

# The Freedom of Information Act Reference Guide

## I. Introduction

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, generally provides that any person has a right to request access to federal agency records. All agencies of the Executive Branch of the United States Government are required to disclose records under the FOIA upon receiving a written request for them, except for those records (or portions of them) that are protected from disclosure by the nine exemptions and three exclusions listed in the FOIA. Agencies are expected to administer the FOIA with a presumption in favor of disclosure, and to respond to FOIA requests promptly and in a spirit of cooperation. The Occupational Safety and Health Review Commission (the Commission) is an Executive Branch agency subject to the FOIA.

The Commission was created by Congress in the Occupational Safety and Health Act of 1970. Our primary mission is to serve as an administrative court providing fair and expeditious resolution of disputes involving the Department of Labor's Occupational Safety and Health Administration (OSHA), employers charged with violations of Federal safety and health standards, and employees and/or their representatives. **The Commission is a completely independent agency that is not part of the Department of Labor.** This helps ensure that OSHA's enforcement actions are carried out in accordance with the law and that parties receive due process.

Please note that because the Commission and OSHA are **two separate entities**, each agency has its own FOIA office. If you are requesting information maintained by OSHA (such as records about citations that were *not* contested, or inspections that did not result in citations), please [contact OSHA](#) about your request.

This Reference Guide is designed to familiarize you with the specific procedures for sending a FOIA request to the Commission. Following the guidance below will make it more likely that you will receive the records that you are seeking in the shortest amount of time possible. This Reference Guide also describes the types of records maintained by the Commission, some of which are already available to the public on the [Commission's website](#). This website includes the Commission's [FOIA home page](#) and [e-FOIA Reading Room](#).

The regulations that govern sending a FOIA request to the Commission are listed in [29 C.F.R. part 2201](#). These regulations are posted on the Commission's [FOIA home page](#).

## II. Access to Certain Records Without a FOIA Request

The Commission makes certain agency records available for inspection and copying on its website, including records posted in its [e-FOIA Reading Room](#). If you have access to the Internet, you will not need to make a FOIA request to obtain access to these records. These records include:

- (1) Final decisions, including concurring and dissenting opinions, remand orders, as well as Administrative Law Judge decisions pending the Commission's review, briefing notices, and other significant orders;
- (2) The Commission's Rules of Procedure and guides to those procedures;

- (3) Any agency policy statements and interpretations adopted by the Commission that are not published in the Federal Register;
- (4) Any administrative Commission manuals that affect the public;
- (5) Copies of records that have been released to a person under the FOIA that, because of the subject matter, the Commission determines have become or are likely to become the subject of subsequent requests for substantially the same records;
- (6) Copies of records that have been released to a person under the FOIA and have been requested three or more times;
- (7) Copies of records that the Commission determines, absent a FOIA request, could be of significant public interest; and
- (8) A general index of records referred to in (5), (6), and (7).

The Commission's [annual FOIA reports](#) are also available on the Commission's website. These reports include such information as the number of FOIA requests received by the agency, the amount of time taken to process requests, the total amount of fees collected by the agency, information regarding any backlog of pending requests, and other information about the agency's handling of FOIA requests. Posted with the annual FOIA reports (since 2016) are spreadsheets containing the [raw data](#) used to complete these reports.

If you are unable to access the Internet, the Commission also permits access, upon request, to its [e-FOIA Reading Room](#) via a computer terminal at its National Office, located at 1120 20th Street, NW, 9th Floor, Washington, DC 20036-3457. Requests to access records in this manner must be made in writing to the Commission's FOIA Requester Service Center (see contact information below) and must identify a preferred date and time for the requested access. The Commission will contact you about your request for an appointment and may need to arrange a different date and time.

### **III. Where & How to Make a FOIA Request**

FOIA requests submitted to the Commission should be for agency records. These are existing records that are either created or obtained by the Commission and under our control at the time of the FOIA request. Agency records may be maintained in various formats, including an electronic format, such as email.

