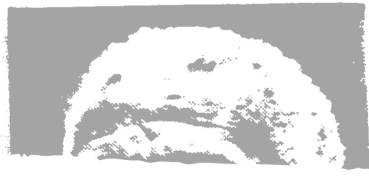


1330 HEADQUARTERS
An individual named "MALCOLM X" a persons were attempting to set up a la

UNCLASSIFIED
9803 ARD/cw
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SEARCHED
SERIAL
FEB 1
FBI - CH

Activist Wins Faster Access To FBI Data



SURVEILLANCE LOG PAGE 5 OF 5

TIME	INITIALS	OBSERVATION
3:10 pm		Photos attempted by SA [redacted]

FOIA BASICS FOR ACTIVISTS

day won a round in his effort to prove his arrest was based on a campaign organized by the Federal Bureau of Investigation to discredit black activists.
Herman Ferguson was granted a request in Manhattan federal court to speed up the release of thousands of pages of Federal Bureau of Investigation documents he claims will prove his innocence.
The documents have been sought



Norman Ferguson
1990. His request would generate about 3,400 pages of documents which would take 120 days to compile, the FBI claimed.

3:30 pm		attempting by SA [redacted]
3:40 pm		long female arrived and entered 980 F Street NW Washington DC

(b) (6)

Watch on AIDS Group During

From: [redacted]
Sent: Wednesday, March 22, 2001
To: [redacted]
Cc: [redacted]
Subject: (U//LES) Draft Race Paper
Attachments: Race DT IA_1st level third
Follow Up Flag: Follow up
Flag Status: Flagged

in civil rights cases.
The bureau also said that there were small files on organizations like Gay Men's Health Crisis and the Center for Immigration Rights, Mr. Deutsch said, and may also have files on Riverside Church.
"These are public groups that don't advocate violence," Mr. Deutsch said. "One can only speculate on why the F.B.I. is collecting documents on these groups when they say they weren't able to do the same thing for militias and violent right-wing groups."
The answer

Federal agency kept files on Act Up and other organizations.

based on reports that violence criminal activity was planned at urban public demonstrations.
Mr. Ka...
back...
investigation...
What...
no surpr...
and a li...
what else...
in the documents?" she said.
Were any attempts to 'destabilize' the group, as they used to say?"
to the...
investigative...
said. Asked...
answered: "Meaning anything...
There is no interest whatsoever."
All that the file contains, he said, is a...
group, as they used to say?"

THE OPEN RECORDS PROJECT:
FOIA FOR THE MOVEMENT

CENTER FOR CONSTITUTIONAL RIGHTS

attached the latest version of the race paper. We address drivers and indicators.



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801 I Street NW
Washington, DC 20536

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MEMORANDUM FOR ALL FIELD OFFICE DIRECTORS

3 Before You Begin

FROM: Anthony J. Langeman
Director
Office of Detention and Deportation

6 Writing Your Request

SUBJECT: Addition of Chapter 19, Section 9 [Bureau of Immigration and Customs Enforcement (ICE) Most Wanted Program] of the Detention and Deportation Office Field Manual (DDFM)

12 Administrative Process

The DDFM is changed to reflect the addition of Section 9, Chapter 19 [Bureau of Immigration and Customs Enforcement (ICE) Most Wanted Program]. Accordingly, the DDFM is changed as follows:

16 Reviewing Documents

19.9 Bureau of Immigration and Customs Enforcement (ICE) Most Wanted Program

18 Litigating FOIA

All Field Offices shall create Wanted Posters for aliens designated as fugitives. (b)(7)(C), (b)(6) contains information on how to complete a Wanted Poster. Only the Wanted Poster () is authorized by Headquarters, Finite Operations Branch (HQFOB) and Region () for use. No changes or deviations are to be made to this form. Earlier formats and locally customized formats are no longer authorized. The only 'Most Wanted' Poster authorized is the ICE Most Wanted Program administered by HQFOB. Field Offices desiring to nominate a target for inclusion to the 'Most Wanted' program should forward a copy of the target's folder to HQFOB.

19 More Information

THE OPEN RECORDS PROJECT: FOIA FOR THE MOVEMENT

FOR OFFICIAL USE ONLY
ENFORCEMENT SENSITIVE

FOIA BASICS FOR ACTIVISTS

A RESOURCE GUIDE FROM THE CENTER FOR CONSTITUTIONAL RIGHTS

INTRODUCTION & OVERVIEW

The Freedom of Information Act (FOIA) and other public records laws have long been critical tools at the core of the Center for Constitutional Rights' social justice work in support of community and movement partners. This is why the Center for Constitutional Rights launched the Open Records Project. Bringing our history and expertise to bear, the project provides trainings and resources to assist movement partners as well as the legal community to use FOIA and open records requests more effectively in their work challenging oppressive systems of power. This guide is part of our Open Records Project.

This resource is designed to support activists, organizers and social movements in filing FOIA requests to aid their ongoing campaigns and work. It does not contain legal advice regarding the litigation of FOIA requests in court. Additional resources and information are available on the Center for Constitutional Rights' website at ccrjustice.org.

This guide is primarily focused on using FOIA to file requests with federal agencies like the FBI or ICE (Immigration Customs and Enforcement). Where we can, we also offer information and tips on filing state-level open records requests (you cannot use FOIA to request information from state governments). Because each state has its own open records laws, we do not provide individualized guides for all 50 states. However, most state open records request laws are based on the same fundamentals set out by the federal FOIA statute so many of the principles discussed here also apply to state-level requests.¹

What is FOIA, and why are open records laws important?

The Freedom of Information Act is a federal statute (5 USC § 552) that enables anyone in the United States to request records from federal agencies such as the FBI. The act was signed into law by President Lyndon Johnson in 1966. States also have their own open records laws, many of them enacted after the passage of FOIA.

These laws are important because they allow the public to request information about the government that it may otherwise not disclose. Information received through FOIA requests has been essential in defending activists facing government surveillance and repression, uncovering gross human rights violations, and arming movements with the information they need to fight powerful interests.

“From the Secure Communities program under Obama to ICE raids under Trump, FOIA requests and litigation have played a key role in our advocacy to challenge ICE tactics and policies.”

Mizue Aizeki, Deputy Director of the Immigrant Defense Project in New York City

Who can make a request under FOIA?

