



 centerforconstitutionalrights

F.O.I.A. REQUESTS

The resource guide

How to get access to
records created by
governmental bodies



INTRODUCTION

James Madison once said that “a popular government without information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both.” The challenge Madison noted two centuries ago is at the same time more and less complex today than ever before. While the amount of information necessary both to govern well and to be a responsible citizen is vastly greater today, the technical means of acquiring and disseminating vital information has improved in ways Madison could not have imagined.

This guide attempts to provide concrete answers to questions such as:

- What is an accessible government record?
- Who has the right of access to government record?
- How can one learn of the time, place and subject of public meetings?
- How much are public officials paid?
- What is an official’s net worth?
- Who contributes to his campaign and in what amounts?
- How can an individual or organization access federal, state, and local governmental records?

Please remember: while we hope to bring you the most accurate and up to date information possible, professional legal advice should be sought in all cases. While the Center for Constitutional Rights does not have the capacity to provide individual criminal representation, your state bar associations should be able to make attorney referrals, including to those who provide pro-bono services.

FREEDOM OF INFORMATION AT THE FEDERAL LEVEL

Since Congress passed the Freedom of Information Act (FOIA) in 1966, FOIA requests have been used to gain access to documents in the possession of federal agencies of the executive branch.

Who can request records?

Any “person,” individual (including foreign citizens), partnership, corporation, foreign or domestic association, government, state and state agency can request records for any reason. A “requestor” does not have to provide a reason for or otherwise justify the request. Requestors have traditionally been individuals. FOIA, however, has been heavily employed by businesses to obtain important records directly related to their operations, or to obtain information from relevant agencies that originate with the requesting business’ competitors. Also significant for the broad public interest is the media’s use of FOIA to develop stories on critically important policy issues.

How does FOIA define a “record” and “control” of a record?

Under FOIA, a record is any document or information file created or obtained by an agency and under that agency’s “control” at the time of the request. In determining “control,” the factors considered are: 1) the intent of the records creator to retain or relinquish control; 2) the ability of the agency to use and dispose of the records as they see fit; 3) the extent to which agency personnel have read or relied on the record; and 4) the degree to which the record was integrated into the agency’s record system. Records include those maintained in any format, including electronic.

What federal agencies are subject to FOIA?

Federal agencies subject to FOIA include any executive department, military department, corporation established or controlled by the government or other establishment in the executive branch (including the executive office of the President) or any independent regulatory agency.

Are all records accessible?

Not all records are accessible under FOIA. The nine types of records exempted from FOIA are records that are:

- Specifically exempted by executive order in the interest of national defense or foreign policy;
- Related solely to internal personnel rules and practices of an agency;

- Specifically exempted from disclosure by other statutes. For example, the Federal Privacy Act, which applies only to citizens and immigrants admitted for permanent residence, severely restricts general access to personal records such as those relating to medical and health information; tax information; arrest and disciplinary proceedings not resulting in convictions or adverse dispositions; adoption; employment records; social security numbers and other personally identifying numbers; and similar information that if disclosed would clearly represent an unwarranted invasion of privacy and be of no legitimate public concern. The privacy act is also, however, a disclosure vehicle because it states that individuals should be provided easy access to their personal information with reasonable opportunities to delete or correct personal information;
- Trade secrets and privileged or confidential commercial or financial information;
- Certain inter- or intra-agency memos or letters protected in litigation;
- Personnel and medical files that if disclosed would constitute an unwarranted invasion of privacy;
- Compiled for law enforcement purposes but only if such disclosure would interfere in enforcement proceedings; deprive a person of a fair trial; disclose the identity of a confidential source; or disclose techniques and procedures for law enforcement investigators or prosecution;
- Regarding regulation or supervision of financial information; and
- Geological and geophysical records, i.e. maps that concern wells.

How does one request a record?

Pursuant to FOIA, before requesting a record, you must search the agency websites and determine what is in the “reading room” that every agency is required to maintain. Certain information must be automatically disclosed in the Federal Register, such as a description of an agency’s organization; functions and procedures; substantive rules and general policies; final opinions and orders in adjudicated cases; certain staff manuals; and some records previously processed for disclosure under FOIA.

If the desired record is not available through these automatic disclosure requirements, then the following steps should be taken:

- The written request should be sent to the proper agency officer. The Justice Department publishes a list of Chief FOIA offices in each agency which is available on the website <http://www.justice.gov/oip/chieffoiaofficers.html>.
- Specify which offices should be searched.
- Specifically describe the requested record.

