

Freedom of Information Act & Public Disclosure Act Requests.

The federal FOIA¹ provides access to all records of all federal agencies in the executive branch, unless those records fall within one of nine categories of exempt information that agencies are permitted (but generally not required) to withhold.

Filing a Request

You may try to make an informal telephone request to an agency to obtain documents. However, agencies frequently require that requests be made in writing. In fact, you establish your legal rights under FOIA only by filing a written request. Once you have filed a FOIA request, the burden is on the government to release the documents promptly or to show that they are covered by one of the FOIA exemptions.

At all agencies, the request is received by the office designated to receive FOIA requests, and then processed in a FOIA Service Center overseen by a Chief FOIA Officer and FOIA Public Liaison. Under amendments to the law in 2007, the request is to be assigned a tracking number, which allows requesters to later check the status of their requests online or over the phone and provides them with an estimated date by which action on the request will be completed.

The agency must respond to your written FOIA request within 20 working days; however, as a practical matter, agencies frequently disregard that deadline without penalty.

The amendments offer the agencies a potential “out” in meeting that deadline by allowing them one clarification request that stops the clock, either for fee assessment purposes or for additional information about the request.

A “response” to a request is a grant or denial of the records sought. A simple acknowledgment by an agency that it has received your request does not count as the response to which you are entitled under FOIA.

Should an agency fail to issue a response within the statutory 20-day deadline, it may also be allowed additional time without violating the law if there are “unusual or exceptional circumstances” associated with the request. A routine backlog of requests at the agency would not qualify as an unusual or exceptional circumstance. Despite this requirement, few FOIA requests are fulfilled in 20 days.

If you have an urgent need for the information, you should ask for “expedited processing.” You are entitled to expedited processing if you can show “compelling need” to the agency. This is most often granted if health and safety are at issue or if you are a person primarily engaged in disseminating information and there is an urgency to inform the public about an actual or alleged governmental activity. Agencies may also decide that they will grant expedited processing for other categories of records. For instance, the Justice Department grants expedited processing for requests concerning issues of government integrity that have already become the subject of widespread national media interest. That agency also grants expedited processing if delay might cause the loss of substantial due process rights.

An agency may charge you the reasonable costs of providing the documents, unless you are entitled to reduced fees or fee waivers. For instance, agencies cannot charge representatives of the news media for costs of searching for records. To minimize delay, the 2007 amendments provided agencies with a disincentive to dally — if an agency fails to comply with any time limit of the law, it may not charge the requester search fees for that request, even if the requester is a commercial entity. For requesters not required to pay search fees, such as the news media, the amendments forbid the agency from charging any duplication fees, no matter the volume of the request.

If an agency refuses to disclose all or part of the information, or does not respond within 20 working days to a written FOIA request, you may appeal to the agency’s FOIA Appeals Officer. You may avoid the agency appeal and go directly to court only if the agency does not respond within the required time period. An appropriate agency response is a grant or denial of the requested information. The agency may also appropriately respond that it is extending its time limit for granting or denying the information by up to 10 additional working days if voluminous records must be searched, if records must be retrieved from various offices or if several agencies must be consulted.

If you file an administrative appeal that is denied or not responded to within 20 working days, you can then file a lawsuit in a federal court convenient to you. If you can demonstrate the need for prompt consideration, you may ask that the court expedite your case. If you win in court, a judge will order the agency to release the records and may award you attorney’s fees and court costs.

Date:

"[Recipient Agency]"
[Street Address]
[City, ST ZIP Code]

FOIA REQUEST

Fee waiver requested

Expedited processing requested

Dear FOIA Officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of:

- Any and all audio recordings, CAD Reports and or transcripts of any and all communications taking place between officers/agents involved in an operation taking place in the area surrounding (Address of Incident), WA on 2/21/10 between 2:00pm and 4:45pm. (Details of incident are fictional and included to show how to describe an incident)

-Any and all video recordings and or photographs obtained during the course of the above referenced investigation.

-Any and all officer reports, hand written notes, logs and voice recordings obtained during the course of the above referenced investigation.

-Detailed records showing any and all inquiries made to NCIC, WSIN, WSIS, Department of Licensing and Department of Corrections as part of the investigation referenced above, etc.

-Detailed report disclosing the final disposition of the information collected and the reason for the investigation.

I would like to receive the information in electronic format. (CD-ROM.)

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

Please provide expedited processing because delay in disclosure could cause a loss of substantial due process rights. I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

[Your Name]
Address

Sample Public Disclosure Request

Lakewood Police Department
1235 F.T.C Street
Lakewood, WA 98309

RECORDS REQUEST

Dear Records Request Officer:

On 2/27/10 at approximately 2:20pm, Unit #315 of the Lakewood Police Department was observed following and photographing a group of motorcyclists in the city of Lakewood.

Pursuant to RCW 42.17.250, the state open records act, I request access to and copies of:

- Any and all audio recordings, CAD Reports and or transcripts of any and all communications taking place between officers/agents involved.**
- Any and all video recordings and or photographs obtained during the course of the above referenced investigation.**
- Any and all officer reports, hand written notes, logs and voice recordings obtained during the course of the above referenced investigation.**
- Detailed records showing any and all inquiries made to NCIC, WSIN, WSIS, Department of Licensing and Department of Corrections as part of the investigation referenced above, etc.**
- Detailed report disclosing the final disposition of the information collected and the reason for the investigation.**

I agree to pay reasonable duplication fees for the processing of this request.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act.

Thank you for your assistance.

Sincerely,

[Your Name]