Anyone can file or submit a FOIA request to a federal agency. You do not have to be a lawyer, a U.S. citizen, or of a certain age. You can submit a request as an individual, or on behalf of your organization or group. In many cases submitting on behalf of a group can be helpful, because you can show that your group is committed to addressing issues of public interest and that the documents you get through FOIA will be distributed widely. These factors may help you obtain a fee waiver and avoid the government charging you for the costs of processing your request.

What parts of government must provide information in response to a FOIA request?

You can make requests to most federal agencies, such as the Department of Justice (DOJ), the Department of Homeland Security (DHS) or the Department of State. You can also make requests to sub-parts of these agencies, like ICE, or small offices within the organizations, like ICE's Office of General Counsel or DHS's Office of Information and Analysis.

What parts of government do not have to respond to a FOIA request?

FOIA does not allow you to request the records of the President of the United States, though you can request records from some offices within the White House, such as the Office of Management and Budget. FOIA also does not cover Congressional records or records from members of the House or the Senate. However, if those Congress members have communicated with federal agencies, you can often get those communications by making requests to the receiving agencies instead.

Differences between federal and state records requests

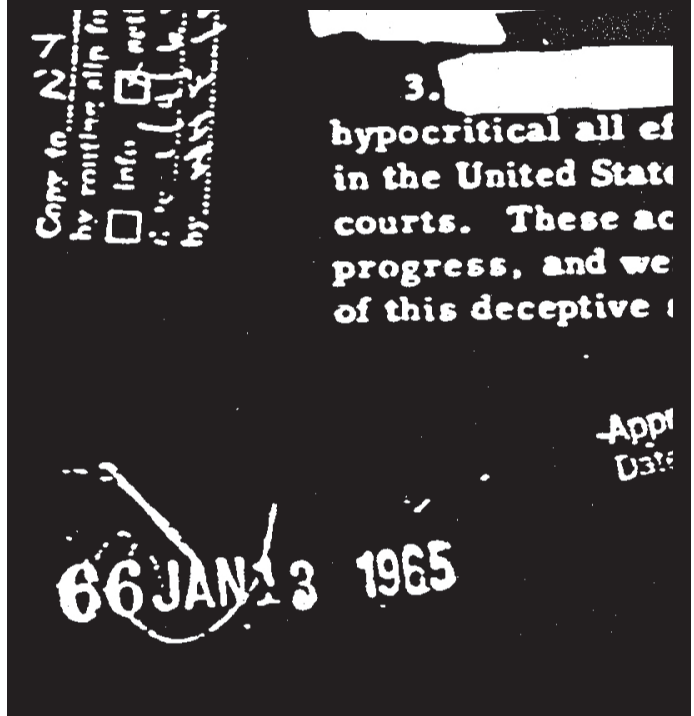
Unlike FOIA, some state open records laws allow you to request records of state or local legislators or legislative records. Check your state open records statute for more information.

What information can be requested

You can request all kinds of information – be creative! While agencies might decide to redact or withhold certain documents, don't let that stop you from making your request. Here are just a few general categories of information you might request:

- Decisions by government officials (memos, policy papers, reports, etc.)
- Official policies and government guidelines
- Communications (emails, letters, notes, etc.)
- Data and maps
- Video and audio recordings
- Records of investigations
- Agency records about you or your organization

Some state public records laws might allow you to request other types of information like voting records, legislative records, congressional transcripts, drafts of bills, and more, depending on the state.



BEFORE YOU BEGIN

Big, long-term request vs. small, focused request

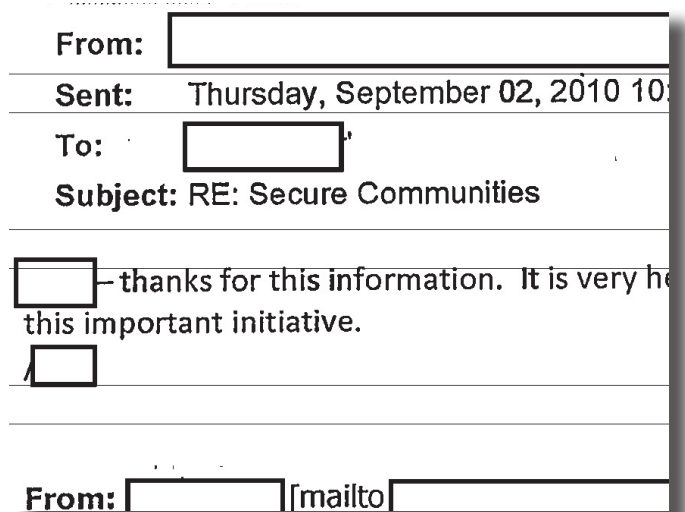
It will most likely take at least a few months² to receive any documents from a FOIA request, and usually much longer. Because of this, it is important to consider how much to ask for in your request and whether FOIA is the best strategy for your campaign at the moment.

A basic question the Center for Constitutional Rights often asks organizers, activists, and others who are interested in using FOIA is, do you want:

- A **bigger, more comprehensive set of documents** that might require a long-term process?
- A **narrow, smaller set of documents** that might lead to a quick process?

For example, in the Center for Constitutional Rights case *NDLON v. ICE*, our client, the National Day Laborer Organizing Network (NDLON), embarked on a nationwide campaign against the ICE program “Secure Communities” and used FOIA to answer key questions about how the program worked. The FOIA request covered a large swath of information from ICE, DHS, and the FBI, and by the end of litigation we had received over 300,000 pages of information. However, the litigation took over three years to complete, with a large legal team filing a number of motions, and over a dozen volunteers reviewing documents.

In contrast, the Center for Constitutional Rights filed FOIA requests in 2014 seeking a narrow set of records regarding a Department of Defense policy related to one of our Guantánamo cases. The purported policy was referenced by a government official in litigation, but was not produced, and so we used FOIA to push the government to reveal whether such a policy even existed.



Similarly, in 2017, the Center for Constitutional Rights filed a narrowly-focused state open records request to the St. Charles Parish Sheriff’s Office in Louisiana for records concerning the sheriff’s trip to North Dakota in 2016 to observe the protests against the Dakota Access Pipeline. This was a targeted request done in support of a number of local groups organizing in Louisiana against the construction of new pipelines there. We received some documents within weeks of filing our request, but then litigated for even more documents over the following year.

Key questions to ask before beginning your FOIA request

Is the information you are seeking already in the public domain?

Before you start, it is always good to check whether what you are seeking has already been requested in another FOIA. Take a moment to do a Google search, look at agency websites, and check with other partner organizations to see if some or all of the information you are after hasn’t previously been released. Know what is already public and what still might not be can help you in better crafting your own request.

