

## **A. THE SCOPE OF THE FREEDOM OF INFORMATION ACT (FOIA)**

All IRS records are subject to FOIA requests. However, FOIA does not require the IRS to release all documents that are subject to FOIA requests. The IRS may withhold information pursuant to nine exemptions and three exclusions contained in the FOIA statute.

The Freedom of Information Act applies to records either created or obtained by an agency and under agency control at the time of the FOIA request. Agencies within the executive branch of the federal government, including the Executive Office of the President and independent regulatory agencies are subject to the FOIA. State governments, municipal corporations, the courts, Congress and private citizens are not subject to the FOIA.

### Background

The Freedom of Information Act established an effective statutory right that records of the Executive Branch of the United States Government are accessible to the people. This was not always the policy regarding disclosure of Federal information. Before the FOIA was enacted in 1966, the Administrative Procedure Act governed the disclosure of Agency records to the public and was viewed as a withholding statute rather than a disclosure statute.

The FOIA sets standards for determining which records must be made available for public inspection and which records (or portions of records) should or may be withheld from disclosure. The law also provides administrative and judicial remedies for those denied access to records. Above all, the statute requires Federal agencies to provide the fullest possible disclosure of information to the public.

### IRS Disclosure Offices

The IRS has Disclosure Offices located across the nation that process FOIA requests for IRS records. These requests should be addressed to the office which has jurisdiction over the records sought. Please refer to our list of [IRS Disclosure Offices](#) on the FOIA main page.

## **B. THE ELECTRONIC FREEDOM OF INFORMATION ACT AMENDMENTS OF 1996 (EFOIA)**

The FOIA contains seven subsections; the first two establish that certain categories of information must automatically be disclosed by federal agencies. Subsection (a)(1) of the FOIA requires disclosure through publication in the *Federal Register* of information such as:

- descriptions of IRS organization and office addresses where the public may obtain information, make requests, or obtain decisions;
- statements of the general course and method of IRS operations including the nature and requirements of all formal and informal procedures;
- rules of procedure and descriptions of forms;
- substantive rules of general applicability adopted as authorized by law and general policy statements adopted by the agency; and
- each amendment, revision of, or repeal of the above.

Section (a)(2) of FOIA requires that the IRS make the following materials available for inspection and copying:

- final opinions and orders made in the adjudication of cases;
- statements of policy and interpretations adopted by an agency, but not published in the *Federal Register*;
- administrative staff manuals and instructions to staff that affect the public;
- copies of records released in response to FOIA requests that the IRS determines have been or will likely be the subject of additional requests; and
- a general index of these four categories of records.

Of these documents listed under section (a)(2) of the FOIA, those created on or after November 1, 1996, must be made available electronically. To comply with section (a)(2), the IRS maintains two Reading Rooms:

- The physical IRS Reading Room is in room 1621 of the IRS Headquarters building at 1111 Constitution Avenue, NW in Washington, DC 20224 and is open from 9 AM to 4 PM Monday through Fridays, except holidays. The public entrance to the Reading Room is on Pennsylvania Avenue, NW between 10<sup>th</sup> and 12<sup>th</sup> streets. The phone number is 202-622-5164
- The online Electronic Reading Room is located on the IRS web site at: <http://www.irs.gov/foia/index.html>.

The form in which IRS maintains a record does not affect its availability. A requester may seek a printed or typed document, tape recording, map, photograph, computer printout, computer tape or disk, or a similar item. The IRS must provide the requested record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format and must make reasonable efforts to maintain its records in forms or formats that are reproducible for such purposes.

Of course, not all records that can be requested under the FOIA must be disclosed. Information that is exempt from disclosure is described below in Section E, "Reasons Access May Be Denied Under the FOIA."

FOIA requires that each request reasonably describe the records being sought. Each request must be specific enough to permit an employee of the IRS to reasonably ascertain exactly what records are being requested and locate them.

Many people include their telephone number with their requests. Some questions about the scope of a request can be resolved quickly when an IRS Disclosure Officer can call the requester to clarify the request. Sometimes, IRS will help a requester identify a specific document that contains the information being sought.

