

**ACCESS TO RECORDS AT THE
NATIONAL ARCHIVES AND RECORDS
ADMINISTRATION**

Jay Olin

NARA Deputy FOIA Officer

WHAT IS NARA?

- Our own operational records.
- Accessioned agency records.
- Records on deposit with NARA.
- Donated historical materials.
- Nixon Presidential materials.
- Presidential records.
- Record Center holdings.

JUDICIAL RECORDS

- Records created by Federal court system are traditionally open.
 - Federal Courts include:
 - District Courts
 - Circuit Courts
 - Appeals Court
 - US Supreme Court
- ***Exceptions

LEGISLATIVE RECORDS

- House of Representatives:
 - Closed for 30 or 50 years.
 - Clerk of the House determines access.
- U.S. Senate:
 - Closed for 20 years.
 - Committee or successor sets rules.

PRESIDENTIAL RECORDS

- Before 1981, governed by deed of gift.
- Nixon materials covered by the Presidential Recordings and Materials Preservation Act of 1974.
- Presidential Records Act governs records created in 1981 and after.

THE FREEDOM OF INFORMATION ACT

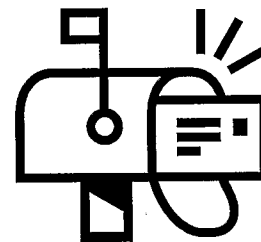
- Passed in 1966.
- Amended - 1974, 1976, and 1986.
- E-FOIA amendments in 1996.
- EO 13,392 in 2005.
- OPEN Government Act of 2007
- Obama Memo 1/21/2009
- Holder Memo 3/19/2009

HOW ARE REQUESTS TO BE FILED?

Requests must be in writing.



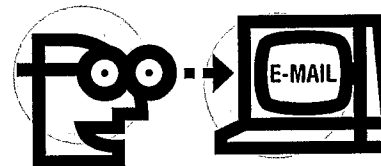
They may be mailed,



faxed,



submitted via e-mail.



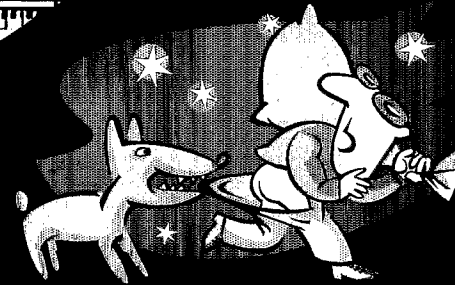
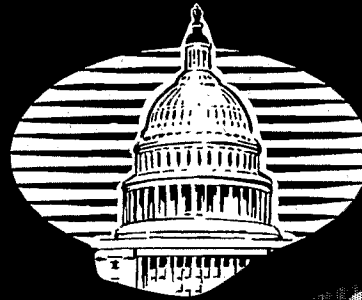
WHO MAY FILE A FOIA REQUEST?

Any person. Two broad classes are excluded from "any person:"

Federal government entities

and

Foreign governments



WHAT CONSTITUTES AN AGENCY RECORD FOR FOIA PURPOSES?

"Agency records" are those created or received in the course of conducting agency business, including paper, electronic or other physical forms. They include reports, letters, photographs, recordings, e-mails, etc.

A record must exist and be in the possession and control of the agency before it is considered for release.

FOIA FEES

We bill requesters for FOIA services based on who they are. We use information provided by the requester to determine the requester's fee category and what fees to assess. These fees only apply to requests for NARA's operational records.

- Commercial users pay for all search, review, & copying.
- News media and educational requesters pay for copying (but the first 100 pages are provided free).
- "All Others" pay for all search and all copying (but the first 2 hours of search and the first 100 pages are provided free).



*If the billable cost to
process a request is \$10
or less, then we automatically
waive the fee.*

FEE'S CONTINUED

- NARA has a statutorily based fee schedule for reproductions of archival records (44 USC 2116(c)).
- Sets fees by type of reproduction.
- No fee waivers or reductions.
- \$10.00 minimum

FOIA EXEMPTIONS

- 5 U.S.C. 552 (b)(1) through (9).
- Not all apply to archival records.
- Discretion in applying exemptions in most cases.