Am I entitled to get documents you request quickly?

If you need documents next week, FOIA will not help you. You should be prepared to wait at least a few months before receiving anything from a federal FOIA request. Some state open records laws allow you to receive documents much more quickly, which is why it might be more strategic to file a state request depending on what information you’re seeking. The FOIA statute allows you to ask for “expedited processing” of your request in certain circumstances, which can potentially speed up your request. However, it can be very difficult to get an agency to grant expedited processing. We go into more detail on expedited processing in the “Writing Your Request” section.

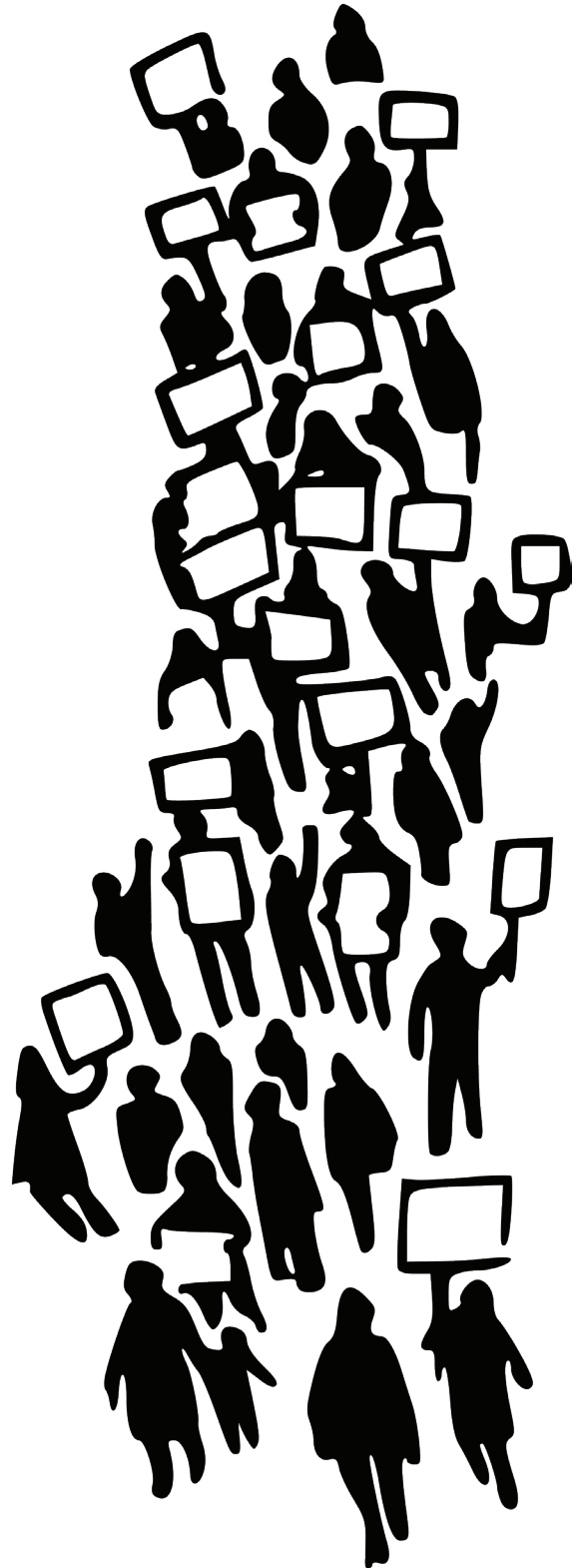
Will your request have an advocacy or media impact?

Some organizations we have worked with have used the request by itself as an advocacy tool. They have chosen to tell a story about why they are filing the request within the request itself. For example, in the FOIA request that racial justice organization Color of Change did with the Center for Constitutional Rights for documents related to surveillance of Movement for Black Lives activists, we wanted to make sure that stories of how federal law enforcement was targeting and chilling activists were part of our request and accessible to the public. Media outlets are often interested in FOIA and will cover the filing of a request to bring attention to the issue, and potentially at other points in the process, even if you don’t receive any documents. Using the request as an advocacy tool isn’t always necessary or strategic, but groups and individuals should consider creative ways to do so.

How will you use the documents you receive?

It’s good to think ahead of time about what you plan to do with any documents you do receive. If you’re asking for data, do you have people ready to analyze that data and write reports? Do you want to publish the documents on a website? Will they be used in “Know Your Rights” trainings for community members? Are there journalists who cover the subject of your FOIA request who might be willing to write a story?

Thinking about possible uses of the information can also help you craft the request with specificity and help you stress that you need the records you are seeking.

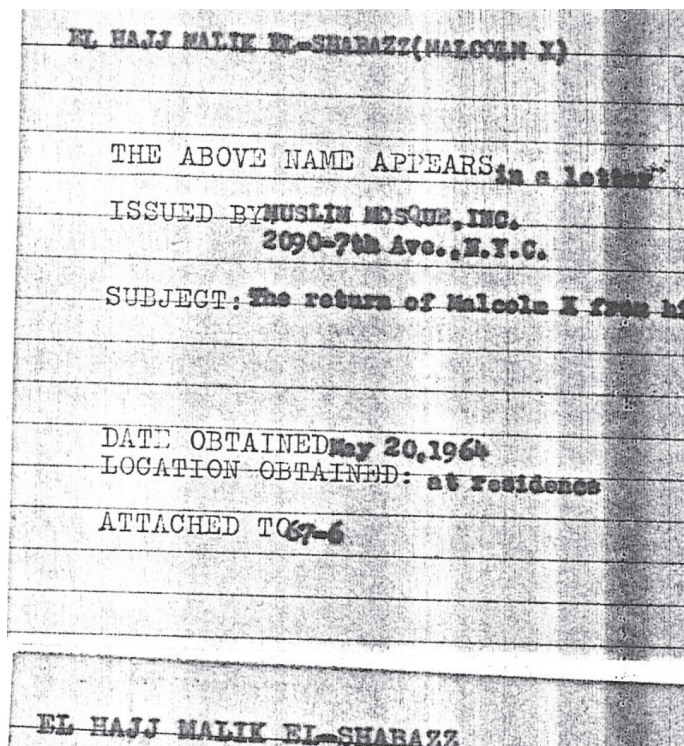


Do you have the resources for a longer process, including litigation?

The FOIA process is often slow. It means dedicating resources to managing the administrative process with each agency, waiting possibly many months before receiving documents, reviewing the documents you receive, and potentially being involved with litigation, which can last months, if not years. This can be hard, especially for small organizations with small staffs, and may require outside legal representation.