Requesters should make requests as specific as possible. If a particular document is required, it should be identified precisely, preferably by date and title. However, a request does not always have to be that specific. A requester who cannot identify a specific record should clearly explain his or her needs. A requester should make sure, however, that a request is broad enough to include all desired information, but narrow enough to be practical.

For example, in the case of a requester who wants all tax records that pertain to him/her, the request may be difficult to satisfy and the research and copying fees may be astronomical. As a result, the request may be returned without processing. It is better to narrow the request to ask for specific documents, for example: "my examination file for tax year 1999".

FOIA applies to only existing records. FOIA does not require the IRS to collect information it does not have, or to research or analyze data for a requester. The IRS is only required to look for an existing record or document in response to a FOIA request. The IRS is not obliged to create a new record to comply with a FOIA request. However, when records are maintained in a computer, the IRS may be required to retrieve information in response to a FOIA request. The process of retrieving the information may result in the creation of a new document when the data is printed out on paper or written on computer tape or disk.

### C. MAKING A FOIA REQUEST

The first step in making a request under the FOIA is to identify the IRS office that is most likely to have the records. A FOIA request must be addressed to an IRS Disclosure Office that services FOIA requests. See [IRS Disclosure Offices](#) on the FOIA main page for the list of offices and addresses.

Often, the requester knows beforehand which IRS office has the desired records. The FOIA request must be in writing to the office with jurisdiction over the records sought. Letters requesting records under the FOIA can be short and simple.

IRS has prepared a document at [Appendix A](#) - "*How to Make a Freedom of Information Act Request*" that describes the request process in greater detail. A requester who follows the IRS's specific procedures may receive a faster response.

There are four 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 along with a copy of the requester's driver's license or a notarized statement swearing to or affirming their identity if the request involves the tax records of an individual or a business. In this case, the authority of the requester to receive such records must be established. Fourth, the requester should make a firm commitment to pay any fees which may apply (the complete regulatory requirements for FOIA requests filed with the IRS are available at 67 *Federal Register* 69673, Treasury Regulation 601.702).

Section (a)(4) of the FOIA requires the IRS to establish fees associated with searching for, reviewing and copying records, which may vary depending on the status of the requester or the purpose of the request. As a result, a requester may have to provide information on their status and their purpose for making the request to allow the IRS to determine the appropriate fees. Different fees apply to: commercial requesters; representatives of the news media; educational or noncommercial scientific institutions; and individuals. More information on fees can be found below in Section E, "Fees and Waivers" and [Appendix B](#).

#### FOIA Optional Items

There are several optional items that are often included in a FOIA request. The first is the telephone number of the requester. This allows an IRS 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 is too high. Also, by stating a willingness to pay a set fee amount 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 a reduction of fees. 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 and distinct from decisions about the amount of fees that a requester can be charged.

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, information maintained by IRS in an electronic form can be provided in that same or a similar form, such as on a computer floppy disk or CD-ROM. FOIA requires agencies to help requesters by providing information in the form requested, including requests for electronic records, if the IRS can readily reproduce it in that form. For more information see subsection (a)(3)(B) of the FOIA.

A fifth optional consideration is seeking expedited processing of a request by showing a "compelling need" for a speedy response. The Department of Treasury regulations authorize expedited processing where a requester demonstrates a "compelling need" for quick response. A "compelling need" warranting faster FOIA processing exists in three categories of circumstances. In the first category, the failure to obtain the records within an expedited deadline could reasonably be expected to pose 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 "a matter of current exigency to the American public." The third category requires the loss of substantial due process rights. For more information see section (c)(6)(A)-(C) of the FOIA.

IRS may determine other circumstances, to be prescribed by regulation, qualifying 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 "current exigency" requires that a reasonable person would conclude that the consequences of delaying a response to a FOIA request would compromise a significant recognized interest to and throughout the American general public. The public's right to know about government activity generally, 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.

#### **D. REQUIREMENTS FOR IRS RESPONSES**

Under the FOIA, the IRS is required to determine within 20 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of a request whether to comply with the request. If a request is denied in whole or in part, the IRS must tell the requester the reasons for the denial. Under section (a)(6)(A)(i) of the FOIA the IRS must also tell the requester that there is a right to appeal any adverse determination to the head of the IRS or his or her designee.

