (1) Records that should be kept confidential for national defense or foreign policy reasons;
- (2) Documents “related solely to the internal personnel rules and practices of an agency.” These are documents that no one outside of agency personnel would have an interest in. In practice, this is a very limited exemption because if any person outside the agency can show a legitimate interest in the records, the material cannot be of “solely” agency interest;¹⁹
- (3) Matters “specifically exempted from disclosure” by other federal statutes.²⁰ There are two ways that an agency can use this exemption. First, they can say that a federal law requires the agency to withhold this type of information. Second, the agency could also argue that a federal law created requirements for withholding information, and that the agency has followed those requirements. The agency must also show that the law applies to the material they are trying to withhold.²¹ Unfortunately, there is not a list of every statute that lets agencies withhold certain information. Additionally, some of these statutes have separate requirements for agencies’ disclosure of information. But, even if the statute has different procedures for disclosing documents, you should always make your request for records under FOIA;
- (4) “Trade secrets and commercial or financial information” given to the government with the expectation that they would be kept secret;
- (5) “Inter-agency or intra-agency memorandums or letters.” This exemption protects communications that are meant to be distributed only within the government and that contain advice, opinions, and recommendations that officials offer to each other. This exemption may not be used to withhold facts, agency decisions, or policies;
- (6) “Personnel and medical files and similar files” which could not be released to someone other than the subject of the file without resulting in an “unwarranted invasion of personal privacy.” The files must contain information about someone so intimate that the person could claim an invasion of privacy. Such information includes marital status, legitimacy of children, welfare payments, family fights and reputation,²² medical details and

¹⁸ 5 U.S.C. § 552(b)(1)–(7). The other two rarely used exceptions to FOIA concern government regulation of financial institutions and geological/geophysical information. Please refer to the statute, 5 U.S.C. § 552(b)(8)–(9), for more information.

¹⁹ *See* *Milner v. Dept. of Navy*, 562 U.S. 562, 581, 131 S. Ct. 1259, 1271, 179 L. Ed. 2d 268, 284–285 (2011) (holding that Exemption 2 “encompasses only records relating to issues of employee relations and human resources”); *Dept. of Air Force v. Rose*, 425 U.S. 352, 369–370, 96 S. Ct. 1592, 1603, 48 L. Ed. 2d 11, 26 (1976) (holding that Exemption 2 does not apply to matters of “genuine and significant public interest” and observing that Congress’ purpose in enacting Exemption 2 was “to relieve agencies of the burden of assembling and maintaining for public inspection matter in which the public could not reasonably be expected to have an interest”).

²⁰ Any statute enacted after October 28, 2009, must specifically cite to the portion of FOIA discussing this exemption, which is 5 U.S.C. § 552(b)(3). 5 U.S.C. § (b)(3)(B).

²¹ *See* *McDonnell v. United States*, 4 F.3d 1227, 1249 (3d Cir. 1993) (noting that the burden of showing that a document falls within the scope of a statute and is exempt rests on the government). *See generally* 5 U.S.C. § 552(a)(4)(B) (placing the burden on the agency to show an exemption applies); *ACLU of N.J. v. FBI*, 733 F.3d 526, 531 (3d Cir. 2013) (noting that the agency bears the burden of justifying the withholding of information under a FOIA exemption); *Church of Scientology of Cal. v. U.S. Dept. of Army*, 611 F.2d 738, 742 (9th Cir. 1979) (explaining that the burden of showing a document is exempt from disclosure falls on the agency that is refusing to disclose); *Harvey’s Wagon Wheel v. N.L.R.B.* 550 F.2d 1139, 1141–1142 (9th Cir. 1976) (explaining that the burden of “sustaining its refusal to disclose the information” falls on the agency that is refusing to disclose).

²² *See* *Rural Hous. Alliance v. U.S. Dept. of Agric.*, 498 F.2d 73, 76–77 (D.C. Cir. 1974) (holding that an investigation report containing detailed personal and medical information of persons allegedly discriminated against by the Department of Agriculture were “within the class of similar files” and its disclosure depended on whether it would result in a “clearly unwarranted invasion of personal privacy”). *But see* *Long v. Off. of Pers. Mgmt.*, 692 F.3d 185, 194 (2d Cir. 2012) (“[W]here public interest favoring disclosure is no more than minimal, a lesser privacy interest suffices to outweigh it.”).

conditions,²³ rap sheets,²⁴ and the incarceration of United States citizens in foreign prisons;²⁵

- (7) All “records or information compiled for law enforcement purposes.” In addition to federal law enforcement, this exemption may also apply to records compiled to enforce state law.

Exemption 7 covers many records.²⁶ For example, law enforcement manuals satisfy the requirements of Exemption 7 and may not be subject to disclosure. Other materials will fall under Exemption 7 if producing them:²⁷

- (1) Might “interfere with [law] enforcement proceedings.” This includes federal and state court proceedings. If the release of records could, for example, reveal the government’s evidence or strategy in a criminal case, then that release can be properly excluded;²⁸
- (2) “Would deprive a person [other than yourself] a right to a fair trial”;
- (3) Might “constitute an unwarranted invasion of personal privacy.” The majority of courts have held the identities of law enforcement personnel are exempt unless you can show proven, significant misconduct on the part of the investigators.²⁹ In other words, the names of law enforcement officers and other government employees will usually not be revealed;
- (4) Might “disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis.” Confidential sources may include people with a close relationship to you or the victim, or people who have a reasonable fear of retaliation (fear that someone might want to get back at them or hurt them for revealing information).³⁰ If the

²³ See *Yonemoto v. Dept. of Veterans Affs.*, 686 F.3d 681, 696 (9th Cir. 2012) (finding that excluding information about the type of medical illness causing an employee to be absent from work was proper under Exemption 6); *McDonnell v. United States*, 4 F.3d 1227, 1254 (3d Cir. 1993) (noting that a “living individual” may have a “strong privacy interest in withholding his medical records” that outweighs a public request); *Rural Hous. Alliance v. U.S. Dept. of Agric.*, 498 F.2d 73, 77 (D.C. Cir. 1974) (holding that Exemption 6 of FOIA covered a USDA report that included, among other things, individual’s medical condition and history); *Brown v. FBI*, 658 F.2d 71, 74–76 (2d Cir. 1981) (upholding denial of plaintiff’s request for FBI files that included an individual’s possible involvement with illegal drugs because that information falls within Exemption 6).