What about fees – don't you have to pay for any records you receive?

Don't let the possible costs of receiving documents scare you. In federal FOIA requests, you can often win a "fee waiver" especially if you are going to distribute the documents for free and in the public interest. However, many states do not allow fee waivers, and it is a good idea to be ready to pay at least a small amount for records you might receive. You can read more about fee waivers in the "Writing Your Request" section.



Tips on narrowing what you're looking for:

- Once you've made a list of the different items you'd like to include in your request, take a moment and put your list in order of highest priority items to lowest. Then see if there are items at the bottom of your list that you can eliminate.
- Even where an agency agrees to produce all the documents you are requesting, rarely will you receive them all at once. Often, it might take months or even a year to receive all the documents you have requested, as agencies tend to produce documents on a "rolling basis," which usually means a certain number each month. Are there documents that won't be relevant if you receive them a year from now? See if you can eliminate those.

Requesting information on yourself or another individual

If you are seeking records on yourself, you will have to submit your full name, current address, and potentially other information (such as phone number, date or place of birth, or social security number) that an agency will use to verify your identity. Each federal and state agency will have slightly different rules about what additional information they will require. Also, if you are filing a FOIA request for another individual's records, you will need a signed and possibly notarized letter from the person whose records you are requesting giving you permission to make the request on their behalf. Some agencies may also provide or ask you to fill out additional forms for these requests as well.

WRITING YOUR REQUEST

You don't need to be a lawyer to put together your request. There isn't one specific way you must write your request for it to be valid. However, the Center for Constitutional Rights has found it useful to break down a request into several parts. All examples below come directly from FOIA requests filed by the Center for Constitutional Rights.

Introduction

You don't need a long introduction, but here are the elements we include at the beginning of many of our requests:

- State the law – identify that the request is made pursuant to the Freedom of Information Act, 5 U.S.C. Sec. 552.
- Name the people or organizations making the request.
- Summarize what you are seeking.
- Identify which agencies and sub-agencies you are requesting be searched.



EXAMPLE: “This is a request under the Freedom of Information Act, 5 U.S.C. Sec. 552 (“FOIA”), on behalf of Color of Change (“COC”) and the Center for Constitutional Rights (“the Center”) (collectively “the Requesters”) for information regarding the Department of Homeland Security (“DHS”) and Federal Bureau of Investigation (“FBI”) policies and actions involving the monitoring and surveillance of public protests surrounding police violence, policing reform, racial justice, and the Black Lives Matter movement (“BLM”).”

Style and format

Many agencies now have forms online that let you fill out and submit a request. We strongly recommend against using these forms unless you absolutely have to. These forms will often not give you room to add all the information and detail you may want. Instead, we recommend that you write your request in a format similar to a formal letter, addressed to the agencies using the structure we outline below. If you're writing on behalf of an organization, add your logo to the first page. Then, when you've finished, save a copy of your request as a PDF. Send both a printed, hard copy of your request to the agency, and email the PDF copy to the agency.

Citing to statutes and agency regulations

You do not need to use legal language in your request. You can still file excellent FOIA requests without legalese. However, we have found it helpful to cite to the federal FOIA statute and certain agency regulations in many of the Center for Constitutional Rights' requests. The people reviewing requests are often lawyers, so citing to specific statutes and laws can clarify for them their obligation to process your FOIA, and it can help later on if you choose to litigate. Additionally, sometimes agency regulations contain language that can be helpful. For example, there might be additional language in DHS's regulations supporting a fee waiver or expedited processing.

Each federal agency has its own FOIA-related regulations

You should be able to find up-to-date agency regulations online.²

For **state-level requests**, make sure to look at state and local laws and cite to those specific to the state, county, or city where you are making your request.

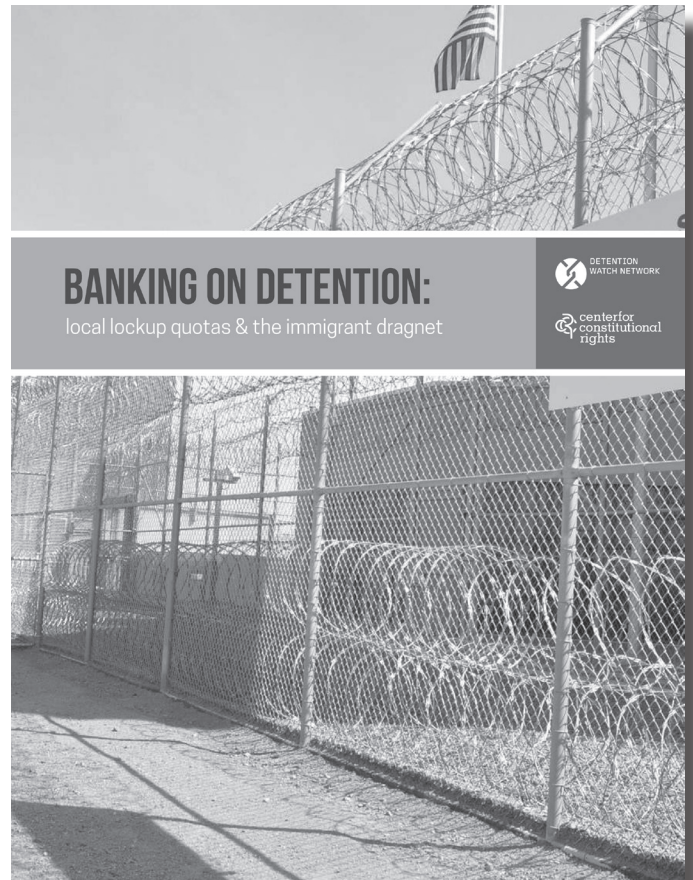
Purpose of request

You can keep this short or include a detailed narrative, depending on your strategy. You could even leave out this section. However, if you are hoping to get a fee waiver or expedited processing, it can be helpful to include at least a short summary of why the information you are seeking is important to you, your organization, and/or the communities you work with.

EXAMPLE: “The purpose of this request is to obtain information for the Requestors and the public on the Detention Bed Mandate, Bed Mandate and/or Detention Quota, decision-making surrounding the mandate, and its impact on detention policy and detention contracting decisions nation-wide from June 2006 to the present. This information will enable the public to engage in an important on-going policy debate and the upcoming Congressional appropriations debate.”