To receive the quickest possible response to your request, please use the Commission's online [FOIA Request form](#) and email the completed form to the Commission's FOIA Requester Service Center at [OSHRC\\_FOIA@Oshrc.gov](mailto:OSHRC_FOIA@Oshrc.gov). You may also mail the form to the following address or fax it to the fax number listed below:

FOIA Request  
Occupational Safety and Health Review Commission  
FOIA Requester Service Center  
1120 20th Street, NW, 9th Floor  
Washington, DC 20036-3457  
Phone: (202) 606-5724  
Fax: (202) 606-5417

Use of the online [FOIA Request form](#) is not required, but your request must be made in writing and should be sent to the FOIA Requester Service Center using the contact information provided above. You should write the words “FOIA Request” on the envelope or fax cover sheet, or in the subject line of the email, as well as in your letter.

Requests may also be made through the National FOIA Portal. To submit a FOIA request through the National FOIA Portal, complete the [Commission’s form](#) on the FOIA.gov webpage and click on “Submit Request.”

If you send your request to the wrong office at the Commission, your request will still be processed, but the time for responding to it will begin only once it is received by the FOIA Requester Service Center.

### ***What to include in your request***

Be as specific as possible in identifying the records you are requesting. The more specific you are about the records or types of records you seek, the more likely it is that those records will be promptly located. For example, if you are seeking records related to a case before the Commission, specify the Commission docket number, employer name, and/or inspection number. We also recommend that you include, along with your mailing address and/or email address, a telephone number at which you can be reached if we need to contact you about your request. If you provide an email address, the FOIA Requester Service Center will send you an email acknowledging receipt of your request.

Before or upon submission of your request, you may contact the FOIA Requester Service Center to discuss the records you are seeking and receive assistance in describing them or narrowing your request. In addition, the Commission may seek further clarification from you about your request in order to provide responsive documents.

In your request, you should also note whether you are seeking expedited processing and/or a fee waiver, the requirements for which are discussed in more detail below. Finally, you are encouraged to specify in your request the preferred form or format of our response, including electronic formats. Your preference will be honored if, using that form or format, the Commission can readily reproduce the records with reasonable effort. If you do not request a particular form or format, the records will be provided to you in the form or format that is most accessible to the Commission.

### ***Verifying identity if requesting records about yourself***

When you are requesting records about **yourself**, you must comply with the requirements for verifying your identity in the Commission’s [Privacy Act regulations](#). These requirements allow you to verify your identity in the following ways:

- (1) If you are seeking access to records about yourself **in person**, you may establish your identity by presenting a single document bearing a photograph (such as a passport, employee identification card, or valid driver’s license), or by presenting two items of identification which do not bear a photograph but do bear both your name and address (such as a billing statement).
- (2) If you are seeking access to records about yourself **by mail or email**, you may establish your identity by a signature, address, date of birth, place of birth, employee identification

number, if any, and one other identifier such as a photocopy of a document that identifies you (as identified in #1 above).

- (3) If you are unable to provide the verification documentation identified above, you may establish your identity by providing a notarized statement, or a declaration in accordance with [28 U.S.C. § 1746](#), swearing or affirming to your identity and to the fact that you understand the penalties for false statements pursuant to [18 U.S.C. § 1001](#). Forms for notarized statements may be obtained on request from the Commission's [Privacy Officer](#):

Occupational Safety and Health Review Commission  
Privacy Officer  
1120 20th Street, NW, Ninth Floor  
Washington, DC 20036-3457

When requesting records about another individual and **not yourself**, you may gain greater access to those records if that individual signs a notarized statement or declaration in accordance with [28 U.S.C. § 1746](#), or if you provide proof that the individual is deceased (a copy of an obituary or death certificate, for example).

If you are only requesting other types of agency records, such as filings in a case before the Commission, you are not required to verify your identity.

#### ***Records that may not be provided***

Please be aware that the FOIA only provides for the release of existing records and does not require the agency to conduct research for you, to analyze data, to answer written questions, or to create records to respond to a request. Further, there are statutory exemptions and exclusions (discussed in Section IX of this guide) that authorize the redaction or withholding of certain sensitive information.

#### **IV. Time for Response**

Under the FOIA, federal agencies are required to respond to a FOIA request within 20 working days, excluding Saturdays, Sundays, and legal holidays. This time period does not begin until (1) the request is received by the FOIA Requester Service Center; (2) the request reasonably describes the records sought; and (3) for requests where the fee is expected to exceed \$25, no question remains about the payment of applicable fees (advance payment of fees might be required if the total amount is expected to exceed \$250). The Commission is not required to send the documents that respond to your request by the last business day of the time period; the FOIA Requester Service Center will contact you in writing by e-mail or letter telling you of the Commission's decision and then send the releasable documents to you as promptly as possible.