- If appropriate, request a waiver or reduction of the standard fee. There is no fee if disclosure of the information is in the public interest, namely, because it is likely to contribute significantly to understanding of the government and is not primarily in the commercial interest of the requestor.
- Specify the maximum amount of costs that an agency can charge without further approval.
- If you are requesting expedited handling, specify the reason.
- Specify the form in which you would like the record delivered.
- Provide the contact information for the agency's response or if the agency has any questions.
- Deliver the request in a form that allows confirmation of the date of receipt.
- Consult agency regulations for any additional requirements.

How and when does the agency respond to a request?

The agency has twenty (20) business days after receipt of a request to decide whether to comply and to immediately notify the requestor of that decision, the reasons for it and information on the requestor's right to appeal to the head of the agency in the event that an adverse decision is made. The requestor has twenty (20) business days thereafter to decide if an appeal will be made. If an appeal of the denial of FOIA request is upheld, in whole or part, the agency must notify the requestor of the provision for judicial review (see following section on judicial review). It is important to note that these time limits are often violated, and responses are often made on a first-in, first-out basis.

What is Judicial Review?

If the agency denies an appeal of its decision not to release the records, the requestor has the right to challenge that decision in a Federal District Court. The challenge can be made in the following locations: 1) where the complainant lives; 2) where the complainant's principal place of business; 3) where the agency records are situated; or 4) in Washington, D.C.

The right of judicial review has led to a great amount of litigation, with some cases reaching the Supreme Court level. It has also given rise to numerous books, treatises and articles. Generally speaking, however, significant cases require legal advice.

FREEDOM OF INFORMATION AT THE STATE AND LOCAL LEVELS

Every state, many cities and the District of Columbia have laws similar to federal FOIA regarding access to governmental records at the state and local level.

How do I learn about FOIA laws in my state or city?

One of the best available sources is the **Open Government Guide**, published by the Reporters' Committee for Freedom of the Press. The guide is available in individual state booklets, a compendium covering the 50 states and Washington D.C. online at <http://rcfp.org/ogg/index.php>. You can also contact the Reporters' Committee for Freedom of the Press at 1101 Wilson Boulevard, Suite 1100, Arlington, VA 22209 or call (703) 807-2100 to order these booklets. New editions were published in 1989, 1993, 1997, 2001 and 2006 and will continue to be updated at approximately the same intervals in the future.

What information is available from which government entities?

The **Open Government Guide** from the Reporters' Committee for Freedom of the Press is organized in outline form for each state. The type of information available from what entities and the procedures to obtain records or other relevant information are shown in the following outline.

I. STATUTE -- BASIC APPLICATION

A. Who can request records?

1. [Status of requestor.](#)
2. [Purpose of request.](#)
3. [Use of records.](#)

B. [Whose records are and are not subject to the act?](#)

1. Executive branch.
 - a. [Records of the executives themselves.](#)
 - b. [Records of certain but not all functions.](#)
2. [Legislative bodies.](#)
3. [Courts.](#)
4. Nongovernmental bodies.
 - a. [Bodies receiving public funds or benefits.](#)
 - b. [Bodies whose members include governmental officials.](#)
5. [Multi-state or regional bodies.](#)
6. [Advisory boards and commissions, quasi-governmental entities.](#)

C. What records are and are not subject to the act?

1. What kind of records are covered?
2. What physical form of records are covered?
3. Are certain records available for inspection but not copying?
- D. Fee provisions or practices.
 1. Levels or limitations on fees.
 2. Particular fee specifications or provisions.
 - a. Search.
 - b. Duplication.
 - c. Other.
 3. Provisions for fee waivers.
 4. Requirements or prohibitions regarding advance payment.
 5. Have agencies imposed prohibitive fees to discourage requesters?
- E. Who enforces the act?
 1. Attorney General's role.
 2. Availability of an ombudsman.
 3. Commission or agency enforcement.
- F. Are there sanctions for noncompliance?

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

- A. Exemptions in the open records statute.
 1. Character of exemptions.
 - a. General or specific?
 - b. Mandatory or discretionary?
 - c. Patterned after federal Freedom of Information Act?
 2. Discussion of each exemption.
- B. Other statutory exclusions.
- C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.
- D. Are segregable portions of records containing exempt material available?
- E. Homeland Security Measures.