If your campaign objectives require it, you can go further into why you are requesting these records. We recommend citing to articles or other public information that shows why releasing these records to you is not only important, but urgent. Wherever possible, show how members of your organization have been affected by the policy or government action in question by citing to an article and even individual stories that led your organization to file this request so you could better serve your membership and advocate for them.

Telling a story in your request itself can be a great tool for shaping public narrative about your organization’s issues before you’ve even received any documents. However, other times it might be strategic to keep things simple and not go into as much detail. It all depends on how you choose to use FOIA requests in your advocacy.



Above: Using information produced by their FOIA request, Detention Watch Network and Center for Constitutional Rights released the report “Banking on Detention” in 2015.

Anne Rolfes, director of the Louisiana Bucket Brigade, speaks on why her organization, in partnership with other grassroots groups, filed a state records request seeking more information about a new pipeline in the region:

“The Bayou Bridge Pipeline is a bad project for Louisiana that will enrich a few people at the expense of our clean water, our Atchafalaya, and people’s health. The company is seizing people’s land against their will. We deserve to know the whole truth about this shady process, and these records will provide clarity.”

Define the terms you decide to use in your request

Defining your terms will help both you and the government agencies identify what you are looking for. For instance, something that you will often see defined in most FOIA requests is the word “Record,” which you could define by writing:

EXAMPLE: “In this request, ‘Record’ includes, but is not limited to, all records or communications preserved in electronic or written form, such as correspondences, emails, documents, data, videotapes, audio tapes, faxes, files, guidances, guidelines, analyses, memoranda, agreements, notes, orders, policies, procedures, legal opinions, protocols, reports, rules, or manuals.”

Identify the records being sought

It’s important to be as specific as possible in your request. FOIA requires requesters to “reasonably describe” the information you are seeking. This does not mean you need to know the names of certain documents, policies or people, but it does mean you need to be more specific than “I request all emails by ICE agents about detentions.” An example of a more specific request might be: “We seek any and all records related to detention facilities’ compliance with ICE’s Performance-Based National Detention Standards between the years 2013 and 2015.”

Sample items to request

Some categories of information to request are: official policies, emails, investigative reports, data collection by agencies, video and audio recordings, letters from congressional or other officials to the agency, contracts with private agencies, text messages, and more.

Cite to any key government statements, documents, or news items

It can be helpful to cite to public documents that might show the existence of the records you are seeking, or how government officials were discussing a certain policy, or other evidence that backs up the reasons for your request.

EXAMPLE: “Any and all names of databases created or used by ICE to identify targets of home enforcement operations, including databases supplied to ICE by other government agencies.” (FOIA on behalf of Immigrant Defense Project and Hispanic Interest Coalition of Alabama)

Specify the format of production

It’s crucial to be specific about how you want any records produced to you. First, you should always say that you are seeking both paper and electronic records. Second, we’ve found that it’s helpful to specify that electronic records are produced in PDF format, and ask for them to be

JUN 3 0 2010



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: All ICE Employees

FROM: John Morton
Assistant Secretary

A handwritten signature in black ink, appearing to read "John Morton".

SUBJECT: Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens

text-searchable. Make sure to also specify that you want “parent-child” relationships between related documents maintained, such as email file attachments produced together with the email with which they are associated. We have also had success asking for data in its original format, such as spreadsheets in Excel format.

EXAMPLE: “Please provide the requested documents in the following format: In PDF format; Electronically searchable wherever possible; Each paper record in a separately saved file; ‘Parent-child’ relationships maintained, meaning that the requester must be able to identify the attachments with emails; Any data records in native format (i.e. Excel spreadsheets in Excel); Emails should include BCC and any other hidden fields; with any other metadata preserved.”

Payment and making a “fee waiver” request

Filing your request is free, but government agencies are typically entitled to charge for processing and copying done in response to your request and usually set limits on the amount they charge per page. However, under FOIA you may be entitled to a “fee waiver” so that you won’t have to pay for any of the records you receive.



Federal fee waivers

To qualify for a fee waiver under the law, you need to show a number of things. Primarily, you must show that:

- You or your organization does not have a “commercial interest” in the information.
- Disclosure of the records that you or your organization are requesting is “in the public interest.”
- The information “is likely to contribute significantly to public understanding of the operations or activities of the government.”

You can show the likelihood you will distribute the information by showing you have a history of doing so – whether as a journalist, a non-profit or membership organization, or in other ways. It is a good idea to take a look not only at the specific provision of the federal law that provides for fee waivers, 5 U.S.C. § 552(a)(4)(A)(iii), but also at the federal regulation regarding fee waivers of the agency whose records you are requesting.³ Make sure that the explanation you provide about why you are entitled to a fee waiver matches the requirements in the agency’s regulation, and cite the regulation.

EXAMPLE: The Requesters are non-profit organizations dedicated to civil rights, human rights, and immigrant rights, and have a proven track record of compiling and disseminating information and reports to the public about government functions and activities, including the government’s record and position on immigrants’ rights, detention, and policy matters. The Requesters have undertaken this work in the public interest and not for any private commercial interest. Access to this information is crucial for the Requesters and the communities they serve to evaluate immigration enforcement actions and their potential detrimental efforts.

State fee waivers

Some state open records laws also allow you to get fee waivers, while others do not. But even if a state’s law and regulations do not provide a detailed process to obtain a fee waiver, you should still ask for one, including telling a state agency that you’re making the request in the public interest and not for any profit or commercial motive.

Additional language on fees to include

Finally, it is good to include language that protects you if your fee waiver request is denied. You can ask agencies that you be contacted if the cost of producing responsive records reaches a certain amount. For example, you can say, “If no fee waiver is granted and the fees exceed \$100.00, please contact us to obtain consent before processing additional records.” You can also ask agencies to give you an estimate of how much producing the documents might cost you before they produce the documents.

Expedited processing request

You can also ask federal agencies for “expedited processing” under FOIA. This means that your request would be processed by the agency much sooner than normal. Under the federal statute, expedited processing will be granted if the requester “demonstrates a compelling need.”⁴ When making this request, explain why the public needs to know about the information you are requesting right away – cite news articles, recent events, or reports that help demonstrate the urgency of your request.

One common way to do this is to show that, as an individual or organization “primarily engaged in disseminating information,” the records you are seeking show an “urgency to inform the public” of government activity. As with fee waivers, you should also look at the specific agency regulation that explains what kinds of requests, and by whom, qualify for expedited processing. For example, the Department of Homeland Security allows for expedited processing when “the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual” or when the records you seek are “a matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.”⁵ Make sure that the explanation you provide about why you are entitled to expedited processing matches the requirements in the agency’s regulation, and if possible, cite the regulation.



