

Your Right To Federal Records

Questions and Answers on the Freedom of Information Act and Privacy Act

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Introduction

The Freedom of Information Act (FOIA), enacted in 1966, generally provides that any person has the right to request access to federal agency records or information. FMCS is required to disclose records upon receiving a written request for them, except for those records that are protected from disclosure by any of the nine exemptions or three exclusions of the FOIA. This right of access is enforceable in court.

In 1996, Congress revised the Freedom of Information Act (FOIA) by passing the Electronic Freedom of Information Act Amendments (E-FOIA). The E-FOIA amendments provide for public access to information in an electronic format and for the establishment of electronic FOIA reading rooms through agency FOIA sites on the Internet. The primary source of FOIA-related information on the Internet is the Justice Department's FOIA website (www.usdoj.gov/foia), which contains links to the FOIA websites of other federal agencies.

The Privacy Act of 1974 is another federal law regarding federal government records or information about individuals. The Privacy Act establishes certain controls over how FMCS gathers, maintains, and disseminates personal information. The Privacy Act also can be used to obtain access to information, but it pertains only to records that federal agencies keep about individual U.S. citizens and lawfully admitted permanent resident aliens. The FOIA, on the other hand, covers all records in the possession and control of federal executive branch agencies.

This document provides basic guidance about the FOIA and the Privacy Act to assist people in exercising their rights. The document is not intended to be a comprehensive treatment of the complex issues associated with the FOIA and the Privacy Act.

The Freedom of Information Act

What information is available under the FOIA?

The Freedom of Information Act (FOIA) provides access to all FMCS and other federal agency records except for those records (or portions of those records) that are protected from disclosure by any of nine exemptions or three exclusions (reasons for which an agency may withhold records from a requester).

The exemptions cover:

- (1) classified national defense and foreign relations information,
- (2) internal agency rules and practices,
- (3) information that is prohibited from disclosure by another 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,
- (7) certain information compiled for law enforcement purposes,
- (8) information relating to the supervision of financial institutions, and
- (9) geological information on wells.

The three exclusions, which are rarely used, pertain to especially sensitive law enforcement and national security matters.

Even if information is exempt from disclosure under the FOIA, FMCS still may disclose the information as a matter of administrative discretion if it chooses to do so and disclosure of that information is not prohibited by any law. The FOIA does not apply to Congress, the courts, or the central offices of the White House, nor does it apply to records of state or local governments.

Under the FOIA, you may request and receive by mail or electronically a copy of any record that is in FMCS files and is not covered by one of the exemptions or exclusions. If the records you seek are about yourself, you may request them under the FOIA and the Privacy Act of 1974. In such cases, records may be withheld only if exempt under both laws.

When you make a FOIA request, you must describe the records that you want as clearly and specifically as possible. If the agency cannot identify and locate records that you have requested with a reasonable amount of effort, it will not be able to assist you. FMCS strives to handle all FOIA requests in a customer-friendly fashion. However, the FOIA does not require FMCS to do research for you, analyze data, answer written questions, or in any other way create records in order to respond to a request.

Can I find agency records on the Internet?

Yes, and it can be very useful to look at the information that FMCS makes available on the Internet before making a FOIA request. This agency places a wide variety of information on its website that is very useful to the general public and describes their various programs and activities.

Whom do I contact in the federal government with my request? How do I get the right address?

There is no one office of the federal government that handles all FOIA requests. Each FOIA request must be made to the particular agency that has the records that you want.

You may have to do a little research to find the proper agency office to handle your FOIA request, but you will save time in the long run if you send your request directly to the most appropriate office. For assistance, you can contact the [Federal Citizen Information Center \(FCIC\)](#) of the U.S. General Services Administration. On the Internet, you can find addresses of the FOIA offices of federal agencies by going to the Justice Department's website at www.usdoj.gov/foia (click on "[Other Federal Agencies' FOIA Web Sites](#)," and select "[Principal FOIA Contacts at Federal Agencies](#)"). You may obtain FMCS FOIA information at its website (www.fmcs.gov).

How do I request information under the FOIA?

In order to make a FOIA request, simply [write a letter](#) or [email](#) to the appropriate agency. You can email FMCS at foia@fmcs.gov or write us at 2100 K Street, N.W. Washington, DC 20427. For the quickest possible handling, mark your correspondence "Freedom of Information Act Request." Although you do not have to give a record's title, you should identify the records that you want as specifically as possible in order to increase the likelihood that FMCS will be able to locate them. Any facts that you can furnish about the time, place, authors, events, subjects, and other details of the records will be helpful to the Agency in deciding where to search and in determining which records respond to your request.