If we need further information from you, the time period for responding to your request will be paused until you provide the necessary information. This procedure, known as "tolling," can be used only once by the agency for the purpose of seeking additional information. The Commission may also toll, as many times as are necessary, the time period for responding to your request to clarify with you any issues regarding fee assessment (and in certain situations discussed in Section VII of this guide, may continue to toll the time period for response while awaiting assurance of payment or advance payment). In either case, once the agency receives your response to a request for information or clarification, the tolling period ends and the response period restarts.

The Commission makes every effort to respond to a FOIA request as quickly as possible. Most requests are processed on a first-in, first-out basis. In many cases, we are able to respond to a FOIA request within 20 working days. However, the Commission is allowed to extend the response time for an additional 10 working days when “unusual circumstances” (as defined by [the Commission’s FOIA regulations](#)) exist. These circumstances might arise if a request requires us to:

- (1) Search for and collect records from one of the Commission’s regional offices or off-site storage facilities;
- (2) Search for, collect, and appropriately review a voluminous amount of separate and distinct records that are sought in a single request; or
- (3) Consult with another agency having a substantial interest in the determination of the request.

You will be notified in writing of the reasons for the extension and the date on which the Commission expects to make a determination regarding your request. If the Commission anticipates that a determination regarding your request will not be made within the allowable time (20 working days plus a 10 working-day extension), you will be notified in writing and offered the opportunity to modify or limit your request. Alternatively, you may agree to a different timetable for the processing of your request (such as receiving partial responses as the Commission continues to complete processing of your request).

If you are dissatisfied with the Commission’s attempt to resolve these issues, you may seek [dispute resolution services](#) from the National Archives and Records Administration’s Office of Government Information Services (OGIS). The contact information for OGIS is:

Office of Government Information Services  
8601 Adelphi Rd.  
College Park, MD 20740-6001  
ogis@nara.gov / 1-877-684-6448

You may check on the status of your FOIA request, including the date on which the Commission received your request and an estimated date of completion, by contacting the FOIA Requester Service Center.

## **V. FOIA Public Liaison**

If you have concerns about the service you have received following an initial response to a FOIA request, you may contact the Commission’s FOIA Public Liaison at the same email, address, telephone number, and fax number as the FOIA Requester Service Center. The FOIA Public Liaison is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of any disputes.

## **VI. Expedited Processing**

Under certain conditions, you may be entitled to have your request processed on an expedited basis. The Commission will grant expedited processing if your request demonstrates that a failure to do so could reasonably be expected to pose an imminent threat to someone’s life or physical safety. The Commission will also grant expedited processing if the request demonstrates that you, the requester, are primarily engaged in disseminating information to the

public and the information is urgently needed to inform the public concerning some actual or alleged government activity.

If you request expedited processing, you must provide the reasons for your request in writing. You must also certify that the reasons you give are true and correct. The Commission will notify you of its decision within 10 calendar days after receiving your request for expedited processing. If your request for expedited processing is denied, you will be advised of the reason for the denial, the name and title of the person who made the decision, and your right to an administrative appeal, which will be handled promptly. The procedures for submitting an appeal are discussed in Section X of this guide.

## VII. Fees

There is no initial fee to file a FOIA request. However, the FOIA provides that an agency is entitled to charge certain fees for processing a request depending on what type of FOIA requester you are. **For purposes of determining fees only**, the FOIA divides requesters into the following categories:

- Commercial use requesters may be charged fees for searching for records, “processing” the records (reviewing them to determine the possible applicability of FOIA exemptions), and photocopying them;
- Educational or scientific institutions, whose request is not for commercial use, may be charged only for photocopying expenses, after the first 100 pages of copies; and
- Representatives of the news media, whose request is not for commercial use, may be charged only for photocopying expenses, after the first 100 pages of copies.

All other noncommercial requesters are charged only for record searches and photocopying and there is no charge for the first two hours of search time or for the first 100 pages of photocopies. With some exceptions (which are discussed below), if the Commission does not respond to your request within the 20-working-day time period, **search fees** will not be assessed for any of the three categories of requesters, and **duplication fees** will not be assessed for the second and third categories of requesters, i.e., for educational or scientific institutions and representatives of the news media whose request is not for commercial use.