EXAMPLE: “The Requesters are entitled to expedited processing of this request because there is a ‘compelling need’ for the information. 5 U.S.C. § 552(a)(6)(E)(i)(I)...There is an urgent need to inform the public of the policies and decision-making regarding the ICE detention bed quotas or detention bed mandate. The appropriations debate will begin in a matter of months and it is paramount that the public have the requested information to meaningfully engage in the public debate surrounding the cost of detention... Politicians on both sides of the aisle have also called attention to excessive use of immigration detention, which is directly tied to the mandate. For example, during a March 2013 House Judiciary Committee Hearing, Representative Bachus (R-Ala.) warned of an “overuse of detention by this administration,” and was among 190 House members who voted for the amendment to eliminate the detention bed mandate.”

Agencies do not like to grant expedited processing, but it is important to request it if you are entitled to it. A denial of expedited processing does not need to be administratively appealed and can be brought straight to federal court.

**F.B.I. PAPERS SHOW
WIDE SURVEILLANCE
OF REAGAN CRITICS**

BUREAU DEFENDS EFFORT

Undercover Agents Were Used

Certification and conclusion

This is an important legal step. Add a line near the end of your request saying everything you have written is “true and correct.” In addition, we suggest reiterating parts of the law that are helpful if your request is denied. Here is an example from a Center for Constitutional Rights’ request:



EXAMPLE: “The Requester certifies that the above information is true and correct to the best of the Requester’s knowledge. If this Request is denied in whole or in part, the Requesters ask that the DHS and FBI justify all deletions by reference to specific exemptions of FOIA. [You can cite to DHS and FBI regulations here]. The Requester expects DHS and FBI to release all segregable portions of otherwise exempt material, and reserves the right to appeal a decision to withhold any records or to deny within the application for expedited processing and waiver of fees.”

What the paragraph above is doing is reminding the government agencies (in this case the FBI and DHS, but it could be any agency) that they must explain why they have redacted any information, and that if they do redact parts of a document, they must still provide you with the un-redacted parts of that document.

The language in this example also reminds them of your right to appeal any decision they make – this includes agency decisions about withholding records and also about granting you a fee waiver or expedited processing.

Contact information for any responses

We highly recommend identifying one specific person as the contact for your request. Ideally this is the person who signs the request. Agencies receive hundreds of FOIA requests every month, and the more names and contact information you list at the bottom of a request, the greater the chance of confusion by the agency, which means the person processing your request might just pick someone’s name and address that they see listed and send responses directly to them. The person they choose may no longer be part of your organization, or may not check their email or mailbox that often. So choose someone who will be staying on top of their email and regular mail. It is critical to stay on top of the correspondence that happens after you file a request, because missed deadlines can give an agency legal justification to close your request entirely and can also make it difficult for you if you later choose to litigate your request.

In her landmark opinion supporting the release of documents in our case *NDLON v. ICE*, in which the National Day Laborer Organizing Network sought documents as part of their campaign to stop ICE’s “Secure Communities” program, Judge Shira Scheindlin wrote:

“The Freedom of Information Act was intended to facilitate transparency about the government’s policies even – or perhaps especially – when members of the public are disturbed by those policies and are fighting to end them. The Act calls on government employees to diligently and honestly respond to requests even from people with whom they disagree.””

ADMINISTRATIVE PROCESS

Sending and tracking your request

We strongly recommend sending your request by both mail and email. Send a request via a mail service like Federal Express, UPS, or the U.S. Postal Service with certified mail, so that you can track delivery and receive documented proof that the request was received by the agency.

Some agencies have forms on their websites that you can fill out to submit your request. We recommend against using these forms, as they may limit your ability to add important details, such as explaining why you deserve you should get a fee waiver. Instead, if you are submitting your request electronically, send an email to the agency's FOIA contact with a copy of your written request attached to an email. Most agencies list FOIA contacts and their email addresses on their websites.

Make sure to send one copy of the request to each agency and/or component to which you are directing your request. For example, you might send your request to the FBI, DHS, and ICE.

Tracking your correspondence

If you are making a larger request, we recommend keeping track of the responses to your request on a spreadsheet or in some other type of document. You will probably get responses from each of the agencies that you sent your FOIA to, but you may also get responses from sub-parts of those agencies that you are unfamiliar with. It is good to keep a list of each of these responses, when you received each (and when each was postmarked and/or dated), and when and how you responded to them. Not only is it useful for organizational purposes, but it can be significantly help or hurt your legal claims if you choose to litigate later.

Always keep copies of ALL mail, email, and written, dated notes from any calls or contacts with FOIA officers at each agency or sub-component.



Agency Responses

You should receive separate responses, at least initially, from each of the agencies you sent your request. Make sure to keep track of each set of responses, because one agency may respond differently than another.

1. Initial response (acknowledgment)

Each agency should send back an initial response confirming they received your request and what day they received the request. Often, this response will invoke a 10-day extension for them to respond. You may also receive responses from offices or subcomponents of agencies that you didn't directly send your request to, but who were forwarded your request by their governing agency. The response should provide a tracking number for your FOIA request as well as a name and address for any follow-up correspondence.

2. Administrative closure response

Agencies might also respond by saying your request is too "vague" or does not "provide sufficient detail" for them to respond or search for documents, and that they will "close" your request administratively within 30 business days if you do not provide more information or "clarify" your request. We have found that even with very narrow FOIA requests, agencies will sometimes still give this response, which can be frustrating.

Do not re-file your request. Instead, as soon as possible, respond in writing and/or with a call to tell the agency that your request was appropriately detailed and reiterate all the key points of the request. In addition, if anything new has happened between when you filed the request and when you received the response that might be important – like news articles or public events – you can cite to those as well.

Timelines and dates

It is important to make a note of when responses from agencies are dated and, if you are receiving a response via regular mail, when the envelope is post-marked. In our experience, the dates don't always match up, and an agency might date a letter October 1, but not mail it until October 10, and it might not get to you until October 15. However, the agency will presume that the clock started running from the date on their letter – October 1 – which might affect your ability to appeal or respond to them.

