INTRODUCTION

The purpose of this guidance is to provide a brief overview of the Freedom of Information Act and Privacy Act **(**FOIA/PA) as it pertains to United States Citizenship and Immigration Services (USCIS), and the public who make requests for copies of documents or records. We provide a brief synopsis of USCIS' responsibilities as an agency, as well as guidance and the requirements for the requester submitting the FOIA/PA request.

In this document, we outline the key positions and responsibilities for the management and operation of the USCIS FOIA/PA program. We have provided information about the FOIA Public Reading Room maintained at the DHS FOIA/PA Headquarters and the USCIS Electronic Reading Room that we maintain on the World Wide Web. We provide definitions of terms relating to FOIA/PA as well as a list of forms we utilize. USCIS uses an automated system, the Freedom of Information Act/Privacy Act Information Processing System (FIPS) to control, create, and process FOIA/PA requests. We include a basic overview of processing FOIA/PA requests and an explanation of the exemptions USCIS uses most often. We provide guidelines for amending or correcting a record. Fees by category and fee waivers are discussed. Finally, we provide the procedures relating to appealing your FOIA/PA response.

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AUTHORITY (back to top)

Listed below are statutes and regulations that USCIS follows in processing a FOIA/PA request:

Freedom of Information Act, 5 U.S.C. § 552

Privacy Act of 1974, 5 U.S.C. § 552a

6 C.F.R. Part 5, Disclosure of Records and Information

Final Rule for Privacy Act Exemptions (DHS) July 16, 2007, 72 FR 38750

Department of Homeland Security (DHS) Freedom of Information Act (FOIA) and Privacy Act (PA) Record System DHS/ALL 001, December 6, 2004, 69 FR 70460

Department of Homeland Security (DHS) System of Records Notices

Department of Homeland Security Freedom of Information Act and Privacy Act Procedures: Interim Final Rule

8 C.F.R. Part 103, Powers and Duties of Service Officers; Availability of Service Records

General Records Schedule 14

Office of Management and Budget Circular A-130 and Appendix 1 (Privacy Act)

Office of Management and Budget Circular A-130, Transmittal No. 3, Appendix II, "Security of Federal Automated Information Resources."

GENERAL RESPONSIBILITIES

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The FOIA/PA program is part of the Enterprise Services Office in USCIS. As a component of the Department of Homeland Security (DHS), the USCIS FOIA/PA program also looks to the DHS Department Disclosure and FOIA Division for department-wide policy and guidance in the FOIA and PA areas.

The primary location for day-to-day FOIA/PA operations and processes in USCIS is at the National Records Center in Lee's Summit, MO. Responsibility for developing and deploying USCIS FOIA/PA training and policy is also located at the National Records Center. In addition, the agency's chief FOIA Officer and its FOIA Public Liaison are at the National Records Center.

USCIS operates a National Customer Service Center to answer questions about filing a request, provide status updates of pending requests, and otherwise provide assistance in obtaining records from USCIS. The phone number to reach a call center representative is (800) 375-5283 or (800) 767-1833 Hearing Impaired TTY. You may also fax inquiries to the National Records Center at (816) 350-5785, or e-mail your questions to uscis.foia@dhs.gov.

The FOIA Appeals Branch for USCIS is located at the National Records Center.

RECEIVING CONTROLLING, CREATING, AND PROCESSING

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Receiving Requests

File your initial FOIA/PA requests with USCIS by:

- Mail. Address the request to:

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P. O. Box 648010
Lee's Summit, MO 64064-8010

- For Overnight or Certified Mail:

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
150 Space Center Loop, Suite 300
Lee's Summit, MO 64064-2139.

- Fax 816-350-5785

- If you are able to scan the subject of record's notarized signature or signature made under penalty of perjury, we will accept it as an attachment to an e-mail at uscis.foia@dhs.gov

Initial Review

USCIS uses an automated database (FIPS) to manage all FOIA/PA requests. Upon receipt, we scan the FOIA request and supporting documents into FIPS. We review the documents and enter the information provided by the requester into the database.

