



FOIA 101

Under the Freedom of Information Act (FOIA) and the Privacy Act, you may request many different types of government records. This guide will address only how to request records on yourself (as opposed to records about another person, living or dead, records about an organization, or records about government operations).

WHERE TO SEND YOUR REQUEST

Every federal agency maintains its own set of records. Because there is no central storage for all federal records, there is no single place to make a FOIA request for your records. Instead, you must ask each federal agency that you believe has records about you to search for and produce those records.

There are many different agencies that could have records about you. This guide will address **only** how to request records that have been collected and maintained by the **Federal Bureau of Investigation (FBI)** and the **Joint Terrorism Task Forces (JTTF)**. These agencies are responsible for cooperation between federal, state and local law enforcement personnel in certain investigations.

Our sample FOIA letter has the addresses of national intelligence-gathering offices and the JTTF offices in Pennsylvania. **You need to photocopy your FOIA letter and send a separate copy to each office that you want to search for records on you.** You no longer need to send separate requests to regional FBI field offices, just a single request to the Washington FBI office.

If you use our sample FOIA letter, cross off the offices listed that you do not want to send the letter to, and do not send it to those offices. If you think there are other federal agencies that may have records on you and are not listed on the sample letter, just attach a list of those agencies to the front of your letter. Remember to send the FOIA contact at each agency a separate copy of the letter. The Department of Justice maintains a list of the FOIA contact office for each federal agency at <http://www.usdoj.gov/04foia/foiacontacts.htm>.

You should write “Freedom of Information Act Request” on the outside of each envelope, and be sure to use the right amount of postage.

WHAT TO REQUEST

Submitting a FOIA request is often referred to as “sending for your file”. In fact, there is a great deal of information collected by the FBI that is not kept in files that correspond to particular individuals. Therefore, you do not want to simply request the FBI’s “file” on you – **you want to request all records, wherever and however kept, that relate to you.** Then the agency will have to search through all of its records for records about you.

If your request is too broad, the FBI may refuse to respond on the grounds that your request cannot be understood. On the other hand, if your request is too specific, then you may not get certain information that is maintained differently than you might anticipate. You should also specify a time frame for the records – for example, from 1970 to the present. As an example, we have attempted to make our sample FOIA letter broad, but still sufficiently specific to capture as much information as possible.

COSTS

There is no initial fee to file a FOIA request. In the majority of requests made to the FBI, no fees are ever charged. By law, however, an agency is entitled to charge fees for “searching” for records, “processing” records, and for photocopying. Fees depend on the particular category of FOIA requester. As an individual requesting your own records, you will not be charged any processing fee, but you could be charged for time spent searching for your records and for photocopying, after the first two hours of search time and after the first one hundred pages of photocopies (which are free). The FBI charges ten cents per page for photocopying. If your fees would not exceed \$14, the Justice Department’s policy is not to charge any fee at all.

It is important to specify in your request letter a limit that you are willing to pay in fees. If you do not do so, the Justice Department will assume that you are willing to pay fees of up to a certain amount, currently \$25. If a government agency estimates that the total processing fees will exceed \$25, it 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 still want all of the records involved, you have to contact the agency and say you are willing to pay the estimated fees. The processing of your request will be suspended until you agree to do so.

You ordinarily will not be required to actually pay the fees until the records have been processed and are ready to be sent to you. If you agree to pay fees for searching for records, be aware that you may be required to pay for the search even if the agency does not locate any records about you or, if records are located, even if they are withheld from you under one of the statutory exemptions.

WHAT ARE STATUTORY EXEMPTIONS?

If the government finds records about you, it is required to provide them to you unless they fall within one or more of the nine exemptions and three exclusions in the Freedom of Information Act, which exempt from disclosure documents that relate to ongoing criminal investigations, national security, private information about other people, government secrets (like the names of informants) and other matters. Often, the FBI will produce a page that has information about

you, but “redact” or block out the information that is about other people or is subject to a statutory exemption.

WHAT YOUR REQUEST MUST INCLUDE

There is no particular form required for a FOIA request, although some federal agencies do make standard forms available as an option. The request must be in writing, identify who you are and what records you are seeking, and include both your old name, if you have changed your name, and verification of your identity (see below).

To obtain the broadest range of documents, you should state that you are making your request under both the FOIA and the Privacy Act. (Our sample FOIA letter says this.) You are not required to provide your Social Security Number, but it may help the government agency to find records relating to you if you do provide it. If you use our sample FOIA letter, you can make your own decision whether to include your Social Security Number.

You may receive more records if you also make your request under the Privacy Act, but the Privacy Act is only available to U.S. citizens and persons lawfully admitted for permanent residence. Our sample FOIA letter includes an option to provide information on your citizenship status, in case you would like to make your request under both the Privacy Act and FOIA.

When you are requesting records about yourself, you also need to verify that you are who you say you are (because no one else can request your records without your permission – at least, while you are alive). There are several ways to do this, but the easiest way is to include the following statement immediately above the signature on your request letter: “I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].” Our sample FOIA letter includes this declaration.

WHAT HAPPENS AFTER I SUBMIT MY REQUEST?

FOIA requires the federal agency to which you have submitted your request to make a formal response within twenty business days after it receives the request (not counting weekends or holidays), but the agency may take up to ten more days under certain circumstances, or it may ask you to agree to a longer search period. In many cases, however, federal agencies have been known to take many months to complete a FOIA search and produce records, even without an agreement from the requester.

It may be a good idea to send your FOIA requests certified mail, return receipt requested, so you have a record of when you mailed the request and when the time is up. If the legal time period has passed and you have not heard from the agency to which you sent your request, you can wait, or you can file suit to demand immediate production of your records.

WHAT KIND OF RESPONSE CAN I EXPECT?

Even if you have been politically active, the FBI may not locate any files on you, particularly if your name has not been made public in connection with your activism. Many people send the FBI FOIA requests and are told that the FBI cannot locate any records about them. If that happens to you, consider whether you want to send a new request with a different description of the records you want – either broader or more narrow.

If the FBI does locate records about you, but refuses to give them to you because it claims they are subject to statutory exemptions, you can file and appeal to challenge the exemption. YOU MUST FILE THE APPEAL WITHIN 60 DAYS OF RECEIVING THE LETTER SAYING THE GOVERNMENT WILL NOT RELEASE THE DOCUMENTS. If you receive that type of response from the FBI, the ACLU would be very interested in talking with you about it and about your options to pursue your records. You can contact the ACLU of PA FOIA Project for assistance.

If the FBI gives you some records, but withholds others or blocks out portions of the documents you do receive, it must tell you which statutory exemption it is claiming justifies the redaction. Again, you will have 60 days to file an appeal demanding the rest of your records.

If you receive any documents about yourself from the FBI, the ACLU of PA is available to talk with you about what you received and what you can do with that information. When emailing, please include the phrase “FOIA Project” in the subject line.

You can contact the ACLU of PA FOIA Project at info@aclupa.org or by mail at

ACLU of PA
PO Box 40008
Philadelphia, PA 19106

Please include FOIA in the subject line.