Important administrative process timelines from the FOIA statute

- 1. 20 business days for response:** FOIA requires federal agencies to determine whether to respond to the request and to notify requester of their determination within 20 business days.
- 2. 10-day extension:** FOIA permits agencies to invoke the right to extend the determination or notification by 10 business days "in unusual circumstances."
- 3. 30 days for "administrative closure":** New regulations in most agencies also allow for "administrative closure" if an agency requests clarification or narrowing and the requester fails to respond. This is often 30 business days, but can vary by agency, so be sure to check the agency regulations.
- 4. 90 days to appeal:** You have 90 days to appeal any determination made by a federal agency.
- 5. 20 days for an agency to respond to your appeal:** An agency must respond to your appeal within 20 business days.

State laws

State and local laws typically also require the government to respond within a certain period of time, but this differs state to state.

4. Substantive response

After an agency notifies you that they have received your request and are reviewing it, they must respond again within 20 business days of receiving your request and provide information about what is happening with your request. Their response will be different for every request, but it might contain one or a number of these answers:

- They might tell you they don't have the documents you are requesting.
- They might tell you they are searching for the documents you are requesting and will follow up.
- They might tell you they have forwarded your request to another agency or other offices or components of their own agency.
- They should tell you whether they have granted or denied a request for a fee waiver.
- They should tell you whether they have granted or denied a request for expedited processing.

An agency must tell you at which stage it is with your request. If they have begun conducting searches for documents, they should tell you what offices or agency components are being searched and when they began searching. If they find no documents in regards to parts of your request, they must tell you that.

Activist Wins Faster Access To FBI Data

*Judge Grants FOIA Motion
In Challenge to Conviction*

BY DEBORAH SQUIERS

AN AFRICAN-AMERICAN militant, who voluntarily ended 19 years as a fugitive to face his 1969 conviction on murder-conspiracy charges, yesterday won a round in his effort to prove his arrest was based on a campaign organized by the Federal Bureau of Investigation to discredit black activists.

Herman Ferguson was granted a request in Manhattan federal court to speed up the release of thousands of pages of Federal Bureau of Investiga-



WIDE WORLD PHOTOS
Herman Ferguson
1990. His request would generate

Filing an appeal

If an agency denies any part of your FOIA request, or denies your request for a fee waiver or expedited processing, you can appeal that denial. The agency must provide a contact and instructions on where to direct your appeal.

- **You should include all the issues you want to appeal in your appeal letter.** For example, if you were denied a fee waiver and also told that DHS does not have the documents you are requesting, write one letter with both appeals. However, you will have to appeal individually to each agency – i.e., you cannot make one appeal to both the FBI and ICE.
- **If there is new information** that further shows the urgency of your request – recently published articles, for example – include it in your appeal.
- **You have 90 days from an agency's substantive response to appeal to the agency in writing.** We recommend you make your appeal as soon as possible, especially if you have requested expedited processing of your request.
- **Agencies have 20 days to respond to your appeal.** If you have appealed different parts of their response, they may send answers to your appeal at different times.
- **It is essential to properly follow the appeals process to "exhaust" your claim if you plan to litigate, in order to have a viable case in court.** "Exhaust" means that you have used an agency's internal procedures and followed its appeal process through its end. When your internal appeal with the agency has ended, you can then go to court.

Our public records requests in the early 1990s in support of activist Herman Ferguson showed the extent to which both the FBI and NYPD were surveilling him and his organization.

Tips on appealing common responses from agencies

If they claim the documents do not exist or are not in control of the agency

If the agency or one of their offices or sub-components responds saying the documents do not exist or they do not have the documents you are seeking, use as much public information in your appeal as possible to argue otherwise. For example, there might be an agency official who spoke about what you're requesting in a recent television interview, so cite to that. Or an agency's website might describe it having the types of documents you're looking for – cite to that. Even if you don't have explicit examples that show the agency's response is incorrect, make the argument as best you can with as much information as you have.

If they claim they searched and did not find any documents responsive to your request

You can appeal this response using some of the tips above, but, in addition, you can challenge the "adequacy" of the agency's search. Depending on their request, you can ask why they didn't search certain offices, sub-components, or a specific official's documents who might have the records you are seeking. You can ask whether they searched certain databases or file systems that you know the agency uses to store their data. A lot of how agencies are structured and store their records can be found on public and government websites, as well as in other FOIAs.

If they claim the documents were not adequately described

If an agency gives you this response, or says that your request was too vague, reiterate why your request is specific and give additional examples that show you know exactly what you're looking for. Again, citing to public, recently published media is always helpful.

If they claim part or all of your request falls under an "exemption"

This is a very common response. Agencies are allowed to redact information in their response to you, and must justify their redactions using one or more "exemptions" that we list below.

- ✓ If they redact or deny information without telling you which exemptions they are using to support their denial, you can appeal their failure to explain to you their reasons for denying you the information.
- ✓ If they deny you information and list the exemptions, you can argue that the exemptions they are using are not applicable to the information you are requesting. This can be a bit trickier and might require looking at the FOIA statute's language, as well as possibly getting advice from a lawyer, but don't be scared away from making an argument.



REVIEWING DOCUMENTS

It's a good idea to think about what you hope to do with any documents you get before the government begins producing them for you, especially if you have a large request that might yield hundreds or even thousands of pages of material.

There are several types of information we have found helpful to track when reviewing FOIA documents that may make it easier to get through large quantities of material quickly. These are:

- Bates number (An index number that appears at the bottom of each document and is sequential: "001, 002, 003...")
- Date of the document
- Geography (for example, the state or city associated with the document's content)
- Key names of individuals mentioned in a document
- Type of document (email, letter, spreadsheet, memo, etc.)
- Brief summary of the document (1-2 sentences)
- Whether it is a priority document for advocacy purposes

Publishing documents

It is also helpful to think early on in the process about how you plan to publish the documents you get. Are you going to provide them to a specific journalist who might write a story about them? Are you going to make some or all of the documents available on your organization's website, or a new specific website just for your FOIA? Figuring out the logistics and initial strategy for the publication of documents can be helpful to do at the outset so that when you begin getting documents you can move quickly to make them available in ways that benefit your advocacy or campaign.

Redactions and FOIA exemptions

Government agencies are permitted to "redact" or black out, documents, in part or in their entirety, if they determine the information is "exempt" from disclosure under federal law. There are nine exemptions that a federal agency can use to try to justify redacting a document, which we have listed below. Remember that for state records requests the exemptions may have different names or numbers, though many will be similar in substance.

You should always remind the agencies in your request that they must tell you why they are redacting part of a document – which means at a minimum marking each redaction with an exemption number.