Response Times

FIPS automatically records the receipt date when we scan in a new request. The FOIA (5 U.S.C. § 552) requires that agencies respond to requests for access to records within 20 working days (which excludes Saturdays, Sundays, and legal holidays). This time does not begin until we receive the request. An agency is not required to send out the releasable documents by the last business day; we may send you a letter informing you of our decision and then send you the documents within a reasonable time afterward. FIPS assigns a control number to the request; and we create an acknowledgment letter and mail it to you, the requester. If you do not provide sufficient information for us to complete a search for responsive records or if your request is unclear, we will have to request additional information (delaying the process).

Under the FOIA, USCIS may extend the response time for an additional ten business days when:

(1) USCIS needs to collect responsive records from field offices;

(2) the request involves a "voluminous" amount of records that must be located, compiled, and reviewed; or

(3) the component needs to consult with another agency or other component of the Department of Homeland Security that have a substantial interest in the responsive information.

When we need such a time extension, we may notify you of this in writing and offer you the opportunity to modify or limit your request. Alternatively, you may agree to a different timetable for the processing of your request.

When we are unable to make a determination on your request within the applicable period and you have not agreed to a different response timetable, you may file suit in federal court to pursue a response. If, however, the court concludes that you have unreasonably refused to limit your request or to accept an alternate timetable for response, the court may find that our failure to comply within the statutory time is justified. The court may excuse the lack of a timely response if USCIS demonstrates that it has a backlog of requests received before yours, that we process our requests on a first-come/first-served basis, and that we are making reasonable progress in reducing our backlog of pending FOIA requests. In such cases, the court may postpone its consideration of your lawsuit until USCIS reaches your request in its processing backlog.

Multi-track Processing

USCIS uses a three-track, first-in/first-out (FIFO) processing system.

Track 1 is for less complex cases in which a requester needs only one or only a few specific documents from the file.

Track 2 is for more complex cases. A complete copy of a file, requests from the news media, or special interest groups are examples of Track 2 cases. If we receive a request for specific documents which implies most of the file (for instance, “the asylum application and all supporting documents,”) we will assign the request to the complex track.

Track 3 is for cases involving individuals who are to appear before an immigration judge. In order to receive Track 3 priority processing, you must include one of the following documents with the FOIA request:

- Form I-862, Notice to Appear, documenting a future scheduled date of the subject's hearing before the immigration judge; or
- Form I-122, Order to Show Cause, documenting a future scheduled date of the subject's hearing before the immigration judge; or
- Form I-863, Notice of Referral to Immigration Judge; or
- a written notice of continuation of a future scheduled hearing before the immigration judge.

WHEN SHOULD I NOT FILE A FOIA REQUEST? (back to top)

- To determine the status of pending applications. For status inquires, you may enter your receipt number (beginning with LIN, SRC, EAC, or WAC, for example), you may enter your receipt number in the lower right-hand corner of our principal web site. Alternatively, you may write to the USCIS office where the application was filed or call our National Customer Service Center at **1-800-375 5283.** You may ask for records, but not information. We do not answer questions. If your request is in the form of a question (example: "They took my border crosser card in Brownsville and did not give it back. Why?"), we cannot process your request and we will ask you to clarify what records you are seeking.
- For consular notification of a visa petition approval, use Form I-824 (Application for Action on an Approved Application or Petition). For instructions on filing Form I-824, click here.
- For the return of original documents, use Form G-884 (Request for Return of Original Documents).
- For records of naturalization prior to September 27, 1906, write to the clerk of court where naturalization occurred.
- For information on USCIS manifest arrivals prior to December 1982, write to the National Archives.
- To obtain proof of status (i.e., Social Security benefit, Selective Service requirement).
- To obtain a replacement Certificate of Naturalization or Certificate of Citizenship, use Form N-565 (Application for Replacement Naturalization/Citizenship Document). For instructions on filing form N-565, click here.

CONSENT AND VERIFICATION OF IDENTITY

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"Consent" for the purposes of FOIA/PA is written agreement, approval or permission for access to information in the record by the competent individual to whom the record pertains.

> 5 U.S.C. § 552a(b) No agency shall disclose any record … except pursuant to a **written** request by, or with the prior **written** consent of, the individual to whom the record pertains.
>
> 6 CFR § 5.21(f): If you are making a request for records concerning *(a living)* individual *(other than yourself)*... You must also provide a statement from the individual certifying the individual's agreement that records concerning the individual may be released to you.