III. STATE LAW ON ELECTRONIC RECORDS

- A. Can the requester choose a format for receiving records?
- B. Can the requester obtain a customized search of computer databases to fit particular needs?
- C. Does the existence of information in electronic format affect its openness?
- D. How is e-mail treated?
- E. Is software public?
- F. How are fees for electronic records assessed?
- G. Money-making schemes.
- H. On-line dissemination.

IV. RECORD CATEGORIES -- OPEN OR CLOSED

- A. [Autopsy reports.](#)
- B. [Bank records.](#)
- C. [Business records, financial data, trade secrets.](#)
- D. [Contracts, proposals and bids.](#)
- E. [Collective bargaining records.](#)
- F. [Coroners reports.](#)
- G. [Election records.](#)
- H. [Gun permits.](#)
- I. [Hospital reports.](#)
- J. [Personnel records.](#)
 - 1. [Salary.](#)
 - 2. [Disciplinary records.](#)
 - 3. [Applications.](#)
 - 4. [Other.](#)
- K. [Police records.](#)
 - 1. [Accident reports.](#)
 - 2. [Police blotter.](#)
 - 3. [911 tapes.](#)
 - 4. [Investigatory records.](#)
 - a. [Rules for active investigations.](#)
 - b. [Rules for closed investigations.](#)
 - 5. [Arrest records.](#)
 - 6. [Compilations of criminal histories.](#)
 - 7. [Victims.](#)
 - 8. [Confessions.](#)
 - 9. [Confidential informants.](#)
 - 10. [Police techniques.](#)
 - 11. [Mug shots.](#)
- L. [Prison, parole and probation reports.](#)
- M. [Public utility records.](#)
- N. [Real estate appraisals, negotiations.](#)
- O. [School and university records.](#)
 - 1. [Athletic records.](#)
 - 2. [Trustee records.](#)
 - 3. [Student records.](#)
 - 4. [Other.](#)
- P. [Vital statistics.](#)
 - 1. [Birth certificates.](#)
 - 2. [Marriage & divorce.](#)
 - 3. [Death certificates.](#)

V. PROCEDURE FOR OBTAINING RECORDS

A. How to start.

1. [Who receives a request?](#)
2. [Does the law cover oral requests?](#)
3. Contents of a written request.
 - a. [Description of the records.](#)
 - b. [Need to address fee issues.](#)
 - c. [Plea for quick response.](#)
 - d. [Can the request be for future records?](#)
 - e. [Other.](#)

B. How long to wait.

1. [Statutory, regulatory or court-set time limits for agency response.](#)
2. [Informal telephone inquiry as to status.](#)
3. [Is delay recognized as a denial for appeal purposes?](#)
4. [Any other recourse to encourage a response.](#)

C. Administrative appeal.

1. [Time limit.](#)
2. To whom is an appeal directed?
 - a. [Individual agencies.](#)
 - b. [A state commission or ombudsman.](#)
 - c. [State attorney general.](#)
3. [Fee issues.](#)
4. Contents of appeal letter.
 - a. [Description of records or portions of records denied.](#)
 - b. [Refuting the reasons for denial.](#)
5. [Waiting for a response.](#)
6. [Subsequent remedies.](#)

D. Court action.

1. [Who may sue?](#)
2. [Priority.](#)
3. [Pro se.](#)
4. Issues the court will address:
 - a. [Denial.](#)
 - b. [Fees for records.](#)
 - c. [Delays.](#)
 - d. [Patterns for future access \(declaratory judgment\).](#)
5. [Pleading format.](#)
6. [Time limit for filing suit.](#)
7. [What court.](#)
8. [Judicial remedies available.](#)
9. [Costs and attorneys' fees.](#)
10. [Fines.](#)

- 11. [Other penalties.](#)
- 12. [Settlement, pros and cons.](#)
- E. [Appealing initial court decisions.](#)
 - 1. [Appeal routes.](#)
 - 2. [Time limits for filing appeals.](#)
 - 3. [Contact of interested amici.](#)
- F. [Addressing government suits against disclosure.](#)

Another good source of FOIA information at the state and local levels is the **Sunshine Review** at <http://sunshinereview.org/index.php>. Sunshine Review also publishes a comprehensive record of major FOIA litigation organized by state and year at http://sunshinereview.org/index.php/Major_FOIA_Litigation_by_State.

