

A Citizen's Guide under the Freedom of Information Act (FOIA)

Requesting records from the Albuquerque District, U.S. Army Corps of Engineers



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ALBUQUERQUE DISTRICT U.S. ARMY CORPS OF ENGINEERS FREEDOM OF INFORMATION ACT (FOIA) GUIDE

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INTRODUCTION

This guide is intended to assist with the proper procedural requirements of a Freedom of Information Act (FOIA) request for Department of the U.S. Army Corps of Engineers records. It provides a brief description of the FOIA process and the rights of those who make FOIA requests. The information is not intended to be definitive or exhaustive.

The FOIA generally provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.

The FOIA, which is known by its legal cite as 5 U.S.C. 552, along with the Department of Defense and U.S. Army Corps of Engineers Regulations, govern how requests will be processed within the U.S. Army Corps of Engineers. U.S. Army Corps of Engineers Regulation 25-55, The Department of the U.S. Army Corps of Engineers Freedom of Information Act Program, can be viewed at the following website: <http://www.usace.army.mil/FOIA>

Requests should be submitted to the FOIA Office for the Corps of Engineers division, district, center or laboratory that you believe has the documents you are seeking. Each of these FOIA Offices process requests for their own records. Directing your request to the local office that has the documents you want, will speed up our response to your request.

Section I. Frequently Asked Questions

What is the Freedom of Information Act?

The Freedom of Information Act (FOIA) is a Federal law that establishes the public's right to request existing records from federal government agencies.

Who can file a FOIA request?

Any "person", regardless of citizenship, can file a FOIA request. This includes individuals, corporations, associations, state and local governments, foreign governments, etc. Fugitives from Justice and foreign governments requesting information from intelligence agencies **cannot** file a FOIA request.

What agencies are subject to the FOIA and what type of information can be requested?

The FOIA's scope includes Federal Executive Branch Departments, agencies, and offices, federal regulatory agencies, and federal corporations. However, Congress, the federal courts, and parts of the Executive Office of the President are not subject to the FOIA. State and local governments are likewise not subject to the FOIA, but some states have their own equivalent access laws for state records. Any information can be requested; however, if responsive records are located, they must undergo a release determination process and the records (or portions thereof) may or may not be released dependent upon the application of FOIA exemptions.

What records are subject to the FOIA?

Agency records are subject to the FOIA. This includes records either created or obtained by an agency, and those under agency control at the time of the FOIA request. The records may be in the form of paper documents, tapes, photos and electronic records generally in the possession and control of an agency. All records are subject to the nine FOIA exemptions (discussed in detail on pages 5 and 6).

What is an agency record?

Any product(s) of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under federal law in connection with the transaction of public business and in U.S. Army Corps of Engineers possession and control at the time the FOIA request is made.

What records are not subject to the FOIA?

Tangible objects or articles and personal records are not subject to the FOIA. In addition, Agencies are not required to create records or compile information in response to a FOIA request or add explanatory materials to any records disclosed.

Can questions be processed as a FOIA request?

No. Questions and interrogatories will not be processed as FOIA requests. The FOIA does not require federal agencies to answer questions, render opinions, do legal research, compile or analyze data, conduct surveys, speculate or provide subjective evaluations. Proper FOIA requests are those seeking existing physical or electronic records, such as those mentioned above.

How do I submit a FOIA request?

FOIA requests must be in writing or electronic mail and must be for agency records. Address your inquiry as “Freedom of Information Act Request,” preferably within the request letter and on the envelope. Address the request directly to the FOIA Office that would likely have the information you are seeking. You can find contact information for U.S. Army Corps of Engineers FOIA Offices and Service Centers at: <http://www.usace.army.mil/FOIA/Pages/FOIAOffices.aspx>

If you are still unsure which Army element to contact for information, you may write to the US Army Corps of Engineers, HQ, Freedom of Information and Privacy Office, US Army Humphreys Engineer Center, ATTN: CEHEC-OC, 7701 Telegraph Rd, Alexandria, VA 22315-3860 or by e-mail to foia@usace.army.mil.

