

## C. MAKING A FOIA REQUEST

The first step in making a request under the FOIA is to identify the agency that has the records. A FOIA request must be addressed to a specific agency. There is no central government records office that services FOIA requests.

Often, a requester knows beforehand which agency has the desired records. If not, a requester can consult a government directory such as the *United States Government Manual*. 22

**[Footnote]** This manual has a complete list of all Federal agencies, a description of agency functions, and the address of each agency. A requester who is uncertain about which agency has the records that are needed can make FOIA requests at more than one agency.

**[Footnote 22:** The *United States Government Manual* is sold by the Superintendent of Documents of the U.S. Government Printing Office. Virtually every public library should have a copy on its shelves. An electronic version of the *Manual* may be found on the Office of the Federal Register website at <http://nara.gov/nara/fedreg>.]

Agencies require that FOIA requests be in writing. Letters requesting records under the FOIA can be short and simple. No one needs a lawyer to make a FOIA request. Appendix 1 of this *Guide* contains a sample request letter.

The request letter should be addressed to the agency's FOIA officer or to the head of the agency. The envelope containing the written request should be marked 'Freedom of Information Act Request' in the lower left-hand corner. 23

### **[Footnote]**

**[Footnote 23:** All agencies have issued FOIA regulations that describe the request process in greater detail. For example, large agencies may have several components each of which has its own FOIA rules. A requester who can find agency FOIA regulations in the *Code of Federal Regulations* (available in many libraries and an electronic version may be found on the Office of the Federal Register website provided in note 22) might find it useful to check these regulations before making a request. A requester who follows the agency's specific procedures may receive a faster response. However, the simple procedures suggested in this guide will be adequate to meet the minimum requirements for a FOIA request.]

There are three basic elements to a FOIA request letter. First, the letter should state that the request is being made under the Freedom of Information Act. Second, the request should identify the records that are being sought as specifically as possible. Third, the name and address of the requester must be included.

Under the 1986 amendments to the FOIA, fees chargeable vary with the status or purpose of the requester. As a result, a requester may have to provide additional information to permit the agency to determine the appropriate fees. Different fees can be charged to commercial users, representatives of the news media, educational or noncommercial scientific institutions, and individuals. The next section explains the fee structure in more detail.

There are several optional items that are often included in a FOIA request. The first is the telephone number of the requester. This permits an agency employee processing a request to speak with the requester if necessary.

A second optional item is a limitation on the fees that the requester is willing to pay. It is common for a requester to ask to be notified in advance if the charges will exceed a fixed amount. This allows the requester to modify or withdraw a request if the cost may be too high. Also, by stating a willingness to pay a set amount of fees in the original request letter, a requester may avoid the necessity of additional correspondence and delay.

A third optional item sometimes included in a FOIA request is a request for a waiver or reduction of fees. The 1986 amendments to the FOIA changed the rules for fee waivers. Fees must be waived or reduced if disclosure of the information 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. Decisions about granting fee waivers are separate from and different than decisions about the amount of fees that can be charged to a requester.

A fourth optional item is the specification of the form or format in which the requested material is sought. This is an important consideration if a requester desires the responsive information in a particular format. For example, should information maintained by an agency in an electronic form be provided in that same form (perhaps on a disk or CD-ROM) or in hardcopy (such as a paper printout)? The 1996 amendments to the FOIA require agencies to help requesters by providing information in the form requested, including requests for the electronic form of records, if the agency can readily reproduce it in that form. Part of this helping effort includes informing requesters of costs and delays that format preferences might engender.

A fifth optional consideration is seeking expedited processing of a request by showing a 'compelling need' for a speedy response. The 1996 amendments to the FOIA require the agencies to promulgate regulations authorizing expedited access where a requester demonstrates a 'compelling need' for quick response. A 'compelling need' warranting faster FOIA processing exists in two categories of circumstances. In the first category, the failure to obtain the records within an expedited deadline poses an imminent threat to an individual's life or physical safety. The second category requires a request by someone 'primarily engaged in disseminating information' and 'urgency to inform the public concerning actual or alleged Federal Government activity.' Agencies may determine other cases in which they will provide in their regulations for expedited processing.

The specified categories for compelling need are intended to be narrowly applied. A threat to an individual's life or physical safety qualifying for expedited access should be imminent. A reasonable person should be able to appreciate that a delay in obtaining the requested information poses such a threat. A person 'primarily engaged in disseminating information' should not include individuals who are engaged only incidentally in the dissemination of information. The standard of 'primarily engaged' requires that information dissemination be the main activity of the requester, although it need not be his or her sole occupation. A requester who only incidentally engages in information dissemination, besides other activities, would not satisfy this requirement.

The standard of 'urgency to inform' requires that the information requested should pertain to a matter constituting a current exigency for the American public and that a reasonable person might conclude that the consequences of delaying a response to a FOIA request would compromise a significant recognized interest. The public's right to know, although a significant and important value, would not by itself be sufficient to satisfy this standard.

A requester should keep a copy of the request letter and related correspondence until the request has been finally resolved.