The FOIA permits the IRS to extend the 20-day statutory time limit by 10 additional days in unusual circumstances as set forth in the FOIA and Treasury Regulation 601.702 (c)(11)(i)(A)(1)-(4). These circumstances include the need to collect records from field locations, review large numbers of records, and consult with other agencies. The IRS is required to notify the requester whenever an extension is invoked. IRS may also make a showing of exceptional circumstances based on the amount of material classified, based upon the resources being devoted to the review of material of public interest, or based upon the number of requests for records by courts or administrative tribunals. A court also shall consider a requester's unwillingness to reasonably limit the scope of his or her request or to agree upon a processing timeframe prior to seeking judicial review.

What does not qualify as an "unusual circumstance" under FOIA? A delay that results from a predictable IRS workload of requests is not an "unusual circumstance" unless the IRS demonstrates reasonable progress in reducing its backlog of pending requests. Any statutory extension of time for unusual circumstances may not exceed 10 days (excluding Saturdays, Sundays and legal public holidays). If additional time is needed to process the request, the IRS will notify the requester and provide the requester an opportunity to limit the scope of the request or arrange for an alternative time frame for processing the request.

If the IRS fails to comply with the time limitations set forth in Treasury Regulation 601.702 (c)(9), (10) or (11)(i), any person making a request for records having satisfied the requirements of Treasury Regulation 601.702 (c)(4)(i)(A) through (I) of this section shall be deemed to have exhausted administrative remedies with respect to such request. A person may initiate suit in Federal District Court when the IRS has failed to comply with these time limits.

## E. FEES AND FEE WAIVERS

FOIA requesters may have to pay fees covering some or all of the costs of processing their requests. FOIA establishes three types of fees that may be charged:

Fees may be imposed to recover the cost of copying documents. IRS has a fixed price for making copies using copying machines. A requester is usually charged the actual cost of copying computer tapes, photographs, and other nonstandard records.

Fees may also be imposed to recover the costs of searching for documents. This includes the time spent looking for material responsive to a request. FOIA defines "search" as a "review, manually or by automated means," of IRS "records for the purpose of locating those records which are responsive to a request." Under the FOIA, IRS need not create documents that do not exist. However, the IRS must make reasonable efforts to search for records. With respect to electronic records, this may require the application of codes or some form of programming to retrieve the information, unless such efforts would significantly interfere with the operation of the IRS' automated information system.

Fees may be charged to recover review costs from commercial requesters only. Review is the process of examining documents to determine whether any portion is exempt from disclosure. Review charges only include costs incurred during the initial examination of a document. IRS may not charge for any costs incurred in resolving issues of law or policy that may arise while processing a request.

Different fees apply to different categories of requesters. The categories of FOIA requesters are:

- Representatives of the news media, and educational or noncommercial scientific institutions whose purpose is scholarly or scientific research. A requester in this category who is not seeking records for commercial use can only be billed for reasonable standard document duplication charges. A request for information from a representative of the news media is not considered to be for commercial use if the request is in support of news gathering.
- Commercial requesters - FOIA requesters seeking records for commercial use. Commercial use is not defined in the law, but it generally includes profit making activities. A commercial user can be charged reasonable standard charges for document duplication, search, and review.
- Other requesters – this includes everyone not in the first two categories. People seeking information for personal use, public interest groups, and nonprofit organizations are examples of requesters who fall into the third group. Charges for these requesters are limited to reasonable standard charges for document duplication and search. Review costs may not be charged.

Small requests (the release of 100 or fewer pages) are free for all requesters except commercial requesters. There is no charge for the first 2 hours of search time and for the first 100 pages of documents. A noncommercial requester who limits a request to a small number of easily found records would not pay any fees at all. However, if a requester breaks up a large request into smaller requests in order to avoid fees, the smaller requests may be aggregated and charged as though only one request had been made.

In addition, the law also prevents agencies from charging fees if the cost of collecting the fee would exceed the amount collected. This limitation applies to all requests, including those seeking documents for commercial use. Thus, if the allowable charges for any FOIA request are less than \$10.00, no fees are imposed.