²⁴ See *U.S. Dept. of Just. v. Repts. Comm. for Freedom of the Press*, 489 U.S. 749, 780, 109 S. Ct. 1468, 1485, 103 L.Ed.2d 774, 800 (1989) (holding that a third-party request for an individual’s rap sheet when the request does not seek official information about a government agency is an unwarranted invasion of privacy).

²⁵ See *Harbolt v. Dept. of State*, 616 F.2d 772, 774 (5th Cir. 1980) (holding disclosure of names and addresses of U.S. citizens imprisoned in foreign countries on narcotics offenses would be an unwarranted invasion of their privacy).

²⁶ See 5 U.S.C. § 552(b)(7); see also *U.S. Dept. of Just. v. Repts. Comm. for Freedom of the Press*, 489 U.S. 749, 756 n.9, 109 S. Ct. 1468, 1473 n.9, 103 L.Ed.2d 774, 785 n.9 (1989) (noting that the shift “from ‘the would constitute’ standard to ‘the could reasonably be expected to constitute’ standard represents a considered congressional effort ‘to ease considerably a federal law enforcement agency’s burden in invoking [Exemption 7]’” (alteration in original) (citation omitted)).

²⁷ See 5 U.S.C. §552(b)(7) (listing instances where production of law enforcement records would be exempt).

²⁸ See *Lynch v. Dept. of the Treasury*, No. 98-56358, 2000 U.S. App. LEXIS 1392, *9–13 (9th Cir., 2000) (stating that even though the agency that was party to the trial had closed its investigation, an ongoing interagency task force was sufficient reason for the Department of the Treasury to deny access to the information); *Manna v. U.S. Dept. of Just.*, 51 F.3d 1158, 1164–1165 (3d Cir. 1995) (affirming a district court’s finding that government records were properly denied under Exemption (b)(7)(A) because disclosure of such information would interfere with future prosecutions and deny sources confidentiality that they were assured).

²⁹ See, e.g., *Sutton v. IRS*, No. 05 C 7177, 2007 U.S. Dist. LEXIS 299, at *17–18, 99 A.F.T.R.2d (RIA) 387 (N.D. Ill. Jan. 4, 2007) (holding that the court should balance the public’s interest in disclosure against the interest in non-disclosure of personal information); *Massey v. FBI*, 3 F.3d 620, 624 (2d Cir. 1993) (holding that government employees have a privacy interest in concealing their identities but that interest must be balanced against the public interest in disclosure); *Anderson v. U.S. Dept. of Just.*, No. 95-1888 (TFH), 1999 U.S. Dist. LEXIS 4731, at *8–9 (D.D.C. Mar. 31, 1999) (finding that the names of government witnesses count as information compiled for law enforcement purposes).

³⁰ See *Hale v. U.S. Dept. of Just.*, 226 F.3d 1200, 1202, 1204–1205 (10th Cir. 2000) (reaffirming that the test for confidentiality requires case by case analysis, and holding that the identity of witnesses was properly withheld

- information is confidential, given to the agency by one source only, and collected in the course of a criminal investigation, agencies are permitted to withhold all of the information provided by that source:
- (5) Would disclose investigative techniques, procedures, or guidelines for law enforcement investigations or prosecution that would create a risk of people breaking the law. This exemption is limited to techniques, procedures, or guidelines not generally known to the public, or not generally known by the public to be useful, and applies even when the government only expects that disclosure would create a risk of people evading the law;³¹
 - (6) Might “endanger the life or physical safety of any individual.” This is a frequently claimed exemption, because while it is similar to Exemption 7(C) (production of law enforcement records/information that might “constitute an unwarranted invasion of personal privacy”), it does not require the court to consider the public interest in its decision.³²

While FOIA requesters are generally sent copies of the information they have requested, agencies sometimes only allow you to see the documents and do not provide you with a copy. In *Tax Analysts v. United States Department of Justice*, one court noted that an agency does not need to respond to a FOIA request for copies of documents when the agency has provided another way of accessing the same information.³³ For example, if an agency makes the requested information available in a public reading room, this is enough to satisfy FOIA.³⁴ Therefore, if an agency itself declines to send you copies of the requested information, it must provide you with another form of access.³⁵

The Privacy Act (PA) also has exemptions that allow government agencies to deny requests for documents. These exemptions are much broader than the FOIA exemptions. The PA exemptions are:³⁶

- (1) Material maintained by the Central Intelligence Agency (“CIA”);³⁷

because they otherwise wouldn’t have spoken to the FBI due to the nature of the crime and relationships to people involved); *see also* *Hodge v. FBI*, 703 F.3d 575, 581–582 (D.C. Cir. 2013) (holding that names of witnesses were properly withheld where they had been assured that they would remain confidential).

³¹ *See* *Blackwell v. FBI*, 646 F.3d 37, 42, 396 U.S. App. D.C. 164, 169 (D.C. Cir. 2011) (noting Exemption 7(E) sets a relatively low bar, and holding that documents containing information on FBI forensic examination procedures were properly excluded from FOIA request); *see also* *Mayer Brown LLP v. IRS*, 562 F.3d 1190, 1193–1194 (D.C. Cir. 2009) (affirming that the IRS did not have to disclose documents if revealing them could reasonably be expected to risk helping or training a person to break the law, especially because tax crimes involve a cost-benefit analysis).

³² *Anderson v. U.S. Dept. of Just.*, No. 95-1888 (TFH), 1999 U.S. Dist. LEXIS 4731, at *10–11 (D.D.C. Mar. 31, 1999) (finding the incarcerated person could not obtain witness names from a police lineup because it could have subjected them to harassment and threats); *Ferreira v. Drug Enf’t Admin.*, 874 F. Supp. 15, 17 (D.C. Cir. 1995) (holding that the DEA properly withheld the names and identities of agents when the disclosure could reasonably be expected to endanger their life or physical safety).