Another comprehensive source is the **Sourcebook to Public Record Information**, which is updated annually and is approximately 2,000 pages in length. You can find it at www.publicrecordsources.com, www.verifyprolicense.com or www.verifycollegedegree.com. An abbreviated version of the **Sourcebook** is published every two years as the **Manual to Online Public Records**. The **Sourcebook** includes information regarding real estate; federal and state tax laws; professional licensing boards; sales taxes; criminal records; department of motor vehicles; legislation passed and pending; county court records; and vital statistics. This source also includes relevant officials' memos, addresses, zip codes, phone numbers and office hours of operation.

OPEN MEETINGS

It is important to know when, where and what is on the agenda for meetings where public officials discuss, and often decide on, issues that affect the public take place. This is particularly true at the state and local level, whose meetings are more geographically accessible and often concern matters of more direct and immediate impact such as schools, zoning and public safety.

How do I learn about such meetings?

The local media, including radio, TV and newspapers, are a great source of information. In addition, all states and many local governments have laws, generally called “sunshine laws,” that require public access to these meetings to varying degrees.

The **Reporters’ Committee for a Free Press** also has a similarly standard source of state-by-state information regarding open meetings laws. The categories covered by this source are laid out as follows.

I. STATUTE -- BASIC APPLICATION.

A. Who may attend?

B. What governments are subject to the law?

1. State.
2. County.
3. Local or municipal.

C. What bodies are covered by the law?

1. Executive branch agencies.
 - a. What officials are covered?
 - b. Are certain executive functions covered?
 - c. Are only certain agencies subject to the act?
2. Legislative bodies.
3. Courts.
4. Nongovernmental bodies receiving public funds or benefits.
5. Nongovernmental groups whose members include governmental officials.
6. Multi-state or regional bodies.
7. Advisory boards and commissions, quasi-governmental entities.
8. Other bodies to which governmental or public functions are delegated.
9. Appointed as well as elected bodies.

D. What constitutes a meeting subject to the law.

1. Number that must be present.

- a. Must a minimum number be present to constitute a "meeting"?
 - b. What effect does absence of a quorum have?
 - 2. Nature of business subject to the law.
 - a. "Information gathering" and "fact-finding" sessions.
 - b. Deliberations toward decisions.
 - 3. Electronic meetings.
 - a. Conference calls.
 - b. E-mail.
- E. Categories of meetings subject to the law.
 - 1. Regular meetings.
 - a. Definition.
 - b. Notice.
 - (1). Time limit for giving notice.
 - (2). To whom notice is given.
 - (3). Where posted.
 - (4). Public agenda items required.
 - (5). Other information required in notice.
 - (6). Penalties and remedies for failure to give adequate notice.
 - c. Minutes.
 - (1). Information required.
 - (2). Are minutes public record?
 - 2. Special or emergency meetings.
 - a. Definition.
 - b. Notice requirements.
 - c. Minutes.
 - 3. Closed meetings or executive sessions.
 - a. Definition.
 - b. Notice requirements.
 - (1). Time limit for giving notice.
 - (2). To whom notice is given.
 - (3). Where posted.
 - (4). Public agenda items required.
 - (5). Other information required in notice.
 - (6). Penalties and remedies for failure to give adequate notice.
 - c. Minutes.
 - (1). Information required.
 - (2). Are minutes a public record?
 - d. Requirement to meet in public before closing meeting.
 - e. Requirement to state statutory authority for closing meetings before closure.
 - f. Tape recording requirements.
- F. Recording/broadcast of meetings.

1. Sound recordings allowed.
2. Photographic recordings allowed.
- G. Are there sanctions for noncompliance?

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

- A. Exemptions in the open meetings statute.
 1. Character of exemptions.
 - a. General or specific.
 - b. Mandatory or discretionary closure.
 2. Description of each exemption.
- B. Any other statutory requirements for closed or open meetings.
- C. Court mandated opening, closing.

III. MEETING CATEGORIES -- OPEN OR CLOSED.

- A. Adjudications by administrative bodies.
- B. Budget sessions.
- C. Business and industry relations.
- D. Federal programs.
- E. Financial data of public bodies.
- F. Financial data, trade secrets or proprietary data of private corporations and individuals.
- G. Gifts, trusts and honorary degrees.
- H. Grand jury testimony by public employees.
- I. Licensing examinations.
- J. Litigation; pending litigation or other attorney-client privileges.
- K. Negotiations and collective bargaining of public employees.
- L. Parole board meetings, or meetings involving parole board decisions.
- M. Patients; discussions on individual patients.
- N. Personnel matters.
 1. Interviews for public employment.
 2. Disciplinary matters, performance or ethics of public employees.
 3. Dismissal; considering dismissal of public employees.
- O. Real estate negotiations.
- P. Security, national and/or state, of buildings, personnel or other.
- Q. Students; discussions on individual students.