If the Commission determines and has notified you in writing that there are unusual circumstances (as discussed above), the Commission may still charge for the fees previously described if it responds to your request within the 30-working-day time period allowed for these types of [requests](#).

The Commission charges 25 cents per page for photocopying. Rates for searching for and processing records vary depending on whether the work is handled by a managerial, professional, or clerical employee, or some combination of personnel. These rates may be found in the table below, as well as in the Appendix to [the Commission’s FOIA regulations](#). In all cases, if the total fee does not exceed a minimum amount, currently \$10, the Commission will not charge any fee at all.

You may include in your FOIA request a specific statement limiting the amount that you are willing to pay in fees. If you do not specify a limit, we will assume that you are willing to pay up to \$25. If we determine that the total fees will exceed \$25, we will advise you of the estimated amount (with an explanation of which services you are being charged for) and offer

you an opportunity to narrow your request in order to reduce the fees. If you choose not to narrow your request, we will confirm your commitment to pay the estimated fees in writing, at which time your request will be considered received for processing. Be aware that you may be required to pay fees even if the search does not locate any responsive records or, if the records are located, the Commission determines that they are exempt from disclosure.

You ordinarily will not be required to pay the fees until the records have been processed and are ready to be sent to you. If, however, you have failed to pay fees in the past, or if the estimated fees exceed \$250, you will be required to pay the estimated fees in advance—that is, before the records are processed. If you fail to pay fees within 30 days of billing, you will be charged interest on your overdue balance, and the Commission will not proceed with any further requests from you until payment in full has been made.

Type of Fee	Amount of Fee
Threshold Amount (Amount below which fees will not be assessed)	\$10
Search and Review Hourly Fees Clerical (GS-9 and below) Professional (GS-10 to GS-14) Managerial (GS-15 and above)	\$23 \$46 \$76
Duplication cost per page	\$0.25
Computer printout copying fee	\$0.40
Searches of computerized records	Actual cost to the Commission, but will not exceed \$300 per hour, including machine time and the cost of the operator and clerical personnel.
Certification Fee	\$35 per authenticating affidavit or declaration. (Note: Search and review charges may be assessed in accordance with the rates listed above.)

### VIII. Fee Waivers

If you expect or are advised that a fee will be charged, you may request a waiver of those fees. However, fee waivers are limited to situations in which a requester can show that the disclosure of the requested information (1) is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, **and** (2) is not primarily in the commercial interest of the requester. In certain cases, even if these two conditions are met, the Commission may grant only a partial waiver of fees (as opposed to a complete waiver) if the request would impose an exceptional burden on or require an exceptional expenditure of Commission resources, **and** the request only minimally satisfies item (1) above.

Requests for fee waivers from individuals who are seeking records pertaining to themselves usually do not meet this standard, because such disclosures usually will not result in any increase of the public's understanding of government operations or activities. However, under the [Commission's Privacy Act regulations](#), individuals are not charged search and review fees pertaining to records requested about themselves, but can be charged for any duplication fees.

Finally, a requester's inability to pay fees is not a legal basis for granting a fee waiver. (Note that the granting of a fee waiver, which is based on general public interest, is entirely separate and distinct from the limitations on fees discussed in Section VII of this guide.)

## **IX. Initial Determination of a FOIA Request**

Once we have processed your request and any fee issues have been resolved, we will send you a written initial determination letter. In most cases, we will include any documents that can be disclosed, though in some cases the documents themselves may be sent promptly afterward. The FOIA provides access to all federal agency records, except for those records that are redacted or withheld under any of nine exemptions or three exclusions—the reasons for which an agency may redact or withhold records from a requester (discussed below).

### *Initial determination letter*

Our initial determination letter will advise you whether any responsive record is being redacted or withheld pursuant to one or more of the exemptions. When a portion of a record is redacted, the released portion of the record will indicate each redaction and the exemption under which the redaction is made. When a record is being withheld in its entirety, the letter will either specify the number of pages being withheld, include an estimate of the volume of the withheld information, or describe the type of record being withheld (unless including that information would harm the interest protected by the exemption). In the event of a redaction or withholding, the letter will notify you of the [dispute resolution services](#) offered by OGIS and your right to appeal this initial determination to the Chairman of the Commission (see Section X).