³³ *Tax Analysts v. U.S. Dept. of Just.*, 845 F.2d 1060, 1066–1067 (D.C. Cir. 1988), *affirmed*, 492 U.S. 136, 109 S. Ct. 2841, 106 L. Ed. 2d 112 (1989) (holding an agency may satisfy its FOIA obligations by simply making extra copies of documents available in its public reading room; it does not have to mail copies of records).

³⁴ *Tax Analysts v. U.S. Dept. of Just.*, 845 F.2d 1060, 1066–1067 (D.C. Cir. 1988), *affirmed*, 492 U.S. 136, 109 S. Ct. 2841, 106 L. Ed. 2d 112 (1989) (holding an agency may satisfy its FOIA obligations by simply making extra copies of documents available in its public reading room; it does not have to mail copies of records); *see also* *Oglesby v. U.S. Dept. of the Army*, 920 F.2d 57, 70, 287 U.S. App. D.C. 126, 139 (D.C. Cir. 1990) (finding an agency is not required to mail information in response to a FOIA request when that information has been made available to the public in another format); *Grunfeld & Harrick v. U.S. Customs Serv.*, 709 F.2d 41, 42–43 (11th Cir. 1983) (holding an agency was not required to mail documents in response to a FOIA request when the documents were available for viewing and copying at the customhouse in Puerto Rico).

³⁵ *Tax Analysts v. U.S. Dept. of Just.*, 845 F.2d 1060, 1066–1067 (D.C. Cir. 1988), *affirmed*, 492 U.S. 136, 109 S. Ct. 2841, 106 L. Ed. 2d 112 (1989) (holding an agency may not avoid producing its records in response to a FOIA request by directing the requester to a public source outside the agency that has the same information).

³⁶ 5 U.S.C. § 552a(j)–(k). *See, e.g.*, *Bassiouni v. FBI*, 436 F.3d 712, 724–725 (7th Cir. 2006) (holding that the district court rightly sided with the FBI in a Privacy Act case where the FBI refused to remove information from a person’s file because the information was relevant to the FBI’s law enforcement activity).

³⁷ 5 U.S.C. § 552a(j)(1).

- (2) Material maintained by a law enforcement agency. This includes police, corrections, and prosecutors' offices;³⁸
- (3) Material that is "properly" secret in the interests of national defense or foreign policy;³⁹
- (4) Material gathered for criminal investigative law enforcement purposes by agencies whose main function is not law enforcement;⁴⁰
- (5) Material contained in Secret Service record systems, relating to protection of the President and others whom the Secret Service protects;⁴¹
- (6) Material required by law to be maintained and used only as statistical records;⁴²
- (7) Material that identifies individuals who were promised that their identity would be kept secret when they provided information to the government as part of a background check for a job application;⁴³
- (8) Material related to testing or examination used only to determine individual qualifications for appointment or promotion in the federal service;⁴⁴ or
- (9) Material that would identify individuals who were promised that their identity would be kept secret when they provided information used in promotion decisions for members of the armed forces.⁴⁵

You should always request information under both FOIA and the PA. Agencies may not hide the information from you when it is exempt under one statute, but not exempt under the other.⁴⁶ In other words, "[i]f a FOIA exemption covers the documents, but a Privacy Act exemption does not, the documents must be released under the Privacy Act; if a Privacy Act exemption but not a FOIA exemption applies, the documents must be released under FOIA."⁴⁷

Do not let the exemptions stop you from making requests, as the records may be available because of an agency or court interpretation of the law. In addition, agencies are not required to keep the information from you just because a particular exemption *could* be applied. Agency officials can choose not to follow the exemptions and give you the materials you requested. If information is withheld, you can challenge that decision by writing an administrative appeal letter or filing a lawsuit.

4. How to Make Your Request for Information from the Department of Justice

As noted above, every agency has a very specific procedure that you must follow in order for your FOIA or PA request to be granted. This Section will only describe the procedures that you must follow if you are seeking to request information from the DOJ. To get information from other agencies, or if you do not know which agency holds the information you want, you can check any government directory or the "United States Government Manual."⁴⁸

³⁸ 5 U.S.C. § 552a(j)(2). To be exempt, the record by an agency under this section must consist of information compiled to identify individual criminal offenders and alleged offenders; information compiled for criminal investigation, including reports of informants and investigators; or reports that identify an individual and that were compiled at any stage of the process of enforcement of the criminal laws.

³⁹ 5 U.S.C. § 552a(k)(1).

⁴⁰ 5 U.S.C. § 552a(k)(2).

⁴¹ 5 U.S.C. § 552a(k)(3).

⁴² 5 U.S.C. § 552a(k)(4).

⁴³ 5 U.S.C. § 552a(k)(5).

⁴⁴ 5 U.S.C. § 552a(k)(6).

⁴⁵ 5 U.S.C. § 552a(k)(7).

⁴⁶ 5 U.S.C. § 552a(t)(1)–(2).

⁴⁷ *Martin v. Off. of Special Couns., Merit Sys. Prot. Bd.*, 819 F.2d 1181, 1184 (D.C. Cir. 1987) (denying release of requested information because the information was exempted under both the PA and the FOIA).

⁴⁸ The United States Government Manual may be available in your law library, but it is likely out of date (though the information in it does not regularly change, so an out-of-date copy will still be helpful). As of 2023, the Government Publishing Office no longer provides a paper edition of the Manual available for purchase. It is only available online at <http://www.usgovernmentmanual.gov>.

In general, if you request information from the DOJ, you should try to send your request to the specific division that has the records you want.⁴⁹ If you are uncertain about which division to write to, you can send your request to the DOJ's FOIA/PA Mail Referral Unit, and someone in that division will forward your letter to the division they think most likely to have the information you want. All requests should be in writing and sent to the following address:

FOIA/PA Mail Referral Unit
Attn: FOIA Request
Department of Justice
Room 115
LOC Building
Washington, DC 20530-0001

The rest of this Section addresses how to make a request for information from two divisions of the DOJ: the Federal Bureau of Prisons ("BOP") and the FBI. It discusses the fees that you will be charged for making such requests, the types of responses you may receive from either the FBI or the BOP, and the appeals process, which may be useful if your request is denied.