IRS sets charges for duplication, search, and review based on its own costs. IRS also sets its own threshold for minimum charges. See [Appendix B](#) - IRS Fee Schedule.

The FOIA requires that IRS waive or reduce fees 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.

Determinations about fee categories are separate and distinct from determinations about fee waivers. For example, a requester determined to be a news reporter will only be charged duplication fees. However, the requester is not automatically entitled to a waiver of those fees upon request. A reporter who seeks a fee waiver must demonstrate that the request also meets the standards for waivers. Normally, only after a requester's fee category has been determined does the issue of a fee waiver arise. Any requester who seeks a fee waiver should ask for a waiver in the original request letter. However, a request for a waiver can be made at a later time. The requester should describe how disclosure would contribute significantly to public understanding of the operations or activities of the IRS.

Any requester may ask for a fee waiver. Some will find it easier to qualify than others. A news reporter who is only charged duplication costs may still ask that the charges be waived because of the public benefits that will result from disclosure. A representative of the news media, a scholar, or a public interest group is more likely to qualify for a waiver of fees. A commercial user may find it difficult to qualify for waivers.

The eligibility of other requesters will vary. A key element in qualifying for a fee waiver is the relationship of the information to public understanding of the operations or activities of IRS. Another important factor is the ability of the requester to convey that information to other interested members of the public.

A requester is not eligible for a fee waiver solely because of indigence, or the inability to pay.



## **F. REASONS ACCESS MAY BE DENIED UNDER THE FOIA**

The IRS may withhold an IRS record that falls under one of the FOIA's nine statutory exemptions or by one of three exclusions. The exemptions protect against the disclosure of information that would harm the following: national security, the privacy of individuals, the proprietary interests of business, the functioning of the government, and other important recognized interests.

When a record contains some information that qualifies as exempt, the entire record is not necessarily exempt. Instead, the FOIA specifically provides that any reasonably segregable portions of a record must be provided to a requester after the deletion of the portions that are exempt. FOIA requires the IRS to identify the location of deletions in the released portion of the record and, where technologically feasible, to show the deletion at the place on the record where the deletion was made, unless including that indication would harm an interest protected by an exemption.

### Exemption 1. Classified Documents Pertaining to National Defense and Foreign Policy

The first FOIA exemption permits the withholding of matters specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which are in fact properly classified under such executive order. IRS does not generally deal with these types of matters, thus this exemption is rarely used.

### Exemption 2. Internal Personnel Rules and Practices

The second FOIA exemption covers matters that are related to IRS's internal personnel rules and practices. As interpreted by the courts, there are two separate classes of documents that are generally held to fall within exemption 2.

- A. The information relating to personnel rules or internal IRS practices may be exempt if it is a trivial administrative matter of no genuine public interest.
- B. More substantial internal IRS matters, the disclosure of which would risk circumvention of a legal requirement.

### Exemption 3. Information Exempt Under Other Laws

The third exemption incorporates into the FOIA other laws that restrict the availability of information. To qualify under this exemption, a statute must require that matters be withheld from the public in such a manner as to leave no discretion on the issue or if the statute establishes particular criteria for withholding or refers to particular types of matters to be withheld. One example of a qualifying statute is Section 6103 of the Internal Revenue Code (IRC) which governs the disclosure of tax returns and return information. By law, tax records may not be disclosed to any individual unless authorized by IRC Section 6103.

#### Exemption 4. Trade Secrets and Confidential Commercial or Financial Information

The fourth exemption protects from public disclosure two types of information: Trade secrets and confidential commercial or financial information. A trade secret has been narrowly defined by the courts under the FOIA as a commercially valuable plan, formula, process, or device that is used for making, preparing, compounding or processing trade commodities and that can be said to be the end product of either innovation or substantial effort.

The second type of protected data is commercial or financial information obtained from a person that is privileged or confidential.

#### Exemption 5. Inter-Agency or Intra-Agency Memorandums or Letters

The FOIA's fifth exemption applies to inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. An example may be a letter from one IRS office to another about a decision that has not yet been adopted by the agency.

One purpose of the fifth exemption is to safeguard the deliberative policymaking process of government (the deliberative process privilege). The exemption encourages frank discussion of policy matters between IRS officials by allowing certain pre-decisional, deliberative documents to be withheld from public disclosure. The exemption also protects against premature disclosure of deliberations before final adoption of an agency policy or position.