### *Exemptions*

The nine FOIA exemptions authorize federal agencies to redact or withhold documents categorized as:

- (1) Classified national defense and foreign relations information;
- (2) Internal agency rules and practices;
- (3) Information that is prohibited from disclosure by another federal law;
- (4) Trade secrets and other confidential business information;
- (5) Inter-agency or intra-agency communications that are protected by legal privileges;
- (6) Information involving matters of personal privacy (note that this is the exemption most commonly used in Commission records);
- (7) Records or information compiled for law enforcement purposes, to the extent that the production of those records—
  - (A) Could reasonably be expected to interfere with enforcement proceedings,
  - (B) Would deprive a person of a right to a fair trial or an 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,
  - (E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or
  - (F) Could reasonably be expected to endanger the life or physical safety of any individual;
- (8) Information relating to the supervision of financial institutions; and
- (9) Geological information on wells.

### *Exclusions*

Congress also provided special protection in the FOIA for [three narrow categories](#) of law enforcement and national security records. The provisions protecting those records are known as “exclusions.” Records falling within an exclusion are not subject to the requirements of the FOIA. Note that it is highly unlikely that the Commission would maintain any records falling within these exclusions because they pertain to especially sensitive law enforcement and national security matters.

### **X. Appeals**

If you disagree with our decision to redact or withhold records, or you believe there are additional records we failed to locate, you may file an administrative appeal within 90 calendar days of the date of the Commission’s written response to you. You may also file an appeal within the same timeframe if we have denied your request for expedited processing or a fee waiver, or if you disagree with the fee category in which we placed you. All appeals must be made in writing and sent to:

FOIA Appeal  
Chairman  
Occupational Safety and Health Review Commission  
1120 20th Street, NW, 9th Floor  
Washington, DC 20036-3457  
Fax: (202) 606-5396  
Email: OSHRC\_FOIA@Oshrc.gov

The front of the envelope or fax cover sheet, or the subject line of the email, as well as the appeal letter itself, should contain the notation “FOIA Appeal.” There is no specific form or particular language needed to file an administrative appeal, and you do not need to include copies of any documents disclosed. However, you must clearly identify the agency determination that is being appealed and your assigned FOIA tracking number (FOIA File No. ##-####), which will be noted in our written response.

Within 20 working days after receipt of the appeal, the Commission’s Chairman will issue a written decision that resolves the appeal. The Chairman may:

- (1) Affirm the initial determination in full, in which case he or she will identify which exemptions (if any) have been appropriately claimed;

- (2) Affirm part of the initial determination (identifying the applicable exemptions), but release to you other information previously redacted or withheld; or
- (3) Reverse the initial determination and release to you all the information you requested.

This decision will notify you of your right to obtain “judicial review” (discussed below), and also direct you to the [dispute resolution services](#) offered by [OGIS](#).

If the Chairman was involved in the initial processing of the request, the Chairman will be recused from consideration of the administrative appeal and the responsibilities for adjudicating the appeal will be delegated to another agency official.

## **XI. Judicial Review**

After your administrative appeal has been decided, if you still believe that the Commission has not handled your FOIA request in accordance with the law, you have a right to challenge the agency’s action in a lawsuit filed in federal district court through the litigation process known as “judicial review.” Judicial review ordinarily requires that you have already filed an administrative appeal and have received a response. However, if the Commission fails to respond to either your initial request or your appeal within the time limits specified in the FOIA, you may file a lawsuit in federal district court as soon as those time limits have expired.

You may file in a federal district court in any of the following places:

- (1) Where you reside,
- (2) Where you have your principal place of business (if any),
- (3) In the District of Columbia, or
- (4) Where the records are located, if they are not located in the District of Columbia.

Your administrative appeal determination from the Chairman will also advise you of your right to seek judicial review. You have six years to file from the time your right to sue begins.

Finally, please understand that employees of the Commission are prohibited from giving legal advice to members of the public on FOIA litigation.

## **XII. Major Information and Locator Systems**

***The Commission’s [Website](#).*** This provides access to agency records, including the Commission’s decisions and orders, procedural rules, budgets, performance reports, press releases, the OSH Act, and job announcements. Final decisions of the Commission are also available in commercial publications.

***Case files.*** These include individual files for all cases processed and/or decided by the Commission including all documents and pleadings filed in a given case. For cases that go to a hearing, the file may contain transcripts of the hearing and any exhibits entered into the record.

***Administrative systems.*** This includes record management systems for case tracking, payroll/personnel services, procurement services, accounting services, and travel services.