(a) Requesting Information from the Federal Bureau of Prisons

The BOP maintains records on people who are currently or formerly incarcerated at federal penal and correctional facilities, as well as records relating to the administration of the agency. Subsection (i) of this Subsection describes how to request information from your institution and Subsection (ii) describes how to request information from the BOP under FOIA and the PA.

(i) *Requesting Information from Your Institution*⁵⁰

If you would like access to your Inmate Central File, the BOP encourages you to request this information from your institution. Many records within the Inmate Central File can be disclosed without you having to file a FOIA request. These include records relating to your sentence, detainer, participation in programs, classification data, parole information, mail, visits, property, conduct, work, release processing, and general correspondence. You can also request access to some medical records from your institution.

The warden of your facility should have selected a staff member to receive requests for access to these records. To request access to your Inmate Central File or medical records, you should submit a request to this person, who must promptly schedule a time for you to review your file. Staff members must tell you if there are documents in your Inmate Central File or medical records that were withheld from you. If you would like access to these withheld documents, you will need to make a FOIA and PA request.

(ii) *Requesting Information from the BOP Under the FOIA and the PA*

To file a request for information from the BOP under FOIA, including any information withheld from your review of your Inmate Central File or your medical records, or any other records, your request should:⁵¹

⁴⁹ For more information about each division, see *Organizational Chart*, U.S. DEPT. OF JUST., available at <https://www.justice.gov/agencies/chart> (last visited Sep. 17, 2023). For a list of FOIA contacts at the DOJ, see *Find A FOIA Contact at DOJ*, U.S. DEPT. OF JUST., available at <https://www.justice.gov/oip/find-foia-contact-doj/list> (last visited Sep. 17, 2023).

⁵⁰ For more information on how to make a request from your institution, see BUREAU OF PRISONS, U.S. DEPT. OF JUST., PROGRAM STATEMENT NO. 1351.05, RELEASE OF INFORMATION (Sept. 19, 2002, revised Mar. 9, 2016), available at https://www.bop.gov/policy/progstat/1351_005_CN-2.pdf (last visited Sep. 17, 2023).

⁵¹ See BUREAU OF PRISONS, U.S. DEPT. OF JUST., PROGRAM STATEMENT NO. 1351.05, RELEASE OF INFORMATION (Sept. 19, 2002, revised Mar. 9, 2016), available at https://www.bop.gov/policy/progstat/1351_005_CN-2.pdf (last visited Sep. 17, 2023); *IV. How to Make a FOIA Request*, in *Department of Justice Freedom of Information Act*

- (1) Be in writing;
- (2) Be clearly marked "Freedom of Information Act/Privacy Act Request" on the front of the letter *and* the envelope;
- (3) Clearly describe the records you seek, including the approximate dates (time frame) the records should cover; you do not need to know the name of the records, but being as specific as possible helps the DOJ to locate your records.
- (4) Include your full name, current address, date of birth, place of birth, and social security number (if you have one); and
- (5) Include your federal register number and the facility where you were last housed.

You must also verify your identity in one of the following ways:

- (1) Complete and sign Form DOJ-361 (See Appendix B);
- (2) Have the signature on the request witnessed by a notary; or
- (3) Include the following statement before the signature on the requested letter: "I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]."

If you are seeking personal information, make sure that you provide the necessary identification information in one of those three ways. If you do not, your request will not be processed by the DOJ.⁵² If you are requesting information about someone other than yourself, the information will not be given to you unless:

- (1) You provide a statement by the other person specifically authorizing the release of information (the statement must be signed by that person and either witnessed by a notary or include a declaration made under penalty of perjury); or
- (2) You provide evidence that the subject of the request is deceased, such as a death certificate, or some comparable proof of death such as a newspaper obituary.

Once you complete these steps, you may email your request to BOP-OGC-EFOIA-S@BOP.GOV or mail it to:⁵³

FOIA/PA Section
Office of General Counsel, Room 924
Federal Bureau of Prisons
320 First Street, N.W.
Washington, DC 20534

There is also an online request form on the BOP website. However, you *cannot* use online requests if you are requesting any non-public information on an individual, since you cannot include the verification or authorization described above in the online form. You can access the online form at <https://www.bop.gov/foia/#tabs-5>.

If you have questions, the FOIA Requester Service Center can be reached by telephone at (202) 616-7750, and the FOIA Public Liaison can be reached at (202) 616-7750.

(b) Requesting Information from the FBI

The FBI collects evidence in legal cases in which the United States is, or might be, an interested party. The FBI also investigates violations of certain federal laws.⁵⁴ If you have internet access, you

Reference Guide, DEPT. OF JUST., available at <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide> (last updated Dec. 22, 2022) (last visited Sep. 17, 2023).

⁵² *IV. How to Make a FOIA Request*, in *Department of Justice Freedom of Information Act Reference Guide*, DEPT. OF JUST., available at <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide> (last updated Dec. 22, 2022) (last visited Sep. 17, 2023).

⁵³ *Freedom of Information Act*, BUREAU OF PRISONS, available at <https://www.bop.gov/foia/#tabs-5> (last visited Sep. 17, 2023).

⁵⁴ Online FOIA/PA requests can be submitted through the FBI's eFOIPA portal at <https://efoia.fbi.gov>.

can submit an online request on FBI's website.⁵⁵ If you need to mail your request for information under FOIA and/or under the PA, send it to the following address:

FBI, Attn: FOIPA Request
200 Constitution Drive
Winchester, VA 22602-4843

To request any information from the FBI, under either FOIA or the PA, your request must:

- (1) Be in writing;
- (2) Provide your full name;
- (3) Provide your date and place of birth; and
- (4) Either be notarized by a notary public, or include the following statement before the signature on the letter: "I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]."