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

- A. When to challenge.
 1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?
 2. When barred from attending.
 3. To set aside decision.

4. [For ruling on future meetings.](#)
- B. How to start.
 1. Where to ask for ruling.
 - a. Administrative forum.
 - (1). [Agency procedure for challenge.](#)
 - (2). [Commission or independent agency.](#)
 - b. [State attorney general.](#)
 - c. [Court.](#)
 2. [Applicable time limits.](#)
 3. [Contents of request for ruling.](#)
 4. [How long should you wait for a response?](#)
 5. [Are subsequent or concurrent measures \(formal or informal\) available?](#)
- C. Court review of administrative decision.
 1. [Who may sue?](#)
 2. [Will the court give priority to the pleading?](#)
 3. [Pro se possibility, advisability.](#)
 4. What issues will the court address?
 - a. [Open the meeting.](#)
 - b. [Invalidate the decision.](#)
 - c. [Order future meetings open.](#)
 5. [Pleading format.](#)
 6. [Time limit for filing suit.](#)
 7. [What court.](#)
 8. [Judicial remedies available.](#)
 9. [Availability of court costs and attorneys' fees.](#)
 10. [Fines.](#)
 11. [Other penalties.](#)
- D. Appealing initial court decisions.
 1. [Appeal routes.](#)
 2. [Time limits for filing appeals.](#)
 3. [Contact of interested amici.](#)

V. [ASSERTING A RIGHT TO COMMENT.](#)

FINANCIAL INFORMATION ABOUT PUBLIC OFFICIALS

An age-old saying is “Follow the money.” This saying is more important than ever today, especially in light of the staggering increase in recent years of the amount of money spent on the election of public officials.

How do we learn about officials’ personal finances, sources of contributions and the identities of their contributors?

I. FEDERAL OFFICIALS

The Federal Election Commission (FEC) is the primary source of information from legally required federal campaign finance reports of Political Action Committees (PACs) and political parties, as well as financial information for campaigns for the presidency, U.S. Senate and the House of Representatives. You can contact the FEC by visiting <http://www.fec.gov/disclosure.shtml> or contacting them at 999 E Street NW, Washington DC, 20463; by phone at (202)-694-1120 or (800)-424-9530; and by fax (202)-501-0693.

The FEC annually publishes the combined **Federal/State Disclosure and Election Directory**, which contains addresses, phone numbers, web addresses and other contact information for both federal and state disclosure offices. This directory is available in print form from the public records office and from the FEC’s website above.

The Congressional disclosure forms are filed with the Clerk of the House of the Secretary of the Senate and also the Secretary of State office in the state that a member represents. The forms for the president, vice president and other executive branch officials are filed with the FEC and the U.S. Office of Government Ethics. The forms for Supreme Court Justices are filed with the administrative offices of the United States Courts.

A source of information that is focused on Congressional salaries and personal finances, including those of their staff members, can be found at www.legistorm.com.

How do I find out about personal finances of state officials?

Many states require that state or local elected officials file financial disclosure statements. The FEC’s annual **Federal/State Disclosure and Election Guide** (mentioned above) is probably the best place to start. In addition, a good source of information is the **Knight Digital Media Center** at the University of California,

Berkeley School of Journalism, which can be found at <http://multimedia.journalism.berkeley.edu/tutorials/financial-disclosure-statements/>.

Are there other sources of financial information about federal officials?

Another very useful source of financial information is the **Center for Responsive Politics (CPR)**, a nonpartisan research group that has a freely available database tracking federal campaign contributions and lobbying activity. CPR's website is <http://www.opensecrets.org/lobby/index.php>. The database includes information on contributions by industry and interest groups, as well as the personal financial disclosures of every member of Congress, the president and top members of the administration. Users can also search their own zip codes to learn how their neighbors are allocating their political contributions, at <http://www.opensecrets.org/indivs/index.php>.

Some interesting facts from CPR's website include information on Danell Issa (R., CA), who is the richest member of Congress with an average net worth of \$251,025,020 and Jay Rockefeller (D., WVA) who ranks as the 8th richest with an average net worth of \$94,306,010.