While the policy behind the deliberative process privilege is well accepted, the application of the exemption is complicated. For example, the exemption protects the policymaking process, but it does not generally protect purely factual information related to the policy process that is protected under the deliberative process privilege. The deliberative process privilege distinguishes between documents that are pre-decisional and post-decisional. Once a policy is adopted, the public has a greater interest in knowing the basis for the decision. Therefore, the deliberative process privilege does not ordinarily apply to post-decisional documents

The exemption also incorporates other privileges that apply in litigation involving the government, including the attorney client and work product privileges. For example, certain documents prepared by IRS's lawyers may be withheld in the same way that documents prepared by private lawyers for clients are not available through discovery in civil litigation.

#### Exemption 6. Personal Privacy

The sixth exemption covers personnel, medical, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This exemption protects the privacy interests of individuals by allowing IRS to withhold personal data kept in its files where there is an expectation of privacy. Only individuals have privacy

interests. Corporations and business associations have no privacy rights under the sixth exemption, with the exception of closely held corporations or similar business entities.

Once it has been determined that a personal privacy interest is threatened by a requested disclosure, the exemption requires agencies to strike a balance between an individual's privacy interest and the public's interest in disclosure.

The Privacy Act of 1974 also regulates the disclosure of personal information about an individual. An individual seeking records about himself or herself should cite both laws when making a request. This ensures that the maximum amount of disclosable information will be released. Records that can be denied to an individual under the Privacy Act are not necessarily exempt under the FOIA.

### Exemption 7. Law Enforcement

The seventh exemption allows agencies to withhold records or information compiled for law enforcement purposes, but only to the extent that the production of such records would cause one of the six specifically enumerated harms described below:

- Exemption (7)(A) allows the withholding of a law enforcement record that could reasonably be expected to interfere with enforcement proceedings. This exemption protects an active law enforcement investigation from interference through premature disclosure.
- Exemption (7)(B) allows the withholding of law enforcement information that would deprive a person of a right to a fair trial or an impartial adjudication.
- Exemption (7)(C) recognizes that individuals have a privacy interest in information maintained in law enforcement files. If the disclosure of information could reasonably be expected to constitute an unwarranted invasion of personal privacy, the information may be exempt from disclosure.
- Exemption (7)(D) protects the identity of confidential sources. Information that could reasonably be expected to reveal the identity of a confidential source is exempt. A confidential source can include a State, local, or foreign agency or authority, or a private institution that furnished information on a confidential basis. In addition, the exemption protects information furnished by a confidential source if the data was compiled by a criminal law enforcement authority during a criminal investigation.
- Exemption (7)(E) protects from disclosure information that would reveal techniques and procedures for law enforcement investigations or prosecutions or that would disclose guidelines for law enforcement investigations or prosecutions if disclosure of the information could reasonably be expected to risk circumvention of the law.
- Exemption (7)(F) protects law enforcement information that could reasonably be expected to endanger the life or physical safety of any individual.

### Exemption 8. Financial Institutions

The eighth exemption protects information that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions (such as FDIC, the Federal Reserve, or similar agencies).

### Exemption 9. Geological Information

The ninth FOIA exemption covers geological and geophysical information, data, and maps, concerning wells.

### FOIA Exclusions

The FOIA also contains three special protection provisions that expressly authorize federal law enforcement agencies for especially sensitive records under certain specified circumstances to treat the records as not subject to the FOIA. IRS may not be required to confirm the existence of these categories of records. If these records are requested, IRS may respond that there are no records responsive to the request. However, these exclusions do not broaden the authority of the IRS to withhold documents from the public. The exclusions are only applicable to information that is otherwise exempt from disclosure.

#### Exclusion 1

The first exclusion may be used when a request seeks information described in subsection (b)(7)(A) of the FOIA and meets the following requirements:

- The investigation in question must involve a possible violation of criminal law.
- There must be reason to believe that the subject of the investigation is not already aware that the investigation is underway.
- Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

When all of these conditions exist, IRS may respond to a FOIA request for investigatory records as if the records are not subject to the requirements of the FOIA. In other words, the IRS response does not have to reveal that it is conducting an investigation.