You can email foipaquestions@fbi.gov with questions about preparing or submitting requests. You can also call the FOIA Requester Service Center at (540) 868-1535 for recorded information on how to submit a new FOIA/PA request to the FBI. Finally, call (540) 868-4593 to discuss the status of an existing FOIA/PA request to the FBI.

If you are requesting information about someone else and that person is alive, your request must include a waiver signed by that person and verified by a notary public. You must also include the person's full name as well as his or her date and place of birth. If you are requesting information about someone who is deceased, you must provide that person's name and proof of death, either in the form of an obituary, death certificate, or published record that indicates the person is actually dead.⁵⁶

(c) Fees

Within a reasonable amount of time after your request, staff should provide you with copies of the disclosable documents from your Inmate Central File and/or medical records. Copies cost ten cents per page. In addition, you will be charged a fee for the search time required to process your request. The cost of search time is \$2.25 per fifteen minutes for clerical staff, \$4.50 per fifteen minutes for professional staff, and \$7.50 per fifteen minutes for managerial staff. You will not be charged for the first 100 pages of copies or the first two hours of search time, and you will only be charged for fees that total above \$8.00.⁵⁷

When you file either a FOIA or PA request with the DOJ, the Department assumes that you are willing to pay fees up to \$25. Most of the time, no fees are ever charged.⁵⁸ However, if you cannot, or do not want to, pay \$25, you should state how much you can pay in your request letter. If the DOJ estimates that your fees will be more than \$25, they will let you make a cheaper request or ask you to agree to pay the estimated amount before they process your request. According to the DOJ website, "[y]ou ordinarily will not be required to actually pay the fees until the records have been processed and are ready to be sent to you."⁵⁹

⁵⁵ See 28 U.S.C. §§ 535, 540–540b (describing various crimes that the FBI is authorized to investigate, for example, crimes involving government officers and employees and killing of state or local law enforcement officers).

⁵⁶ *Requesting FBI Records*, FBI, available at <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/freedom-of-information-privacy-act/requesting-fbi-records> (last visited Sep. 17, 2023).

⁵⁷ See BUREAU OF PRISONS, U.S. DEPT. OF JUST., PROGRAM STATEMENT NO. 1351.05, RELEASE OF INFORMATION 21–22 (Sept. 19, 2002, revised Mar. 9, 2016), available at https://www.bop.gov/policy/progstat/1351_005_CN-2.pdf (last visited Sep. 17, 2023).

⁵⁸ VII. Fees, in *Department of Justice Freedom of Information Act Reference Guide*, DEPT. OF JUST., available at <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide> (last updated Dec. 22, 2022) (last visited Sep. 17, 2023).

⁵⁹ VII. Fees, in *Department of Justice Freedom of Information Act Reference Guide*, DEPT. OF JUST., available at <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide> (last updated Dec. 22, 2022) (last visited Sep. 17, 2023).

You can also request a fee waiver, which allows you to skip paying the fees. To get a fee waiver, you must show you are requesting the information to benefit the public, not your own interests. Because you are requesting records about yourself, you will probably not meet this standard.⁶⁰ You cannot get a fee waiver just because you cannot afford to pay the fees.⁶¹ If you are entirely without a way to pay, you can ask for a fee waiver for that reason, but the DOJ usually denies such requests.

(d) Initial Response to Requests

Once a division of the DOJ has processed your request and any fee issues have been resolved, the division will send you a response. This response may be (1) the information you requested, (2) some of the information you requested and a letter explaining why part of your request was denied, or (3) a letter explaining why your entire request was denied. If information is being withheld, the letter will tell you whether the information is being withheld because of one of the exemptions to the PA or FOIA. Also, note that in some cases you may receive the documents a short time after you receive this response.

The BOP should respond to your request within twenty business days, not counting Saturdays, Sundays, and legal holidays. The twenty-day period begins when the BOP's FOIA office receives your request. The BOP may extend the initial response time an additional ten business days when one of the following applies:

- (1) Records must be collected from field offices;
- (2) A "voluminous" (large) quantity of records must be located, compiled, and reviewed in response to the request; or
- (3) The request requires that the BOP consult with another agency that has a substantial interest in the information, or among two or more other DOJ Divisions.

When the BOP needs more time to process your request, they will inform you in writing and give you the opportunity to modify your request.⁶²

5. What to Do if Your Request is Denied

If your initial request is denied, you should first file an administrative appeal with the agency you are requesting information from. If your administrative appeal is also denied, you can file a lawsuit.

(a) Filing an Appeal

You should file an appeal if you are not satisfied with the response you received to your FOIA request. Your appeal should be in writing, marked "Freedom of Information Act Appeal" on the front of the envelope and on the appeal itself, and must be received by the DOJ within sixty days of the date of the DOJ's initial letter. You can mail your appeal to the following address:

Office of Information Policy
United States Department of Justice
Attn: Freedom of Information Act Appeal
Suite 11050
1425 New York Avenue, N.W.
Washington, DC 20530-0001

⁶⁰ VIII. *Fee Waivers*, in *Department of Justice Freedom of Information Act Reference Guide*, DEPT. OF JUST., available at <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide> (last updated Dec. 22, 2022) (last visited Sep. 17, 2023) (stating that requests for fee waivers from individuals who are seeking records about themselves usually do not meet this standard).

⁶¹ VIII. *Fee Waivers*, in *Department of Justice Freedom of Information Act Reference Guide*, DEPT. OF JUST., available at <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide> (last updated Dec. 22, 2022) (last visited Sep. 17, 2023).

⁶² V. *Response Times*, in *Department of Justice Freedom of Information Act Reference Guide*, DEPT. OF JUST., available at <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide> (last updated Dec. 22, 2022) (last visited Sept. 16, 2023).

