

A Citizen's Guide to 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 procedural requirements of a Freedom of Information Act (FOIA) request for U.S. Army Corps of Engineers (USACE) 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, 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 USACE. USACE Regulation 25-55, 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>, which provides links to the full FOIA text as well as Department of Defense and Department of the Army regulations.

The FOIA generally provides that any person has a legally enforceable right 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.

Submit your FOIA request to the FOIA Office for the USACE division, district, center, or laboratory that you believe has the documents you are seeking. Directing your request to the local office that has the documents you want will speed up our response to your request because each FOIA Office processes requests for their own records.

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 submit a FOIA request?

Any "person," regardless of citizenship, can submit a FOIA request. This includes individuals, corporations, associations, state and local governments, and foreign governments. Fugitives from justice and foreign governments requesting information from intelligence agencies **cannot** submit 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 all states have their own equivalent laws to provide the public with access to state records. Any information can be requested under the FOIA; 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 nine FOIA exemptions (discussed in detail on pages 5 and 6).

What is an agency record?

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

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, must be submitted by physical mail or e-mail, and must request agency records. Label both your envelope and letter as “Freedom of Information Act Request.” Address the request directly to the FOIA Office that would likely have the documents you are seeking. You can find contact information for USACE FOIA Offices and Service Centers at: <http://www.usace.army.mil/FOIA/Offices.aspx>.

If you are still unsure which USACE element to contact for information, you may write to the U.S. Army Humphreys Engineer Support 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 must state your willingness to pay applicable fees, if any. If you are requesting a fee waiver you must provide justification. Refer to the Fees section of this guide, beginning on page 8, 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 easily. Please include the type of document, title, subject area, date of creation, contract number, originator, etc. or enough event-related information (e.g. date and circumstances surrounding the event the record covers) to permit organized and 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 USACE may not release a record requested under FOIA. The DOD FOIA Handbook lists the following:

- A reasonable search of files failed to identify responsive records.
- The request is transferred to another DoD Component, or to another Federal Agency.
- The request is withdrawn by the requester.
- The requester is unwilling to pay fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with the fee estimate.

- A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search. The requester has failed to reasonably comply with procedural requirements, other than fee-related, imposed by this Regulation or DoD Component supplementing regulations.
- The information requested is not a record with the meaning of the FOIA and this Regulation.
- The request is a duplicate request (e.g., a requester asks for the same information more than once). This includes identical requests received via different means (e.g., electronic mail, facsimile, mail, courier) at the same or different times.
- The requester does not comply with published rules for another reason other than those outlined above.
- The record is denied in whole or in part in accordance with procedures set forth in the FOIA. One or more of the nine FOIA exemptions may apply.

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, which, if released, would allow circumvention of agency function, rule, policy, or statute, thereby impeding USACE 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?

A denial occurs under FOIA when information is withheld, whether in whole or in part, for one or more of the exemptions identified above. A denial also occurs when not all of the requested documents could be located and when there are simply no documents responsive to FOIA request (no records response). In any of these instances, you will be notified in writing by an Initial Denial Authority (IDA) and given appeal rights.

In some instances, records that are released may have been redacted. In a redacted record, the denied information is blacked out 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, USACE Office of Counsel processes requests in the order that they are received. 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

one-time extension of up to 10 working days may be allowed for unusual circumstances which include:

- The USACE 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 (e.g., 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 \$25.00. If we estimate that the total fees for processing your request will exceed \$25.00, we will notify you in writing of the estimate and offer you an opportunity to

narrow your request to reduce the fees. If you wish to proceed and request all 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 promptly pay fees 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 you have paid in full. 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.

An up-to-date fee schedule can be found at: <https://www.usace.army.mil/FOIA/Fees.aspx>.

How do I request a fee waiver?

All requesters must indicate their willingness to pay fees; 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 only pay duplication fees, unless a decision is made to waive or reduce the fees as being in the public interest. The first 100 pages are provided at no cost.
- Non-Commercial Scientific Institutions – institutions operated for the purpose of conducting scientific research that does not promote a particular product and not operated on a commercial basis.
- News Media – representatives of the news media actively gathering news for an entity that is organized and operated to publish or broadcast news and freelance reporters.

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 do not begin until the request is received by the FOIA Office that maintains the requested records.

What does aggregating requests mean?

An aggregated 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 submits 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 website - <https://www.rmda.army.mil/foia/RMDA-FOIA-Division.html>

Department of the Army Electronic Reading Room - <https://www.rmda.army.mil/readingroom/>

Department of Defense FOIA website - <https://open.defense.gov/Transparency/FOIA/>

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

Section III. Conclusion

We trust this information will be helpful to you when pursuing FOIA requests with USACE Albuquerque District. If you have any questions or 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
FOIA-SPA@usace.army.mil

[DATE]

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

E-mail address

Telephone Number (optional)