When submitting your FOIA request you should state your willingness to pay applicable fees, if any. If you seek a fee waiver you must provide justification. Refer to the section titled “Do I have to pay for a FOIA request” on page 7 for more information regarding fee waivers.

Also, be sure to describe the specific records you are requesting in enough detail so that they can be located with a reasonable amount of effort. Generally, a record is reasonably described when the description contains sufficient file-related information (type of document, title, subject area, date of creation, contract number, originator, etc.); or the request contains enough event-related information (date and circumstances surrounding the event the record covers) to permit the conduct of an organized, non-random search.

NOTE: Appendix A (page 11) contains a sample FOIA request letter.

What are the reasons for not releasing a record?

There are several reasons why the U.S. Army Corps of Engineers may not release a record requested under FOIA. The reasons include the following:

- The record is not maintained by the office receiving the request.
- The record is not under the purview of the office receiving the request.
- The office receiving the request does not have the authority to release the record.

- The U.S. Army Corps of Engineers Component determines, through knowledge of its files and reasonable search efforts, that it neither controls nor otherwise possesses the requested record.
- A record has not been described with sufficient detail to enable the U.S. Army Corps of Engineers Component to locate it by conducting a reasonable search.
- The requester has failed to comply with procedural requirements, including payment of fees, imposed by the FOIA, Department of Defense Policy and the governing Army Regulation 25-55.
- The request is withdrawn by the requester.
- The request is a duplicate or records have been previously provided to the requester.
- The information requested is not a record within the meaning of the FOIA and AR 25-55.
- The record is denied in whole or in part in accordance with procedures set forth in the FOIA and AR 25-55.

What are the nine FOIA exemptions?

The FOIA maintains nine exemptions to the general presumption of mandatory disclosure. Generally, Congress intended the exemptions to protect against disclosure of information which would substantially harm national defense or foreign policy, individual privacy interests, business proprietary interests, and the efficient operation of governmental functions. Records that meet the exemption criteria of the FOIA may be withheld from public disclosure and need not be published in the Federal Register, made available on public websites, in libraries, in electronic reading rooms, or provided in response to a FOIA request.

The nine exemptions are categorized and described below:

- (b) (1) – Protects records currently and properly classified in the interest of national defense, security or foreign policy.
- (b) (2) – Protects records that are related solely to internal personnel rules and practices of an agency, which, if released, would allow circumvention of an agency function, rule, policy or statute, thereby impeding the U.S. Army Corps of Engineers in the conduct of its mission.
- (b) (3) – Protects information that has been specifically exempted from disclosure by statute.
- (b) (4) – Protects trade secrets or commercial or financial information obtained from a private source (person or organization) which is privileged or confidential and if publicly released would cause substantial competitive harm to the source if disclosed.

- (b) (5) – Protects inter-agency memos, letters or records that are deliberative in nature and are part of the decision making process that contain advice, subjective evaluations, opinions and recommendations. Also within the scope of this exemption are attorney-client and attorney work product privileged documents.
- (b) (6) – Protects records which, if released, would result in a clearly unwarranted invasion of personal privacy, such as information contained within personnel and medical files.
- (b) (7) – Protects investigatory records or information compiled for law enforcement purposes
- (b) (8) – Protects records for the use of, or related to, examination, operating, or condition reports prepared by or for regulators or supervisors of financial institutions.
- (b) (9) – Protects records containing geological and geophysical information and data, (including maps) concerning wells.

What is a denial?

When information is withheld, whether in whole or in part, for one or more of the exemptions identified above, this constitutes a denial under FOIA. Also, when a request is made for a number of specific documents and some of the documents could be located but others could not, or there are simply no documents responsive to the FOIA request. This will lead to a response of a “no records found” denial letter. In either of these instances, you will be notified in writing by an Initial Denial Authority (IDA) and given appeal rights.

Records that are released may have to be redacted. Redacted records have the denied information removed from where it was originally located within the document. If your request is denied in part, you will receive information regarding the portions that were withheld.

Can I appeal a denial?