Your appeal should include the name of the Component (office within the agency) that denied your request, the initial request number that was assigned to the request, and the date of the BOP's action. If no request number has been assigned, you should try to enclose a copy of the BOP's determination letter with your appeal. You should also explain your reasons for disagreeing with the BOP's denial of your request. Do not attach specific documents unless they are directly related to a point you are making in the appeal.⁶³ Once your appeal has been received, it will be reviewed by an attorney in the Office of Information Policy ("OIP"). At that point, the OIP will either (1) affirm the BOP's decision, (2) affirm part of the BOP's decision and release other information requested, or (3) reverse or modify the original decision and send the request to the BOP to reprocess the request.⁶⁴

(b) Filing a Lawsuit

If the appeal does not get you the information you requested, you can file a lawsuit to force the agency to release the documents. You have up to six years after the date your administrative appeal was denied to file a lawsuit,⁶⁵ but you should try to file as soon as possible to show the court that you need the information.

Filing a FOIA complaint should be relatively cheap and simple.⁶⁶ Sometimes, as soon as the complaint is filed, the government will release the documents without further litigation. If you are denied documents that you think are clearly covered by FOIA, you may wish to draft and file your own short-form complaint. In addition, you should consider filing a "Motion for a *Vaughn* Index" using the sample *Vaughn* motion reproduced in Appendix C-5 at the end of this Chapter.⁶⁷ This is a routine motion under which the government agency will be required to give you a detailed list describing the documents it is withholding and the reason it claims for withholding each.

After you file, the burden is on the government to justify why it is withholding the information.

C. Conclusion

While FOIA can be a great tool to get documents related to your case or your life, it is important to follow the procedural rules. Many states have passed their own Freedom of Information laws with their own procedures for requesting documents. If you are considering filing a Freedom of Information request to a state agency under a state law, make sure you read the relevant state laws—some states do not have a fee waiver provision like the federal Freedom of Information Act. Also, know that it can take many months to receive a final response to your FOIA request. However, if you believe that FOIA information will be helpful for you or your case, it never hurts to file a request just in case.

⁶³ *X. Administrative Appeals*, in *Department of Justice Freedom of Information Act Reference Guide*, DEPT. OF JUST., available at <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide> (last updated Dec. 22, 2022) (last visited Sept. 16, 2023).

⁶⁴ See 28 C.F.R. § 16.8(c) (2023); *X. Administrative Appeals*, in *Department of Justice Freedom of Information Act Reference Guide*, DEPT. OF JUST., available at <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide> (last updated Dec. 22, 2022) (last visited Sept. 16, 2023).

⁶⁵ 28 U.S.C. § 2401(a).

⁶⁶ Various resources are available to help jailhouse lawyers filing FOIA lawsuits. The names of several organizations that will advise incarcerated people can be found in Appendix D-1 of this Chapter.

⁶⁷ This procedure was adopted in *Vaughn v. Rosen*, 484 F.2d 820, 826–828 (D.C. Cir. 1973) (instructing trial court to provide itemized index of disclosable and exempt documents, with justifications for exemptions).

APPENDIX A

STATE FREEDOM OF INFORMATION LAWS

State	Statute
Alabama	Ala. Code §§ 36-12-40 to 36-12-41 (LexisNexis 2022 & Supp. 2013).
Alaska	Alaska Stat. §§ 40.25.100 to 40.25.295 (LexisNexis 2013).
Arizona	Ariz. Rev. Stat. Ann. §§ 39-121 to 39-129 and 39-171 (LexisNexis 2022).
Arkansas	Ark. Code Ann. §§ 25-19-101 to 25-19-112 (2022).
California	Cal. Gov't Code §§ 6250 to 6270 (West 2013).
Colorado	Colo. Rev. Stat. Ann. §§ 24-72-201 to 24-72-206 (West 2013).
Connecticut	Conn. Gen. Stat. Ann. §§ 1-200 to 1-259 (West 2013).
Delaware	Del. Code Ann. tit. 29, §§ 10001 to 10008(2023).
Dist. of Columbia	D.C. Code Ann. §§ 2-531 to 2-540 (2013).
Florida	Fla. Stat. Ann. §§ 119.01 to 119.15 (West 2013).
Georgia	Ga. Code Ann. §§ 50-18-70 to 50-18-77 (LexisNexis 2013).
Hawaii	Haw. Rev. Stat. Ann. §§ 92F-1 to 92F-43 (LexisNexis 2007 & Supp. 2013).
Idaho	Idaho Code Ann. §§ 74-101 to 74-127 (2023).
Illinois	5 Ill. Comp. Stat. Ann. §§ 140/1 to 140/11.5 (West 2013).
Indiana	Ind. Code Ann. §§ 5-14-3-1 to 5-14-3-10 (LexisNexis 2013).
Iowa	Iowa Code Ann. §§ 22.1 to 22.14 (West 2012).
Kansas	Kan. Stat. Ann. §§ 45-215 to 45-250 (2012).
Kentucky	Ky. Rev. Stat. Ann. §§ 61.870 to 61.884 (LexisNexis 2013).
Louisiana	La. Rev. Stat. Ann. §§ 44:1 to 44:41 (West 2012).
Maine	Me. Rev. Stat. Ann. tit. 1, §§ 401 to 414 (West 2013).
Maryland	Md. Code Ann., State Gov't §§ 10-611 to 10-630 (LexisNexis 2013).
Massachusetts	Mass. Ann. Laws ch. 4, § 7(26) (LexisNexis 2013) and ch. 66, § 10 (LexisNexis 2013).
Michigan	Mich. Comp. Laws Ann. §§ 15.231 to 15.246 (West 2013).
Minnesota	Minn. Stat. Ann. §§ 13.03 to 13.04 (West 2013) and 138.17 (West 2013).
Mississippi	Miss. Code Ann. §§ 25-61-1 to 25-61-19 (2013).