List of federal FOIA exemptions

The federal exemptions are listed in a section of the FOIA statute beginning with the small letter "b," 5 U.S.C. 552(b). Because of this, when a federal agency redacts part of a document, they will label that redaction with the exemption beginning with "b" – for example, "(b)(5)". The exemptions are:

- **(b)(1):** Properly classified information
- **(b)(2):** Internal personnel rules and practices
- **(b)(3):** Documents exempted by a statute other than FOIA, if exemption is absolute
- **(b)(4):** Trade secrets and confidential/privileged financial information
- **(b)(5):** Information that would be privileged in civil discovery, e.g. attorney-client privilege or inter- or intra-agency documents that reveal deliberative process
- **(b)(6):** Personal/medical/similar files which, if revealed, would invade privacy
- **(b)(7):** Records compiled for law enforcement purposes
- **(b)(8):** Reports prepared by or for the use of agencies that regulate financial institutions
- **(b)(9):** Documents that would reveal oil well data

LITIGATING FOIA

This is not a FOIA litigation guide, but here are some basic considerations for what to do when thinking about a request that may lead to litigation. You will need an attorney to litigate your FOIA, but it is critical not only that the attorneys understand how FOIA litigation generally works, but that those non-attorneys – activists, organizers, community groups – be involved in the FOIA litigation. This type of litigation can be the most successful if the strategy is led by the groups and individuals who have made the request and who have the best understanding of what they are seeking to get from the request.

Considerations before litigation

Finding an attorney

Litigating your request in federal court means that if you aren't an attorney, you will need to find one to represent you. Unfortunately, the Center for Constitutional Rights does not have the capacity to litigate all the amazing FOIA requests our partners file. We are working on training more attorneys to litigate these requests. Because it can often be hard to find an attorney willing to litigate a FOIA request "pro bono," which means for free, we highly recommend finding an attorney early on in the process of filing your request so that you aren't scrambling to locate one later.

Exhaustion

In almost all cases, you must first have "exhausted" the administrative process of FOIA. This means you must have gone through the process of getting a response from the government agency and then appealing the decisions of the agency. You cannot ask for a fee waiver or certain kinds of documents for the first time in federal court; everything that you seek in federal court needs to have appeared first in the initial request to the agency.

Length of time

As we mentioned earlier, litigation can take time. There are some strategies lawyers can use to move a case along, but ultimately the judge assigned to your case will decide how quickly the process will go. It will usually take at least several months for you to begin receiving documents, and could take more than a year to receive most or all of the documents you request. In addition, you could receive many documents sooner but in redacted form, and so you would need to go back to court and litigate whether you can get unredacted versions of those documents.

The slow process of litigation can be a problem for campaigns that might need documents quickly

This is why filing narrow, targeted FOIA requests can be more strategic, since it makes it harder for the government to argue that it will take them a long time to produce a small number of records, and also make your request appear more sympathetic in front of a judge.

F.B.I. Kept Watch on AIDS Group During Protest Years

By DAVID W. DUNLAP

The New York office of the Federal Bureau of Investigation kept watch on Act Up, the AIDS advocacy group, during the years that it staged some of its most conspicuous demonstrations against Government policy on AIDS, according to a file supplied by the bureau to the Center for Constitutional Rights.

Of the 199 pages compiled on Act Up by the F.B.I., 22 were sent to the center, which requested the data under the Freedom of Information Act. To judge from what little was made public, the file amounts mostly to newspaper clippings.

In response to a request for information, the F.B.I. also said it had

in civil rights cases.

The bureau also said that there were small files on organizations like Gay Men's Health Crisis and the Center for Immigration Rights, Mr. Deutsch said, and may also have files on Riverside Church.

"These are public groups that don't advocate violence," Mr. Deutsch said. "One can only speculate on why the F.B.I. is collecting documents on these groups when they say they weren't able to do the same thing for militias and violent right-wing groups."

James K. Kallstrom, the assistant director in charge of the New York F.B.I. office, said, "The answer is, we're not."

Federal agency kept files on Act Up and other organizations.

based on reports that violence or criminal activity was planned at certain public demonstrations."

About the other groups, Mr. Kallstrom said the files might well go back more than two decades, before the adoption of guidelines that were meant to control the investigation of domestic political groups.

Ann Northrup, a member of Act

Up's first reported yesterday in The Daily News, are memorandums concerning protests planned during a visit to New York by President Ronald Reagan in 1984 and demonstrations at the National Institutes of Health in Bethesda, Md., in 1990, at the Centers for Disease Control and Prevention in Atlanta in 1990 and at the White House in 1991.

There is also a schedule of a visit to New York in 1992 by President George Bush, apparently issued by Act Up, calling for protests.

James M. Fox, who headed the New York office of the F.B.I. from 1988 to 1993, said yesterday that any groups that plan demonstrations around the President are going to be

ENDNOTES

Litigation and movement priorities

For FOIA to be an effective movement support tool, it is critical that the lawyers you work with center your or your organization's objectives in the litigation strategy. You should decide which documents you think are important to prioritize once you go to court. Make sure to be in consistent, clear contact with your attorney. Let them know if there are demands you want them to push for, and what you are willing, or aren't willing, to give up in any negotiations with the government agencies. Make sure they answer any questions you have about the legal process. If you are able, come to court for any proceedings before the judge and take notes on what happens there.

Basic components of FOIA litigation

Litigation can involve some or all of the following:

- Negotiating with government attorneys on which documents are most important, setting the order in which documents are produced to you, and other issues.
- Seeking a court order requiring the agency to produce records to you on a specific schedule. For example, a judge could order a certain number of documents or pages per month.
- Challenging redactions made by government agencies in documents you received based on "exemptions" under the FOIA statute.
- Challenging the "adequacy" of an agency's search for documents responsive to your request.
- Negotiating the settlement of a case in which you receive key documents in exchange for not receiving others that might be old or of lesser priority.

¹ For a good guide to more state-specific information, visit the Reporter's Committee for Freedom of the Press' website <http://rcfp.org>.

² Depending on the state, you may be able to get certain records more quickly from a state open records request.

³ Many federal agencies post the FOIA regulations on their websites. Examples of specific federal agency regulations on fee waivers are 28 C.F.R. §16.10(k) (Department of Justice) and 6 C.F.R. § 5.11(k) (Department of Homeland Security).

⁴ For a full description of what kinds of request can be granted expedited processing, see 5 USC 552 (a)(6)(E).

⁵ See DHS regulations at 6 C.F.R. §5.5 (e)(1).

JUSTICE TAKES A FIGHT.™



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