Consent could be:

- Block 3 on Form G-639, or
- A properly executed Form G-28, or
- A separate declaration by the subject, such as:

> Pursuant to the Privacy Act of 1974 and DHS policy, I hereby consent to the disclosure to _____ _____ of any record pertaining to me that appears in any system of records of USCIS, USCBP, or USICE.

Consent of parents or guardians

If a parent is filing on behalf of a minor child, then the parent must submit proof of parentage. Proof of parentage can be in the form of a birth certificate, adoption decree or similar document, naming them as a legal parent.

If a guardian is filing on behalf of a minor or person judicially determined to be incompetent, he or she must submit proof of guardianship. The signature of the parent/guardian must be notarized or signed under penalty of perjury [6 C.F.R. § 5.21(e)].

Minors can make a request for their file themselves. They do not have to have the consent of their parent or guardian to make this request. An attorney may also represent a minor.

VERIFICATION OF IDENTITY

If you are asking for information about yourself, information such as your immigration, medical, criminal, educational, financial or employment history, which we may have, you must provide verification of your identity. This is true for any information we keep in a

Privacy Act System of Records. Our method of storing immigration files is a Privacy Act System of Records, and your record within that system is a Privacy Act Record.

A Privacy Act record, for USCIS purposes, is any item, collection, or grouping of information about a person which we retrieve by the person's name, identifying number, symbol, or other identifying particular assigned to that person. If we store and retrieve information about you in that manner, you are the "subject of the record."

If you believe that the Department has records on you, please submit the following information:

- Full Name *
- Current address *
- Date of Birth *
- Place of Birth *
- Alien Registration Number (if known)

Starred items are required by 6 CFR § 5.21(d).

Next, the subject of record must sign the request and his or her signature must either be notarized or submitted under 28 U.S.C. 1746 *(penalty of perjury in lieu of notarized signature)*.

The notarized signature of the subject of record or the signature of the subject of record under penalty of perjury does not need to be on the Form G-639. If a requester has inserted the **penalty of perjury statement on <u>ANY</u> document**, and the subject of the record has signed the document, it fulfills the requirement to verify identity.

The notarized signature or signature under penalty of perjury **might** be on a:

- Separate letter, or any piece of paper *including* a G-28, but then only if the penalty of perjury statement is directly above the signature of the subject of record.

- Executed blocks 7 and 8 on Form G-639.

"Verification of Identity" for purposes of FOIA/PA does <u>not</u> include a Form G-28 with a statement made under penalty of perjury by the requesting attorney or representative "that the information I have provided on this form is true and correct." The statement must come from the subject of the record.

A statement made under penalty of perjury must come from the subject of record and must conform to the requirements of **28 U.S.C. § 1746: Unsworn declarations under penalty of perjury**, which reads as follows:

> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such

matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States:

"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.
Executed on (date).
(SIGNATURE)".

(2) If executed within the United States, its territories, possessions, or commonwealths:

"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
(SIGNATURE)".

The designation (SIGNATURE) above refers specifically to the signature of the subject of the record.

If the subject of the record is deceased, the requester must submit proof of death in lieu of consent. Proof of death could be any of the following:

- Death Certificate;
- Obituary;
- Excerpt from the Social Security Death Index http://ssdi.rootsweb.ancestry.com/ (Please note, this is a commercial website. You may search and print your finding without having to pay a fee.)
- Funeral Memorial; or
- Photograph of headstone

DESCRIPTION OF RECORDS SOUGHT

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Please include enough file-related information (type of document, title, subject area, date of creation, originating office) or enough event-related information (date and circumstances surrounding the event the record covers) for us to conduct a focused, time efficient search. Your request cannot be in the form of a question. FOIA does not require agencies to answer questions. Questions posed as FOIA requests will not be processed.

It may be that we find multiple matches for name, place of birth, and date of birth. It is also possible that we are unable to locate any record. In such a case, we do not have a reasonable description of the records being sought.

If we are not able to identify positively the subject of record, we will request additional information, which could cause a delay. Your response to our request for additional information could be critical, and we greatly appreciate your cooperation and understanding.

Because there is a possibility of identity theft, we will close a case as a failure to identify the subject of record before we will unintentionally release personal information to a third party without consent.

TYPE OF REQUEST (back to top)

A request for access to records could be a first party request or a third party request.

First Party Requester

A request for release of records by the subject of the records or his/her representative or attorney is a first-party request. The subject of the record must provide consent and verification of identity in order to allow us to release the record.

