

THE FREEDOM OF INFORMATION ACT (FOIA)

FOIA, 5 U.S.C. § 552, provides the public with a right to access federal agency information, subject to enumerated exemptions and exclusions.

KEY TERMS

The meanings of three terms used by FOIA – “agency,” “agency records,” and “any person” – effectively determine which entities are subject to FOIA, what materials those entities must disclose, and to whom FOIA grants the right to request and receive records.



AGENCY

Includes executive departments, military departments, and other establishments within the executive branch, including certain entities within the Executive Office of the President, and independent regulatory agencies of the federal government.



AGENCY RECORDS

Materials that an agency has *created or obtained* and that it *controls* when a FOIA request for such materials is made.



ANY PERSON

Includes individuals (U.S. citizens and noncitizens), as well as corporations and certain other entities.

ACCESS TO GOVERNMENT INFORMATION UNDER FOIA

FOIA sets forth a **three-part system** for disclosing government information under which agencies must

01 publish certain government information, such as “substantive rules of general applicability,” in the *Federal Register*;

02 electronically disclose other information—including final agency adjudicative opinions and certain previously released records—unless the information has been promptly published and copies have been made available for sale; and

03 promptly release covered records after receiving a request that reasonably describes the requested records and complies with relevant agency rules.

Note: Once an agency receives a proper FOIA request, it normally has 20 business days to determine whether to comply with the request.

EXEMPTIONS

FOIA contains **9 exemptions** from its disclosure requirements that permit, but do not require, agencies to withhold information or records that are otherwise subject to release.

01 — properly classified national security matters

02 — matters related solely to internal agency personnel rules and practices

03 — matters exempted by specific types of statutes

04 — trade secrets and certain sensitive commercial or financial information

05 — inter- and intra-agency materials that would normally be privileged in civil discovery

06 — certain personal information contained in personnel, medical, or similar files

07 — various categories of law enforcement records

08 — specified financial institution reports

09 — geological and geophysical information and data concerning wells



EXCLUSIONS

FOIA also excludes three particular categories of law enforcement records from its disclosure requirements. These exclusions allow an agency, in response to a request for such records, to treat the records as not subject to FOIA.



JUDICIAL REVIEW

FOIA authorizes requesters to seek review of an agency's withholding decision in federal district court. The agency has the burden of proving that it properly withheld information under a FOIA exemption.

CONGRESSIONAL MATERIALS

Congress is not subject to FOIA. Whether a document that Congress transmits to an agency or that an agency creates to respond to a congressional request is subject to FOIA depends on whether Congress clearly expressed its intention to retain control over it.

Author Information

Daniel J. Sheffner
Legislative Attorney

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