As a general rule, FOIA requesters are not required to state the reasons why they are making their requests. You may do so if you think it might help the agency to locate the records. If you are not sure whether the records you want are exempt from disclosure, you may request them anyway.

May I request records in a specific format?

Yes, but the records may not be available in the requested format. If you request records that already exist in an electronic format, the FOIA requires agencies in almost all cases to provide these records to you in that same format, if that is what you prefer. However, if you request records that exist only in paper form, and would like them in some electronic format, the agency is obligated to provide the records in that

electronic format only if it can do so with a reasonable amount of effort. The same is true if you request that electronic records be provided to you in an electronic format in which they do not already exist.

What is the cost for getting records under the FOIA?

The FOIA permits agencies to charge fees to FOIA requesters. For noncommercial requesters, an agency may charge only for the actual cost of searching for records and the cost of making copies. After the first two hours, search fees range from \$16 to \$40 per hour at FMCS, depending upon the salary levels of the personnel needed for the search. The charge for copying documents are at the Agency's cost after the first 100 pages. FMCS will not charge if the total cost is minimal.

How long will it take to answer my request?

Under the FOIA, FMCS is required to respond to your request within 20 working days of receipt (excluding Saturdays, Sundays, and federal holidays). If you have not received a response by the end of that time (allowing for mailing time), you may telephone or email FMCS or write a follow-up letter to ask about the status of your request. FMCS may extend this 20-day period for up to 10 more working days with written notice to you.

Is there any way for me to speed up the response time?

If FMCS is unable to respond to your request in time, it may ask you to modify your request so that you can receive a response more quickly. Generally, it takes agencies less time to process simple requests involving a small number of records. Complex requests involving a greater number of records can take considerably more time to process. Therefore, you and the FMCS FOIA Officer may want to discuss narrowing the scope of your request to speed up the response time or to agree on an alternative time frame for record processing.

Another means of obtaining a faster response is to ask the agency for "expedited processing" of your request. However, you should know that the agency will grant this request only under very specific circumstances. In order to qualify, you must certify that there is an imminent threat to the life or physical safety of an individual or, if you are a member of the news media, you must demonstrate that there is an urgency to inform the public about certain federal government activity.

What happens if the agency denies my request?

If FMCS locates records in response to your request, it can withhold them (or any portion of them) only if they are exempt from disclosure. If the Agency denies your request, in whole or in part, it ordinarily must provide an estimate of the amount of material withheld, state the reason(s) for the denial, and inform you of your right to appeal to a higher decision making level within the Agency.

How do I appeal a denial?

In order to appeal a denial, promptly send a letter or email to FMCS. The Agency requires that the appeal be made within 30 days after you receive notification of a denial. The denial letter should tell you the office to which your appeal letter should be addressed. For the quickest possible handling, you should mark both your request letter and the envelope "Freedom of Information Act Appeal."

What can I do if my appeal is denied?

If FMCS denies your appeal, or does not respond within the statutory time period, you may take the matter to court. You can file a FOIA lawsuit in the U.S. District Court where you live, where you have your principal place of business, where the documents are kept, or in the District of Columbia.

The Privacy Act

What is the Privacy Act?

The federal government compiles a wide range of information on individuals. For example, if you were ever in the military or employed by a federal agency, there should be records of your service. If you have ever applied for a federal benefit or received a student loan guaranteed by the government, you are probably the subject of a file. There are records on every individual who has ever paid income taxes or received a check from Social Security or Medicare.

The Privacy Act, passed by Congress in 1974, establishes certain controls over what personal information is collected by the federal government and how it is used. This law guarantees three primary rights:

- (1) the right to see records about oneself, subject to the Privacy Act's exemptions;
- (2) the right to amend a nonexempt record if it is inaccurate, irrelevant, untimely, or incomplete; and
- (3) the right to sue the government for violations of the statute, such as permitting unauthorized individuals to read your records.

What information can I request under the Privacy Act?

The Privacy Act applies only to records about individuals maintained by agencies in the executive branch of the federal government. It applies to these records only if they are in a "system of records," which means they are retrieved by an individual's name, Social Security number, or some other personal identifier.

There are 10 exemptions to the Privacy Act under which the Agency can withhold certain kinds of information from you such as information that would identify a confidential source.

Whom do I contact in the federal government with my request? How do I get the right address?

As with the FOIA, no one office handles all Privacy Act requests. To locate the proper agency to handle your request, **[follow the same guidelines as for the Freedom of Information Act](#)**.

How do I know if an agency has a file on me?

If you think a particular agency has a file pertaining to you, you may write to the Privacy Act Officer. Agencies are generally required to inform you, upon request, whether or not they have files on you. In addition, agencies are required to report publicly the existence of all systems of records they keep on individuals.