Yes. If your request is initially denied, in whole or in part, under one or more of the above exemptions, or you receive a “no records found” denial, you will be advised of your appeal rights and the proper procedures for submitting an appeal. You are usually given 60 days from the date of the correspondence to appeal. If you are not satisfied with the appeal determination, you may seek a judicial review.

How long will it take for my request to be processed?

Generally, the U.S. Army Corps of Engineers Office of Counsel processes requests in order by date of receipt. Whenever possible, an initial determination to release or deny a record is made within 20 working days after receipt of the request by the appropriate FOIA Office. That is, the office that maintains the responsive information and/or is designated to respond regarding the subject matter requested.

If unusual circumstances exist that preclude a timely response, the responsive FOIA office will provide an interim response, giving an estimated completion date and reason(s) for delay. A onetime extension of up to 10 working days may be allowed for unusual circumstances which include:

- The U.S. Army Corps of Engineers Office receiving the request has a significant number of pending requests.
- The complexity of the request or volume of responsive records prevents a final response within 20 working days.
- The need to search for and collect the requested records from other facilities that are separate from the office determined responsible for a release or denial decision on the requested information.
- The need to search for, collect, and examine a voluminous amount of separate and distinct records.
- The need for consultations, with another agency or among two or more components within the same agency.

How do I qualify for expedited processing of my request?

To qualify for expedited processing, you must request expedited processing *and* demonstrate one of the following compelling needs:

- Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.
- Information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.
- Other reasons that the agency may deem appropriate (eg. an imminent loss of substantial due process rights).

Do I have to pay for a FOIA request?

The FOIA allows uniform fees to be charged to certain types of requesters, but it also provides that waivers or reductions in fees be given depending upon the category of the requester, and/or if disclosing the information is in the public interest.

FEES

Before we start the search for your records, you will need to inform us if there is a maximum you are willing to pay for search, review, and duplication charges related to your request. If you do not do so, USACE Albuquerque District will assume that you are willing to pay fees of up to a certain amount, currently \$25. If we estimate that the total fees for processing your request will exceed \$25, we will notify you in writing of the estimate and offer you an opportunity to narrow your request in order to reduce the fees. If you wish to proceed and request all of the records involved, you will be asked to express your commitment to pay the estimated fees and the processing of your request will be suspended until you agree to do so.

You ordinarily will not be required to pay the fees until the records have been processed and are ready to be released to you. If, however, you have failed to pay fees within thirty days of billing in the past, or if the estimated fees exceed \$250.00, you may be required to pay the estimated fees in advance -- that is, before the records are processed.

If you agree to pay fees and then fail to do so within 30 days of billing, you may be charged interest on your overdue balance and USACE Albuquerque District will not proceed with any further requests from you until payment in full has been made. If you agree to pay fees for searching for records, be aware that you may be required to pay such fees even if the search does not locate any responsive records or, if records are located, even if they are withheld as entirely exempt.

What types of Fees exist under FOIA?

Three types of fees exist under FOIA. They are:

- 1) **Search Fees** – the time spent looking for material that is responsive to a request; searches may be done manually or by computer.
- 2) **Review Fees** – determining whether the material is exempt from disclosure. This includes doing all that is necessary to excise the records and prepare them for release.
- 3) **Duplication Fees** – the process of making copies of the documents or records.

How do I request a fee waiver?

All requesters must submit a willingness to pay fees regardless of the fee category; however, this does not mean you will be charged fees. Request for fee waivers or reduction of fees will be reviewed on a case-by-case basis. A request for a fee waiver should be made at the time of the initial FOIA request. Indigence alone is not enough to automatically waive fees.

Fee waivers may be granted when disclosure of the records 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.

The following factors are weighed in making a fee waiver determination:

- The subject of the request.
- The informative value of the information to be disclosed.
- The contribution to an understanding of the subject by the general public likely to result from the disclosure.
- The significance of the contribution to public understanding.
- Disclosure of the information is not primarily in the commercial interest of the requester.
- The ability of the requester to disseminate the information.

What are the categories of FOIA requesters and what fees are charged to each category of requester?

The FOIA requires that requesters be placed into one of three requester categories:

1) Commercial-use Requesters - pay all fees for search, review, and duplication.