State	Statute
Missouri	Mo. Ann. Stat. §§ 109.180 to 109.195 (West 2013).
Montana	Mont. Code Ann. §§ 2-6-101 to 2-6-112 (2011).
Nebraska	Neb. Rev. Stat. §§ 84-712 to 84-712.09 (LexisNexis 2012).
Nevada	Nev. Rev. Stat. Ann. §§ 239.005 to 239.030 (LexisNexis 2011).
New Hampshire	N.H. Rev. Stat. Ann. §§ 91-A:1 to 91-A:9 (LexisNexis 2011).
New Jersey	N.J. Stat. Ann. §§ 47:1A-1 to 47:1A-13 (West 2013).
New Mexico	N.M. Stat. Ann. §§ 14-2-1 to 14-2-12 (2012).
New York	N.Y. Pub. Off. Law §§ 84 to 90 (McKinney 2013).
North Carolina	N.C. Gen. Stat. §§ 132-1 to 132-10 (2013).
North Dakota	N.D. Cent. Code §§ 44-04-18 to 44-04-19.3 (2013).
Ohio	Ohio Rev. Code Ann. §§ 149.43 to 149.45 (LexisNexis 2013).
Oklahoma	Okla. Stat. Ann. tit. 51, §§ 24A.1 to 24A.29 (West 2013).
Oregon	Or. Rev. Stat. §§ 192.410 to 192.505 (West 2012).
Pennsylvania	65 Pa. Cons. Stat. Ann. §§ 67.101 to 67.3104 (West 2013).
Rhode Island	R.I. Gen. Laws §§ 38-2-1 to 38-2-15 (West 2013).
South Carolina	S.C. Code Ann §§ 30-4-10 to 30-4-165 (2012).
South Dakota	S.D. Codified Laws §§ 1-27-1 to 1-27-48 (2013).
Tennessee	Tenn. Code Ann. §§ 10-7-503 to 10-7-509 (2012).
Texas	Tex. Gov't Code Ann. §§ 552.001 to 552.353 (West 2011).
Utah	Utah Code Ann. §§ 63G-2-101 to 63G-2-406 (LexisNexis 2012).
Vermont	Vt. Stat. Ann. tit. 1, §§ 315 to 320 (2012).
Virginia	Va. Code Ann. §§ 2.2-3700 to 2.2-3714 (2013).
Washington	Wash. Rev. Code Ann. §§ 42.56.001 to 42.56.904 (West 2012).
West Virginia	W. Va. Code Ann. §§ 29B-1-1 to 29B-1-7 (LexisNexis 2012).
Wisconsin	Wis. Stat. Ann. §§ 19.31 to 19.39 (West 2012).
Wyoming	Wyo. Stat. Ann. §§ 16-4-201 to 16-4-205 (West 2013).

APPENDIX B

DEPARTMENT OF JUSTICE CERTIFICATION OF IDENTITY FORM

Department of Justice Certification of Identity

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d), personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103-0016), Washington, DC 20503.

Full Name of Requester⁶⁸ _____

Citizenship Status⁶⁹ _____ Social Security Number⁷⁰ _____

Current Address _____

Date of Birth _____ Place of Birth _____

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Print or Type Name

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or

⁶⁸ Name of individual who is the subject of the record(s) sought.

⁶⁹ Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence." Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.

⁷⁰ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.

obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature⁷¹ _____ Date _____

⁷¹ Signature of the individual who is the subject of the record sought.

APPENDIX C

SAMPLE LETTERS

C-1. Sample FOIA Request Letter (Federal)

Return Address

Date

Freedom of Information Officer

Name of Agency

Address

Dear Sir or Madam:

This request is made under the Freedom of Information Act (FOIA), 5 U.S.C. Section 552 [and the Privacy Act 5 U.S.C. Section 552a].

Please send me copies of the following documents: [describe the documents you want as clearly as possible, including names, places, and period of time about which you are inquiring].

As you know, the Freedom of Information Act provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed. Therefore, I will expect you to send me all nonexempt portions of the records which I have requested, and ask that you justify any deletions with reference to specific exemptions of FOIA. The information requested is not to be used for commercial benefit, so I do not expect to be charged fees for your review of the material to see if it falls within one of FOIA's exemptions.

[Option I]

I promise to pay reasonable search and duplication costs in connection with this request. However, please notify me ahead of time if you estimate that total fees will exceed \$ _____ so I can approve the additional amount.

[Option II]

FOIA provides for the waiver or reduction of search and duplication fees where the "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." This request should be exempt from all fees because [here explain how you intend to distribute the information you receive, and how those to whom you distribute it will be better informed about the operations of the government]. If you deny this request, however, please notify me if fees will exceed \$ _____ so I can decide whether to pay the fees or appeal your denial of my request for a waiver.

Sincerely,

[Signature]

C-2. Sample FOIA Appeal Letter (Federal)

Return Address

Date

Administrator
Name of Agency
Address

To the Administrator:

This is an appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552. On [date], I made a FOIA request to your agency for [brief description of the materials sought]. On [date], your agency denied my request because [state the ground for denial cited by that agency] [or, if the agency has not responded to you within the legal limit of 20 days, say how long they have delayed your request.] Copies of the correspondence are attached.

Please be informed that I consider the requested material clearly releasable under FOIA and consider your agency's policy to be arbitrary and capricious.

[Insert any arguments in favor of disclosure of the documents, if you wish.]

I expect that upon reconsideration, you will reverse the decision to deny my request. However, if you do deny this appeal, I intend to file a lawsuit to compel disclosure.

Sincerely,
[Signature]

C-3. Sample FOIL Request Letter (New York State)

Return Address

Date

Records Access Officer
Name of Agency
Address of Agency
City, NY ZIP Code

Re: Freedom of Information Law Request

Records Access Officer:

Under the provisions of the New York Freedom of Information Law, Article 6 of the Public Officers Law, I hereby request records or portions thereof pertaining to _____ [identify the records in which you are interested as clearly as possible].

If there are any fees for copying the records requested, please inform me before filling the request [or: Please inform me if the fees associated with this request exceed \$____.]

As you know, the Freedom of Information Law requires that an agency respond to a request within five business days of receipt of a request. Therefore, I would appreciate a response as soon as possible and look forward to hearing from you shortly. If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.

Sincerely,
[Signature]

C-4. Sample FOIL Appeal Letter (New York State)

Return Address

Date

Records Access Officer
 Name of Agency Official
 Appeal Officer
 Address of Agency
 City, NY ZIP Code

Re: Freedom of Information Law Appeal

Dear _____:

I hereby appeal the denial of access regarding my request, which was made on _____ [date] and sent to _____ [records access officer, name and address of agency].