How do I request information under the Privacy Act?

Write a letter or send an email to the agency that you believe may have a file pertaining to you. Address your request to the agency's Privacy Act Officer. Be sure to write "Privacy Act Request" clearly on both the letter and the envelope. Most agencies require some proof of identity before they will give you your records. Therefore, it is a good idea to enclose proof of identity (such as a copy of your driver's license) with your full name and address.

Give as much information as possible as to why you believe the agency has records about you. The agency should process your request or contact you for additional information.

What is the cost for getting records under the Privacy Act?

Under the Privacy Act, an agency can charge only for the cost of copying records, not for time spent locating them.

How long will it take to answer my request?

Under the terms of the Privacy Act, FMCS is not required to reply to a request within a given period of time. However, if you do not receive any response within four weeks or so, you might wish to write or email again, enclosing a copy of your original request.

What if I find that a federal agency has incorrect information about me in its files?

The Privacy Act requires agencies maintaining personal information about individuals to keep accurate, relevant, timely, and complete files. If, after seeing your file, you believe that it contains incorrect information and should be amended, write or email FMCS. The Agency will let you know if further proof is needed. The law requires an agency to notify you of the receipt of such an amendment request within 10 working days of receipt. If your request for amendment is granted, the agency will tell you precisely what will be done to amend the record. Even if an agency denies your appeal, you have the right to submit a statement explaining why you think the record is wrong and the agency must attach your statement to any nonexempt records involved.

What can I do if I am denied information requested under the Privacy Act?

There is no required procedure for Privacy Act appeals, but FMCS will advise you of its own appeal procedure when it makes a denial. Should the Agency deny your appeal, you may take the matter to court.

A Comparison of the Freedom of Information Act and the Privacy Act

What is the relationship between the FOIA and the Privacy Act?

Although the two laws were enacted for different purposes, there is some similarity in their provisions. Both the FOIA and the Privacy Act give people the right to request access to records held by agencies of the federal government. The FOIA's access rights are generally given to "any person," but the Privacy Act's access rights are given only to the individual who is the subject of the records sought (if that individual is a U.S. citizen or a lawfully admitted permanent resident alien).

The FOIA applies to all FMCS records. The Privacy Act, however, applies to only those records that are in "systems of records" containing information about individuals that is retrieved by the use of a name or

personal identifier. Each law has a somewhat different set of fees, time limits, and exemptions from its right of access.

If you are in doubt about which law applies or would better suit your needs, you may refer to both in your request letter. If you request records about yourself and the Privacy Act applies, the FMCS will process the request under both the FOIA and the Privacy Act and withhold requested information from you only if it is exempt under both laws.

Can I request information about other people?

Yes, but it might be withheld to protect their personal privacy. The FOIA contains two very important provisions concerning personal privacy: Exemption 6 and Exemption 7(C). They protect you from others who may seek information about you, but they also may prevent you from obtaining information about others. The FOIA's Exemption 6 permits FMCS to withhold information about individuals if disclosing it would be "a clearly unwarranted invasion of personal privacy." Exemption 7(C) similarly protects personal privacy interests in law enforcement records. Neither Exemption 6 nor Exemption 7(C) can be used to deny you access to information about yourself, only to deny you information about other persons.

Other Sources of Information

Federal Citizen Information Center

The [Federal Citizen Information Center \(FCIC\)](#) of the U.S. General Services Administration administers a Center which can help you find information about the federal government's agencies, services, and programs. You may ask the contact center for assistance in contacting the proper federal agency with your Freedom of Information Act or Privacy Act request.

Simply call toll-free **1-800-FED-INFO (that's 1-800-333-4636)** from anywhere in the United States. The contact center is open for personal assistance from 8 a.m. to 8 p.m., Eastern Time, Monday through Friday, except federal holidays. Recorded information on frequently requested subjects is available around the clock.

U.S. Government Manual: The text version is available on the U.S. Government Printing Office's website at www.gpoaccess.gov/gmanual.

The Privacy Act of 1974: A text version is available on the Justice Department's website at www.usdoj.gov/foia (click on "[Reference Materials](#)," and scroll down to the "[Text of the Privacy Act](#)").

A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records: Is available online at oversight.house.gov (click on "[Investigations](#)").

Freedom of Information Act Guide and Privacy Act Overview: Is available at www.usdoj.gov/foia (click on "[Reference Materials](#)," and then click on the name of each document).

Freedom of Information Case List: Is available at www.usdoj.gov/foia (click on "[Reference Materials](#)," and then click on "[Freedom of Information Case List](#)").

FOIA Update: All back issues are available at www.usdoj.gov/foia (click on "Materials," and then click on "[FOIA Update](#)").

