

DEPARTMENT of JUSTICE

Department of Justice Guide to the Freedom of Information Act

October 9, 2019



The United States Department of Justice Guide to the Freedom of Information Act is a comprehensive legal treatise on the FOIA. The Guide includes detailed discussions of the FOIA's procedural requirements, nine exemptions, and litigation considerations. Each section contains a detailed analysis of the key judicial opinions issued on the FOIA.

Each chapter of the Guide will be updated by OIP on a rolling basis as significant new developments in FOIA occur. OIP's Court Decisions page also provides a regularly updated review of significant FOIA decisions with detailed summaries searchable by key terms and topical categories.

On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016 which which contains several substantive and procedural amendments to the FOIA as well as new reporting requirements for agencies. Until all relevant Guide chapters have been updated to reflect these changes, you can read the text of the FOIA as amended and a summary of the recent amendments through the links below.

Text of the FOIA (showing changes made by the FOIA Improvement Act of 2016)

OIP Summary of the FOIA Improvement Act of 2016

All sections are available as Portable Document Format files, which may be viewed with a free copy of Adobe Acrobat Reader.

TABLE OF CONTENTS

Introduction (posted March 7, 2019)

Structure of the FOIA (page 2) History of the FOIA (page 6)

Proactive Disclosures (posted April 11, 2019)

Subsection (a)(1) - Federal Register Publication (page 2) Subsection (a)(2) - Public Inspection in an Electronic Format (page 2) Electronic Availability of Proactive Disclosures (page 6) Indexing Proactive Disclosures (page 7)

Procedural Requirements (posted September 4, 2019)

OPEN Government Act (page 1) FOIA Improvement Act (page 3) Entities Subject to the FOIA (page 4) "Agency Records" (page 10) FOIA Requesters (page 17) Proper FOIA Requests (page 23) Time Limits (page 32) Expedited Processing (page 36) Searching for Responsive Records (page 40) "Reasonably Segregable" Obligation (page 59) Consultations and Referrals (page 64) Responding to FOIA Requests (page 67) Administrative Appeals (page 74)

Fees and Fee Waivers (posted October 2, 2019)

Introduction (page 1) Fees (page 1) Requester Categories (page 2) Educational Institution (page 4) Noncommercial Scientific Institution (page 4) Representative of the News Media (page 5) All Other Requesters (page 8) Fee Category Considerations (page 8) Exemption 7 (posted May 24, 2019)

Introduction (page 1) Timing of Compilation for Law Enforcement Purposes (page 4) Types of Law Enforcement Covered by Exemption 7 (page 6) Personnel Actions and Law Enforcement Purpose (page 14) Standards for Demonstrating Law Enforcement Threshold Met (page 17) Deference (page 22)

Exemption 7(A) (posted August 21, 2019)

Introduction (page 1) Two-Part Test (page 1) Duration (page 3)

Types of Law Enforcement Proceedings (page 7) Related Proceedings (page 9)

Generalized Showing of Harm (page 12) Types of Interference (page 13) Generic Categories (page 20) Adequate Description of Categories (page 24) Deference (page 25) Time Frame for Determining Exemption 7(A) Applicability (page 26) Changes in Circumstances in Litigation When Exemption 7(A) No Longer Applies (page 27) Exclusion Considerations (page 28)

Exemption 7(B) (posted March 21, 2019) Exemption 7(C) (posted October 4, 2019)

Privacy Considerations (page 3) Public Interest (page 18) Balancing Process (page 27) The "Glomar" Response (page 32)

Exemption 7(D) (posted May 24, 2019)

Types of Fees (page 9) Fee Restrictions (page 13) Fee Waivers (page 21)

Exemption 1 (posted August 21, 2019)

Executive Order 13,526 (page 3) Reclassification of Information (page 9) Classifying After Receiving a FOIA Request (page 10)

Proper National Security Markings (page 11) Duration of Classification and Declassification (page 12)

Applicability of Successive Executive Orders (page 14)

Deference to Agency Judgment (page 14) In Camera Submissions and Adequate Public Record (page 19)

Glomar Response (page 21)

Compilation of Information (page 25)

Waiver of Exemption 1 Protection (page 27) Exclusion Considerations (page 32)

Exemption 2 (posted May 7, 2019)

Historical Interpretation of Exemption 2 (page 1) The Supreme Court's Decision in Milner v. Department of the Navy (page 5) Exemption 2's Three-part Test (page 10) Exemption 2 in the Wake of the Supreme Court's Decision in Milner (page 11)

Exemption 3 (posted August 20, 2019)

Initial Considerations (page 2) Statutes Not Delineated as Subpart (A)(i) (Requiring Withholding) or Subpart (A)(ii) (Establishing Criteria or Designating Matters to be Withheld) (page 9) Subpart (A)(i): Statutes Requiring Withholding (page 15) Subpart (A)(ii): Statutes Establishing Criteria for Withholding or Referring to Types of Matters to Introduction (page 1) The Confidentiality Analysis (page 6) Express Confidentiality (page 7) Implied Confidentiality (page 10) Scope of Protection (page 22) Waiver of Confidentiality (page 27) Exclusion Considerations (page 34)

Exemption 7(E) (posted May 14, 2019)