#### Exclusion 2

The second exclusion applies to informant records maintained by IRS criminal law enforcement filed under the informant's name or personal identifier. IRS is not required to confirm the existence of these records unless the informant's status has been

officially confirmed. This exclusion helps agencies to protect the identity of confidential informants.

### Exclusion 3

The third exclusion only applies to records maintained by the Federal Bureau of Investigation, which pertain to foreign intelligence, counterintelligence, or international terrorism. When the existence of these types of records is classified, the FBI may treat the records as not subject to the requirements of FOIA.

**Requesters who believe that records were improperly withheld because of the exclusions can seek judicial review by filing suit in Federal District Court.**

## **G. ADMINISTRATIVE APPEAL PROCEDURES**

Whenever a FOIA request is denied, IRS must inform the requester of the reasons for the denial and the requester's right to appeal the denial to the head of the agency. A requester may appeal the withholding of a document or denial of a fee waiver request. A requester may contest the type or amount of fees that were charged. A requester may appeal any other type of adverse determination under the FOIA. However, a requester may not file an administrative appeal for the lack of a timely response. A requester can also appeal because IRS failed to conduct an adequate search for the documents that were requested.

A person whose request was granted in part and denied in part may appeal the part that was denied. If IRS has agreed to disclose some but not all requested documents, the filing of an appeal does not affect the release of the documents that are disclosable.

A FOIA appeal is an administrative appeal. The procedural requirements for filing an appeal are found at Treasury Regulation 601.702 (c)(10). There is no charge for filing an administrative appeal.

An appeal is filed by sending a letter to:

IRS Appeals  
Attn: FOIA Appeals  
5045 E. Butler Ave.  
M/Stop 55201  
Fresno, California 93727-5136

The letter must identify the FOIA request that is being appealed. The envelope containing the letter of appeal should be marked in the lower left-hand corner with the words "Freedom of Information Act Appeal."

The IRS assigns a number to all FOIA requests that are received. This number should be included in the appeal letter, along with the name and address of the requester. It is a common practice to include a copy of the IRS's initial decision letter as part of the appeal, but this is not necessarily required. It can also be helpful for the requester to include a telephone number in the appeal letter.

An appeal will normally include the requester's arguments supporting disclosure of the documents. A requester may include any facts or any arguments supporting the case for reversing the initial decision. However, an appeal letter does not have to contain any arguments at all. It is sufficient to state that the IRS's initial decision is being appealed. The FOIA regulations require that an appeal be postmarked within 35 days after the date of the letter denying access to the information and within 35 days of the date of other adverse determinations as described in Treasury Regulation 601.702 (c)(10). An administrative appeal for denial of a request for expedited processing must be made by letter postmarked within 10 days after the date of the response letter denying expedited processing.

IRS is required to make a decision on an appeal within 20 days (excluding Saturdays, Sundays, and legal holidays) after the date of receipt of the appeal unless extended pursuant to Treasury Regulation 601.702(c)(11)(i). It is possible for IRS to extend the time limits by an additional 10 days under unusual circumstances (see Treasury Regulation 601-702(c)(11)(i)). If the IRS fails to comply with the time limitations, the FOIA requester shall be deemed to have exhausted administrative remedies and may proceed with a judicial appeal in a Federal District Court.

## **H. FILING A JUDICIAL APPEAL**

Treasury Regulation 601.702 (c)(13) sets forth the circumstances under which a FOIA requester may proceed with a judicial appeal. For example, when an administrative appeal is denied, a requester has the right to appeal the denial in court. When a requester goes to court, the burden of justifying the withholding of documents is on the IRS.

Most requesters require the assistance of an attorney to file a judicial appeal. A person who files a lawsuit and substantially prevails may be awarded reasonable attorney fees and litigation costs reasonably incurred. Some requesters may be able to handle their own case without an attorney. Since this is not a litigation guide, details of the judicial appeal process have not been included. Anyone considering filing a FOIA lawsuit can begin by reading the provisions of the FOIA on judicial review.