EXEMPTION (B)(1)

- Allows for the withholding of information that is currently and properly classified pursuant to EO 12958, as amended.
- March 25, 2003 President Bush signed EO 13292, which amended EO 12958.
 - No discretionary disclosure.
 - Documents referred to agencies that hold equities for determinations.

EXEMPTION (B)(2)

- High (b)(2)
 - Internal matters, the disclosure of which would risk circumvention of a statute or agency regulation.
 - Protection of agency assessments of vulnerability of critical systems, facilities, stockpiles, and other assets.
 - DOJ Guidance: use (b)(2) to protect Critical Infrastructure Information.
 - Basis of NARA's "Record of Concern Policy."
 - ISOO/DOJ Memorandum, March 19, 2002
- No discretionary disclosure

EXEMPTION (B)(2)

- Low (b)(2)
 - Relatively trivial internal matters (i.e., parking facility rules, lunch hour rules, sick leave policy, file numbers, mail routing stamps, initials, data processing notations).
- Discretionary disclosure is appropriate

EXEMPTION (B)(3)

- Information precluded/prohibited from being released by another statute
- Examples
 - FR Cr. P. 6(e) - Grand Jury Information
 - 26 U.S.C. 6103 -Income Tax Information
 - 50 U.S.C. 403(g)(3) - CIA sources & methods

EXEMPTION (B)(4)

- Information submitted by an outside party which is a **trade secret or proprietary commercial/financial information** submitted with an understanding of confidentiality.

EXEMPTION (B)(4)

- **Trade secret:** commercially valuable plan, formula or process used to make or prepare a trade commodity that is a end product of innovation or substantial effort.
- Any plan, formula or product that gives the owner a competitive advantage over other companies who do not know or use it.
- **Proprietary commercial/financial information -** privileged and confidential data related to business, trade or commerce.
- Business sales statistics, research data, technical designs, overhead and operating costs, and information on financial condition.

EXEMPTION (B)(4)

- NARA normally recognizes this exemption in records ten years old or less only.
 - 36 CFR 1256.14

EXEMPTION (B)(5)

- Inter- or Intra- agency, non-factual, deliberative information, used in a decision-making process.
 - Advise, opinions, suggestions, recommendations, evaluations, consultations
 - Information prepared in preparation for litigation
 - Information pertaining to an attorney-client relationship or attorney work product

EXEMPTION (B)(6)

- Information which, if released, would result in a clearly unwarranted invasion of the personal privacy of an individual.
 - Home addresses, telephone numbers, and e-mails
 - Personnel and medical files
 - Social security numbers
 - Personnel or administrative actions

EXEMPTION (B)(7)

- Records compiled for law enforcement which are investigatory in nature that would or could:
 - (a) reasonably be expected to interfere with a law enforcement proceeding.
 - (b) deprive a person of a right to a fair trial or impartial adjudication;
 - (c) reasonably expected to constitute an unwarranted invasion of personal privacy;

EXEMPTION (B)(7)

- (d) reasonably be expected to disclose the identity or a confidential source;
 - (e) disclose investigative techniques and procedures; or
 - (f) reasonably be expected to endanger the life or safety of another individual
- NARA uses (b)(7)(c), (d), and (e).

EXEMPTION (B)(8)

- Information pertaining to matters that are contained or related to examination, operating, or condition reports prepared by or for the use of an agency responsible for the regulation or supervision of financial institutions (banking records).
 - To protect the security of financial institutions by withholding from the public reports that contain frank evaluations of a banks stability.
 - To promote cooperation and communication between employees and examiners.

EXEMPTION (B)(9)

- Geological and geophysical information and data, including maps, concerning wells.

FINAL DETERMINATION

- Release In Full:
 - There is no sound legal basis for withholding.
- Withhold in Full:
 - The entire document contains exempt information that cannot be reasonably segregated.
- Release in Part:
 - Exempt information can be reasonably redacted and non-exempt information released.

THE PROCESS

- Records must be requested in writing
- Anyone can request records under the FOIA
- We have 20 working days to respond.
- We will screen or refer for declassification if necessary.
- We will respond in writing.
- We will offer appeal rights.