- Requesters who seek information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is being made, which can include furthering those interests through litigation.

2) Favored Requesters - pay only duplication fees (no search or review fees).

- Educational Institutions – a school which operates a program of scholarly research (including preschools, elementary or secondary schools and institutions of higher learning). The records must be sought in furtherance of scholarly research. Educational requesters pay only duplication fees, unless it is determined that fees are waived or reduced in the public interest. The first 100 pages are provided at no cost.
- Non-commercial scientific institutions – institutions not operated on a commercial basis, operated for the purpose of conducting scientific research that does not promote a particular product.
- News Media – representatives of the news media actively gathering news for an entity that is organized and operated to publish or broadcast news; freelancers.

- 3) **“Other” Requesters** - receive the first two hours of search costs, all review costs, and the first 100 pages at no cost.
- Requesters who do not fall under Commercial-use Requesters or Favored Requesters, and normally make requests for agency records for their personal use.

What happens if I send my request to the wrong agency?

USACE Albuquerque will make every effort to provide your request to the appropriate agency. Misdirected requests will be forwarded to the FOIA Office with the responsibility for the records requested. The 20 working days allowed for responding to a FOIA request does not begin until the request is received by the FOIA Office that maintains the requested records.

What does aggregating requests mean?

An aggregating request is when multiple requests along with expended search time and duplication costs are combined for the purpose of determining a fee chargeable to the requester. Requests may be aggregated if a requester files multiple requests at or near the same time, each seeking portions of a document or documents, or portions of a collection of records. When an agency reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the agency may aggregate any such requests and charge accordingly.

Section II. Electronic Access and Links of Interest

Below is a list of website links you may find useful:

U.S. Army Corps of Engineers Albuquerque District Homepage - <http://www.spa.usace.army.mil/>

U.S. Army Corps of Engineers HQ FOIA Homepage - <http://www.usace.army.mil/FOIA/>

U.S. Army Corps of Engineers HQ Homepage - <http://www.usace.army.mil/>

Department of the Army FOIA Web Site - <https://www.rmda.army.mil/organization/foia.shtml>

Department of the Army Electronic Reading Room - https://www.rmda.army.mil/foia/FOIA_ReadingRoom/err-main.aspx

Department of Defense FOIA Web Site - <http://www.dod.mil/pubs/foi/>

Department of Justice FOIA Web Site - <http://www.justice.gov/oip/index.html>

Section III. Conclusion

We trust this information will be helpful to you when pursuing FOIA requests with the U.S. Army Corps of Engineers. If you have any suggestions, you may email us at: FOIA-SPA@usace.army.mil or write to:

U.S. Army Corps of Engineers
Albuquerque District
Freedom of Information and Privacy Office
4101 Jefferson Plaza NE
Albuquerque, NM 87109

APPENDIX A
Sample FOIA Request Letter

FOIA Officer
U.S. Army Corps of Engineers
Albuquerque District
4101 Jefferson Plaza, NE
Albuquerque, NM 87109

Dear FOIA Officer:

This is a request under the Freedom of Information Act (5 U.S.C. 552).

I request that a copy of the following document(s) be provided to me. [Identify the document(s) as specifically as possible]. Please provide the requested documents by [choose one] regular mail, expedited mail, scanned and e-mailed or on the cd provided.

In order to help you determine my status for the purpose of assessing fees, you should know that I am [Insert one of the descriptions below]

 a representative of the news media affiliated with the _____ newspaper (magazine, television station, etc.), and this request is made as part of news gathering and not for a commercial use.

 affiliated with a private business and am seeking information for use in the companies' business.

 an individual seeking information for personal use and not for a commercial purpose.

I am willing to pay fees for this request up to a maximum of \$_____. If you estimate that the fees will exceed this limit, please inform me first.

[Optional] I request a waiver of fees for this request because disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the Army and is not primarily in my commercial interest. [Include details about how the requested information will be disseminated by you to the general public.]

Sincerely,

Name
Address
City, State, Zip
Telephone Number (optional)
E-mail address (optional)