The essential feature of both FOIA and the Privacy Act is that they make government agencies, including the IRS, accountable for information disclosure policies and practices. While neither law grants an absolute right to examine government documents, both laws establish the right to request records and to receive a response to the request. If a record cannot be released, the requester is entitled to the reason for the denial. The requester also has a right to appeal the denial and, if necessary, to challenge it in court. These procedural rights granted by the FOIA and the Privacy Act make the laws valuable and workable.



## **Appendix A. How to Write Your Freedom of Information Act (FOIA) Request**

Before writing your request, please take some time to review the documents available to you on the [irs.gov](http://irs.gov) web pages. You may be able to find what you are looking for in a few minutes. If you cannot find what you are looking for on the [irs.gov](http://irs.gov) web pages, you may, after searching the web pages, have a better understanding of what you will be requesting in your FOIA letter.

FOIA provides that any person may make a request for IRS records. The request must meet the following criteria (the criteria numbers correspond with the numbered sections in the sample FOIA request below):

Your FOIA request must include the address of the requester so that the IRS can properly respond. You may also wish to include your phone number where an IRS Disclosure Officer can contact you.

Your FOIA request should be addressed to the correct IRS Office. See [IRS Disclosure Offices](#) on the FOIA main page for a list of IRS Disclosure Offices and addresses. You should also write “FOIA” on your envelope.

Your FOIA request must state that your request is being made pursuant to the Freedom of Information Act, and/or Privacy Act, if personal records are requested.

Your FOIA request must reasonably describe the records being requested as specifically as possible. If possible, you should give the name, subject matter, location and years at issue of the requested documents. You must state whether you wish to inspect the records or desire to have a copy made and furnished without first inspecting those records. If you attach copies of any correspondence pertaining to the documents you are requesting, the IRS Disclosure Office may be able to respond to your request quicker.

Your FOIA request must state what category of requester you are, so the IRS Disclosure Officer can properly determine any applicable fees. The categories of requesters are:

- Commercial use requesters,
- Media requesters,
- Educational institutions and non-commercial scientific institutional requesters,
- Others (including individual requesters).

For more information on the categories please see [26 CFR 601.702 \(f\)\(3\)](#), and [Appendix B](#).

Your FOIA request may require proof of your identity and your authority to access the records, depending on the nature of the records you are requesting. To protect your

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privacy the IRS will not, without proof of your identity, release to you, or anyone else, documents that should be available **only** to you.

- a) If the information you are requesting is available to the general public you do not need to provide proof of identity or authority to access those records.
- b) If the records that you are requesting are confidential and not available to the general public (i.e., subject to the Privacy Act or Internal Revenue Code 6103) **YOU MUST** submit proof of identity and proof of your authority to access the information. For instructions on proving your identity and your authority to access information see the Section "[To Establish Identify and Right to Access](#)" below.

Your FOIA request must include an agreement to pay all fees that might be incurred through processing your request. You may wish to specify an upper limit of the amount of money you are willing to pay to satisfy your request. See [Appendix B](#) for the IRS Fee Schedule.

Your FOIA request must be in writing and signed by the person making the request, (stamped signatures are not acceptable).

## Example FOIA Letter

- (1) Your name or your company's name  
Your address or your company's address  
Your phone number (optional)

Date

- (2) Internal Revenue Service  
[Your local Disclosure Office address; See [IRS Disclosure Offices](#) for address list]

Dear Disclosure Officer:

- (3) This is a request under the Freedom of Information Act.
- (4) I request that a copy of the following documents (identify the documents or information as specifically as possible) be provided to me. I do not wish to inspect the documents first.
- (5) In order to determine my status for the applicability of fees, you should know that I am (insert a suitable description of the requester and the purpose of the request).

[Sample requester descriptions (**please choose only one** if applicable):

A **Media Requester**: a representative of the news media affiliated with the XXXX newspaper (magazine, television station, etc.), and this request is made as part of newsgathering and not for a commercial use.

An **Educational Institution Requester** or a **Non-Commercial Scientific Institution Requester** affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for a commercial use.

A **Commercial-Use Requester** affiliated with a private corporation, seeking information for use in the company's business.

An **“Other” Requester** seeking information for non-commercial or personal use.]