The records that were denied include: _____ [list and describe the records that were denied].

As required by the Freedom of Information Law, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within ten business days of the receipt of an appeal. If the records are denied on appeal, please explain the reasons for the denial fully in writing as required by law.

In addition, please be advised that the Freedom of Information Law directs that all appeals and the determinations that follow be sent to the Committee on Open Government, New York Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, NY 12231.

Sincerely,
 [Signature]

C-5. Sample 5. Sample Vaughn Motion⁷²

[Use the proper court caption]

Motion Under Vaughn v. Rosen to Require Detailed Indexing, Justification, and Itemization

Plaintiff [your name] moves this Court for an order requiring Defendants [name of agency and agency head] to provide within 30 days of the filing of the Complaint in this action, a detailed justification for allegations contained in the Defendant's Answer and previous administrative denial that the requested documents are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552, including an itemization and index of the documents claimed to be exempt, correlating specific statements in such justification with actual portions of the requested documents. See Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. den., 415 U.S. 977 (1974).

Respectfully Submitted,
 [Name of plaintiff or plaintiff's attorney]
 Address

Dated: [date] [city and state]

⁷² It is difficult to determine the proper federal court in which to file your Vaughn motion. To find out how to proceed, write or call the clerk of the federal district court that has jurisdiction over the agency from which you are trying to get information. Most federal agencies are headquartered in Washington, D.C. The address for the federal

district court of D.C. is: Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C. 20001. The phone number is (202) 354-3000.

APPENDIX D

ADDRESSES FOR USEFUL ORGANIZATIONS AND FEDERAL AGENCIES

D-1. Additional Information & Assistance

American Civil Liberties Union (“ACLU”)

125 Broad St., 18th Floor

New York, NY 10004

Phone: (212) 549-2500

ACLU chapters can give you information about FOIA, or “open records” laws, like FOIL, if you are seeking state or local government records.

Freedom of Information Clearinghouse

1600 20th Street NW

Washington, D.C. 20009

Phone: (202) 588-1000

<http://www.citizen.org/article/freedom-of-information-act-and-government-transparency>
The Clearinghouse provides legal and technical assistance to public interest groups, journalists and individual citizens using the laws granting access to information that is held by the government.

Legal Action Center

225 Varick Street, 4th Floor

New York, NY 10014

Phone: (212) 243-1313

Fax: (212) 675-0286

Email: lacinfo@lac.org

<http://www.lac.org>

The Legal Action Center Publishes the very useful “How to Get and Clean Up Your State Rap Sheet” with editions covering New York, California, Illinois, Pennsylvania, and Virginia.

ACLU National Prison Project

915 15th Street NW

7th Floor

Washington, D.C. 20005

Phone: (202) 393-4930

Fax: (202) 393-4931

<http://www.aclu.org/issues/prisoners-rights>

The Prison Project will refer prisoners to local aid groups where requests for information from state authorities are addressed.

D-2. Federal Government Agencies

Remember, always mark the outside of the envelope, “Freedom of Information Act Request.”

Divisions of the Department of Justice

Civil Rights Division

Chief, FOIA/PA Branch

Civil Rights Division

United States Department of Justice

4CON, Room 6.153

950 Pennsylvania Ave, N.W.

Washington, D.C. 20530

Phone: (202) 514-4210

Criminal Division

Chief, FOIA/PA Unit

Criminal Division

Department of Justice

Room 803, Keeney Building

Washington, D.C. 20530-0001

Phone: (202) 616-0307

Email: crm.foia@usdoj.gov

Drug Enforcement Administration

Drug Enforcement Administration

Freedom of Information and Privacy Act Unit

Attn: Intake Sub-Unit

8701 Morrisette Drive

Springfield, VA 22152

Phone: (571) 776-2300

Email: DEA.FOIA@dea.gov

Federal Bureau of Investigation

Federal Bureau of Investigation

Attn: Initial Processing Operations Unit

Record/Information Dissemination Section

200 Constitution Drive

Winchester, VA 22602

Email: foipaquestions@fbi.gov

United States Parole Commission

FOIA Unit
U.S. Parole Commission
90 K Street NE, Third Floor
Washington, DC 20530
Phone: (202) 346-7000
Email: USParole.questions@usdoj.gov

Immigration

Requests for U.S. Citizenship and Immigration Services should be addressed to:
National Records Center (NRC)
FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010

Office of the Attorney General

Requests should be addressed to:
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
6th Floor
441 G Street, N.W.
Washington, D.C. 20530-0001
Phone: (202) 514-FOIA
Fax: (202) 514-1009

Justice Management Division

FOIA Contact
Justice Management Division
Department of Justice
Room 1111 RFK
950 Pennsylvania Ave NW
Washington, D.C. 20530-0001
Phone: (202) 616-0253

The Justice Management Division can help you with questions regarding requests within the Justice Department, such as which division to write to and how to write the request.

Bureau of Citizenship and Immigration Services (formerly INS)

U.S. Citizenship and Immigration Services
National Records Center (NRC)
FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010

U.S. Commission on Civil Rights

FOIA Officer
U.S. Commission on Civil Rights
1441 Pennsylvania Ave., NW, Suite 1150
Washington, D.C. 20425
Phone: (202) 376-8351
Fax: (202) 376-1163
Email: foia@usccr.gov

Equal Employment Opportunity Commission

Legal Counsel, Equal Employment Opportunity Commission
Office of Legal Counsel, FOIA Programs
131 M Street, NE, Suite 5NW22B
Washington, D.C. 20507
Fax: (202) 827-7545
Email: foia@eeoc.gov

Department of Health and Human Services

Department of Health and Human Services (HHS), Office of the Secretary (OS)
Freedom of Information Act Office
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue, SW
Washington, D.C. 20201
Phone: (202) 690-7453
Fax: (202) 690-8320
Email: FOIARequest@hhs.gov

Internal Revenue Service

Internal Revenue Service
GLDS Support Services
Stop 93A
Post Office Box 621506
Atlanta, GA 30362
Fax: (877) 891-6035