~~SECRET~~ [REDACTED]

FOIA(b)1
FOIA(b)2
FOIA(b)3 - 50 USC 403

the respective tabs, until final resolution of document classification issues. Such resolution will be the responsibility of [REDACTED]

FOIA(b)1
FOIA(b)2
FOIA(b)3 -
50 USC 403

4. ~~(S)~~ AFDO will attempt to conduct its examinations in such a manner that no records will remain off the open shelves more than 30 days. If AFDO informs NARA that it cannot resolve an issue with regard to a specific set of records within 30 days, both parties will agree upon a date by which the issue will be resolved. When researchers request records held by AFDO for examination, AFDO will expedite its examination so that the records can be made available to the researcher with a minimum of delay.

FOIA(b)1
FOIA(b)2
FOIA(b)3 - 50 USC 403

5. ~~(S)~~ [REDACTED] NARA will not acknowledge the role of [REDACTED] AFDO in the review of these documents or the withholding of any documents determined to need continued protection from unauthorized disclosure. Researcher requests for withheld documents shall be accepted for processing by NARA and researchers shall not be directed to [REDACTED] AFDO, or CIA for response. It may be necessary to supplement AFDO with [REDACTED] personnel. NARA will not disclose the true reason for the presence of [REDACTED] AFDO [REDACTED] personnel at the Archives, to include disclosure to persons within NARA who do not have a validated need-to-know. In the event that NARA's leadership determines that a statement concerning the presence of the AFDO [REDACTED] reviewers is required, NARA will use the following: "The Air Force has assigned additional reviewers at NARA II to ensure appropriate implementation of Presidential Order 12958 historical records declassification review responsibilities.

FOIA(b)1
FOIA(b)2
FOIA(b)3 -
50 USC 403

6. ~~(S)~~ AFDO [REDACTED] personnel will follow NARA requirements for the handling of archival records and will take care to preserve the integrity of the records.

FOIA(b)1
FOIA(b)2
FOIA(b)3 -
50 USC 403

~~SECRET~~ [REDACTED]

FOIA(b)1
FOIA(b)2
FOIA(b)3 - 50 USC 403

ACCESS RESTRICTED

The item identified below has been withdrawn from this file:

File Designation _____

Date _____

From _____

To _____

In the review of this file this item was removed because access to it is restricted. Restrictions on records in the National Archives are stated in general and specific record group restriction statements which are available for examination. The item identified above has been withdrawn because it contains:

- ☐ Security-Classified Information
- ☐ Otherwise Restricted Information

Authority

Date

Withdrawn by

WITHDRAWAL NOTICE

OFFICE OF GOVERNMENT INFORMATION SERVICES (OGIS)

- Created by OPEN Government Act of 2007
- Started operations September 2009
- Provides mediation for FOIA requesters government-wide
- <http://www.archives.gov/ogis/>

CONTACT INFORMATION

- NARA Operational Records

- FOIA Officer
- National Archives and Records Administration
- 8601 Adelphi Road, Room 3110
College Park, MD 20740
- Telephone: (301) 837-FOIA (3642)
FAX: (301) 837-0293
- E-mail: foia@nara.gov

- NARA Accessioned Holdings

- Special Access and FOIA Staff (NWCTF)
- 8601 Adelphi Road, Room 6350
College Park, MD 20740
- Telephone: (301) 837-3190
FAX (301) 837-1864
- E-mail: specialaccess_foia@nara.gov

CONTACT INFORMATION

- Office of Inspector General
- Office of the Inspector General
FOIA Request
- 8601 Adelphi Road, Room 1300
College Park, MD 20740
- Telephone: 301-837-3000
FAX: 301-837-3197
- Official Military Personnel Records
- National Personnel Records Center
Military Personnel Records
- 9700 Page Avenue
St. Louis, MO 63132-5100
- Telephone: 314-801-0800
Fax: 314-801-9195
- E-mail: MPR.center@nara.gov
Status Check: mpr.status@nara.gov
Web: <http://www.archives.gov/st-louis/military-personnel/>

NARA FOIA STAFF

- Chief FOIA Officer: Gary M. Stern
- NARA FOIA Officer: Vacant
- NARA Deputy FOIA Officer: Jay Olin
 - Jay.olin@nara.gov
 - (301) 837-2025

QUESTIONS?