- (6) As proof of identity I am including a photocopy of my driver's license, notarized declaration, sworn statement, etc. (See [“To Establish Identify and Right to Access”](#))
- (7) I am willing to pay fees for this request up to a maximum of \$XX. If you estimate that the fees will exceed this limit, please inform me first.

Thank you for your consideration of this request.

Sincerely,

(8) [your signature]

### Additional Options for Your FOIA Request

You may also include in the body of your FOIA request additional optional requests. These requests require you to establish certain criteria by providing appropriate additional information.

Your FOIA request may include a request that the fees be reduced or waived. To qualify for a waiver you must include specific details. For more information see 26 CFR (f)(2).

Your FOIA request can include a request that the documents be provided to you in an alternative media. For more information see Subsection (a)(3)(B) of the FOIA (5 U.S.C. 552(a)(3)(B)).

If you qualify under stipulated criteria you may be able to request expedited processing of your FOIA request. To receive expedited processing you must have a 'compelling need' for expedited processing and you must include specific details concerning your need for expedited processing in your FOIA request. For information on compelling needs and what qualifies for expedited processing see 26 CFR 601702 (c)(6).

### Where to Send Your Request

A FOIA request should generally be addressed to the IRS Disclosure Office that services your current address. If you know that the records that you are requesting are located in another area you should direct your request to the Disclosure Office where those records are kept. See [IRS Disclosure Offices](#). If you are requesting headquarters IRS policy documents please write to the Headquarters Freedom of Information Office address provided at the end of the address list.

### To Establish Proof of Identity and Right to Access

To receive copies of documents protected under the Privacy Act or Internal Revenue Code 6103 you must show proof of identity and demonstrate your right to access by:

- Signing your FOIA request (stamped signatures are unacceptable for the purpose of establishing identity), including your address in the request, **and** attaching a copy of one form of identification bearing your signature (such as your drivers license), **or**
- Presenting a notarized statement swearing to or affirming your identity, **or**
- Presenting a sworn statement as to your identity, under penalty of perjury (You may include in your FOIA request "I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed on [date]. I am [your name] and I am requesting...."), **or**

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- Providing an official document showing proof of entitlement as the sole proprietor, member of partnership, corporate officer, shareholder, etc., if requesting the records of a business.

For records of a deceased individual you must provide a document showing proof of status as administrator, executor, or trustee of estate; if an heir at law, next of kin, or beneficiary under the will, proof of a material interest which will be affected by information contained in the requested documents and proof of the kinship, e.g., a copy of birth certificate or will.

**Appendix B. IRS FOIA Fee Schedule**

|  |  |   |
|--|--|---|
| Commercial requesters  | Copying charges  | \$.20 per page.   |
|  | Search charges   | \$17.00 per hour or fraction of an hour (charges for computer searches may include search time expended by employees plus the actual direct costs to the IRS for performing the electronic search such as computer search time, runs, and the operator's salary). |
|  | Review charges   | \$21.00 per hour or fraction of an hour.  |
|  | Minimum charge   | No fee charged if total charges are \$10.00 or less.  |
| Media requesters   | Copying charges  | No charge for first 100 pages; \$.20 per page thereafter.   |
|  | Minimum charge   | No fee charged if total charges are \$10.00 or less.  |
| Educational or Non-commercial Scientific institution requesters  | Copying charges  | No charge for first 100 pages; \$.20 per page thereafter.   |
|  | Minimum charge   | No fee charged if total charges are \$10.00 or less.  |
| Other requestors (Individuals seeking records for their own use) | Copying charges  | No charge for first 100 pages; \$.20 per page thereafter.   |
|  | Search charges   | No charge for first 2 hours (or equivalent computer search cost); \$17.00 per hour or fraction of an hour plus any direct electronic search costs thereafter.   |
|  | Minimum charge   | No fee charged if total charges are \$10.00 or less.  |
| Other Charges  | <p>Fees may be assessed at actual cost for any request that requires special services or materials.</p> <p>These services are provided at the discretion of the IRS and may include: certification fees (\$1.00 per document certified); shipping costs; employee transportation; contractor duplication costs; video tapes; computer disks; and shipping, etc. The charge for a copy of tax return as filed is \$39.00.</p> |   |