Techniques and Procedures (page 1) Guidelines for Law Enforcement Investigations and Prosecutions (page 19) Homeland Security Records and Exemption 7(E) (page 24)

Exemption 7(F) (posted May 16, 2019)

Exemption 8 (posted May 22, 2019)

Exemption 9 (posted August 26, 2019)

Exclusions (posted April 4, 2019)

The (c)(1) Exclusion (page 3) The (c)(2) Exclusion (page 7) The (c)(3) Exclusion (page 11) Procedural Considerations (page 13)

Waiver and Discretionary Disclosure (posted August 28, 2019)

Waiver (page 1) Discretionary Disclosure (page 15)

Litigation Considerations (posted September 25, 2019)

Jurisdiction (page 1) Standing (page 8) Venue and Removal (page 10) Statute of Limitations (page 13) Relief (page 15) Preliminary Injunctions (page 19) Frivolous Lawsuits (page 21) Appointment of Counsel (page 22) be Withheld (page 26) Statutes Both Requiring Withholding and Establishing Criteria or Delineating Particular Matters to be Withheld (page 44) Tax Return Information (page 47) FOIA-Specific Nondisclosure Statutes (page 54) Nondisclosure Results Under Appropriations Acts (page 58) "Operational Files" Provisions (page 60) Statutes Found Not to Qualify Under Exemption 3 (page 61)

Exemption 4 (posted October 9, 2019)

Trade Secrets (page 1)

Commercial or Financial Information (page 4) Obtained from a "Person" (page 10) "Confidential" Information (page 13) Historical Interpretation of Exemption 4 (page 13) The Supreme Court's Decision in Food Marketing Institute v. Argus Leader Media (page 14) Privileged Information (page 15)

Interrelation with the Trade Secrets Act (page 18)

Exemption 5 (posted August 26, 2019)

"Inter-Agency or Intra-Agency" Threshold Requirement (page 3) Consultant Corollary (page 4) Common Interest (page 12) Deliberative Process Privilege (page 14) Predecisional (page 18) Deliberative (page 27) Applying Deliberative Process Privilege (page 35) Adoption and Incorporation (page 44) Attorney Work-Product Privilege (page 48) Attorney-Client Privilege (page 61) Other Privileges (page 67)

Exemption 6 (posted October 4, 2019)

Threshold: Personnel, Medical and Similar Files (page 4) Privacy Interest (page 6) Practical Obscurity and Survivor Privacy (page 13)

Pleadings (page 23) Standard of Review (page 27) Exhaustion of Administrative Remedies (page 29) Constructive Exhaustion (page 34) "Open America" Stays of Proceedings (page 44) Adequacy of Search (page 50) Mootness and Other Grounds for Dismissal (page 67) Pattern-or-Practice Claims (page 76) Vaughn Index/Declaration (page 82) "Reasonably Segregable" Requirements (page 99) In Camera Inspection (page 105) Summary Judgment (page 111) Discovery (page 119) Waiver of Exemptions in Litigation (page 126) Special Counsel Provision (page 131) Considerations on Appeal (page 134)

Attorney Fees (updated October 4, 2019)

Threshold Issues (page 1)

Eligibility (page 7)

Entitlement (page 15)

Iming of Attorney Fees Motions (page 29)

Calculations (page 30)

Reverse FOIA (posted October 9, 2019)

Standard of Review (page 7) Executive Order 12,600 (page 13)

Text of the Freedom of Information Act

Text of the Attorney General's Memorandum on the Freedom of Information Act

Derivative Privacy Invasion (page 16) Expectations of Privacy (page 20) Federal Employees (page 23) Information in the Public Domain (page 30) Passage of Time (page 34) Corporations and Business Relations (page 34) Life Status (page 37) Public Figures (page 39) Privacy Assurances and Waivers (page 40) Interest in Disclosure (page 41) FOIA Public Interest (page 43) Assigning a Weight to the FOIA Public Interest (page 49) Nexus Between the Requested Information and the Public Interest (page 50) Derivative Use of the Information (page 57) Public Servant Accountability (page 60) Evidentiary Showing (page 64) Public Interest in Agency Compliance with Federal Statutes (page 68) Balancing a Privacy Interest in Nondisclosure Against a Public Interest in Release (page 71) Names and Home Addresses (page 76) Redacting Identifying Information (page 79) "Glomar" Responses (page 82)

Updated October 9, 2019

Was this page helpful?

Was this page helpful? Yes No

Thank you for your input. Contact the Webmaster to submit comments.

JUSTICE.GOV

Left Column

Archive

Accessibility Adobe Reader FOIA No FEAR Act Information Quality **Privacy Policy** Legal Policies & Disclaimers **Right Column** Social Media For Employees Office of the Inspector General **Open Government Plain Writing** USA.gov **BusinessUSA** Footer Menu Justice First Column en ESPAÑOL Contact DOJ Second Column Archive Accessibility Information Quality **Privacy Policy** Legal Policies & Disclaimers Social Media Third Column **Budget & Performance** Office of the Inspector General No FEAR Act

For Employees

FOIA

USA.gov

U.S. Department of Justice

950 Pennsylvania Avenue, NW Washington, DC 20530-0001

Stay Connected with Justice:

Instagram Facebook Twitter YouTube

Email Updates

