

OFFICE OF EXTERNAL AFFAIRS

What is the Freedom of Information Act (FOIA)?

The Freedom of Information Act (FOIA) is a federal mandatory disclosure statute that affords individuals the right, enforceable in court, to obtain access to federal agency records, unless the records (or a part of the records) are protected from public disclosure by any of the nine exemptions contained in the law or by any one of three special law enforcement record exclusions.

The FOIA contained in Title 5, United States Code, Section 552, was signed into law on July 4, 1966, by President Lyndon Johnson. Since then, the FOIA has been amended several times, perhaps most significantly by the Electronic Freedom of Information Act Amendments of 1996 (E-FOIA). The U. S. Department of Energy (DOE) implements the FOIA according to procedures outlined in 10 Code of Federal Regulations, Part 1004 (10 CFR, Part 1004) http://www.eere.energy.gov/golden/PDFs/ReadingRoom/FOIA_10_CFR_1004.pdf. The Act applies only to records created by and/or in the possession of agencies in the executive branch of the federal government, such as DOE, and including DOE's Golden Field Office. The FOIA applies to the offices under the President but not to Congress, the judicial branch of the federal government, or to state or local governments; however, many states have enacted their own open records laws. Information about a particular state's laws can usually be obtained from that state's attorney general.

It is important to know that you can get access to certain information without having to submit a FOIA request. The FOIA and E-FOIA require that certain agency records, such as descriptions of agencies' organizations and office addresses, statements of agencies' operations or rules of procedures, general policy statements, final opinions made in the adjudication of cases, and administrative staff manuals that affect the public, be made available for inspection and copying without the need for filing a FOIA request. For the Golden Field Office, these records and many other agency records, in the spirit of openness, are available to the public in our public reading facilities. (See Public Reading Facilities Page).

All other agency records may be requested by submitting a FOIA request. Under the FOIA, agencies must provide copies of records in their possession at the time of the request. Agencies are not required to create a record or answer questions when responding to FOIA requests.

Although the FOIA is primarily a disclosure law, not all records requested are automatically released. The FOIA establishes nine exemptions that allow certain information contained in a record, or the entire record, to be withheld from public disclosure. These exemptions apply to:

- **Exemption 1** - matters that are properly classified in the interest of national defense or foreign policy

- **Exemption 2** - information related solely to an agency's internal personnel rules and practices
- **Exemption 3** - matters that are specifically mandated to be withheld from public release by other statutes
- **Exemption 4** - trade secrets or commercial or financial information which is obtained from a person and is privileged or confidential
- **Exemption 5** - inter-agency or intra-agency memoranda or letters that would be protected by a privilege in court, such as the attorney-client privilege, attorney work product, or deliberative process privilege
- **Exemption 6** - personnel and medical files and similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy
- **Exemption 7** - investigatory records or information compiled for law enforcement purposes, the release of which (a) could reasonably be expected to interfere with enforcement proceedings, (b) would deprive a person of a right to a fair trial or impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (f) could reasonably be expected to endanger the life or physical safety of any individual
- **Exemption 8** - information contained in or related to certain examination, operating, or condition reports concerning financial institutions
- **Exemption 9** - certain information concerning gas or oil wells

Nonexempt information will be released unless it is inextricably intertwined with exempt material. Agencies are encouraged to make discretionary releases of information in cases where no foreseeable harm would result from doing so.

Generally, you have a right to a decision as to whether the requested records will be provided within 20 working days from the time we receive your request. However, under certain circumstances, some requests may take longer to complete. If we determine we will need additional time to complete your request, we will notify you.

If we withhold any part of the information you requested or if you believe we did not conduct a thorough search, you have the right to appeal to the DOE Office of Hearings and Appeals. If you have requested a fee waiver and we denied it, you can also appeal that determination.

The request for an appeal must be submitted in writing to: Director, Office of Hearings and Appeals, HG-1, Department of Energy, 1000 Independence Avenue, S.W.,

Washington, D.C. 20585. Both the letter and the envelope must be clearly marked, "Freedom of Information Appeal." In the letter, please refer to the FOIA request docket number from the subject line in our response letter to you, and be specific about what aspect of our response you are appealing. The judicial review will thereafter be available within the district in which you reside, have a principal place of business, where the records are located, or in The District of Columbia.

The Office of Hearings and Appeals will review our handling of the request and will normally either deny your appeal or remand the matter back to us with instructions to issue a new determination based on their direction. Their direction could require us to conduct a more thorough search, release the information, release part of the information, or simply provide a clearer rationale as to why the information is being withheld.

If your appeal is not resolved to your satisfaction, you have the option of taking the matter to court.