Third Party Requester

If no consent is present and it does not appear likely that a requester can obtain consent, we consider it a third party request. Third party requesters are entitled to any public documents that may be in the record and any documents that may have submitted on behalf of the subject of the file. This includes applications, petitions and documents relating to them.

Third party requesters without consent or proof of death will receive nonexempt information and records determined to be releasable under the FOIA.

PRIVACY ACT (PA) AMENDMENT REQUEST (back to top)

If you are a United States citizen or a permanent resident alien, you may file a request to amend incorrect information in your file.

You must submit the request in writing. You must identify yourself as described in the paragraph Consent and Verification of Identity when seeking to amend information in a PA system of records. You must identify the particular record involved, the nature of the amendment sought, and the justification for the amendment.

Statements of Disagreement

We will send the request to amend the record to an adjudicating officer, who will amend your record or deny your request and give you the reason he or she denied it. You have the right to appeal a denial. If the USCIS FOIA/PA Appeals Office affirms denials of requests for correction or amendment on appeal, the USCIS FOIA/PA Appeals Office will advise you of the reason for affirmation, your right to file a Statement of Disagreement, and your right to obtain judicial review of the denial in the courts.

Even if the USCIS FOIA/PA Appeals Office affirms the adjudicating officer's decision to deny your request for amendment to record, you may still file a statement of disagreement to be included with the unchanged record. If you choose to do this, you must file a "Statement of Disagreement" with the Appeals Office, and it may not exceed one typed page per fact disputed.

EXPEDITED PROCESSING

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A requester may ask for his or her request to be expedited and processed outside of the first in- first out method. USCIS may grant expedited processing if the requester establishes either:

> (1) circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
>
> (2) an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.

In addition, a request for expedited processing must include a statement, certified true and correct, explaining the basis for requesting expedited treatment. If a requester asks for expedited processing and fails to meet the above criteria, USCIS will process the request in the appropriate track using the first in/first out system.

We will make a decision to grant or deny an expedited processing request within ten calendar days of receipt of a request for expedited treatment. Our determination is made on a case-by-case basis in accordance with established guidelines (6 C.F.R. § 5.5(d)).

If our decision is to deny the request, we will advise you of the criteria for expediting a request. You will then have an opportunity to resubmit the request or to appeal the denial decision.

ACKNOWLEDGEMENT LETTERS

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As required by 5 U.S.C. § 552, we create and mail an acknowledgment letter to each requester upon the receipt of a FOIA or PA request. All acknowledgment letters will contain information relating to the track in which we have placed the request, fees, and a telephone number to call with questions. FIPS assigns an individual control number to each case to assist FOIA personnel in locating the case and for the requester to reference in any subsequent correspondence.

If the request contains enough information to positively identify the file and consent to release the file is present, we will send a standard acknowledgment letter to the requester.

If you did not provide consent from the subject of records along with the initial request, you will receive an acknowledgment letter advising that consent or written authorization from the subject of the file is required to release any information. If you are unable to provide consent from the subject of records, we will treat it as a third party request (see the header "Third Party Requester" under the section **TYPE OF REQUEST)**.

You must respond to the request for additional information, whether positively or negatively. If you do not respond to a request for additional information, your case will automatically close after 30 days.

When we need more information to identify positively the subject of the file, we attach a form for other documentation to the acknowledgment letter.

CHECKING THE STATUS OF A FOIA REQUEST

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After we have mailed you your Acknowledgement Letter with your Control Number, you can check status using the online FOIA Request Status Check.

If you have any other questions concerning your pending FOIA/PA request, please call the National Customer Service Unit at 1-800-375-5283 or Hearing Impaired TTY at (800) 767-1833. (This number is also for any immigration question, including FOIA/PA matters). As an alternative, you may fax inquiries to the National Records Center at (816) 350-5785, or e-mail your questions to uscis.foia@dhs.gov. Please note that the National Records Center can help you with matters concerning your FOIA/PA request, but cannot assist you concerning any pending Applications or Petitions or any other type of immigration matter.

PROCESSING

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Processing of records is completed using FIPS (Freedom of Information Act/Privacy Act Information Processing System). USCIS processes cases on a first-in/first-out (FIFO) basis using a three-track system. Responses to requests are available either on

Compact Disc or paper format. We process requests for information containing classified National Security Information off-line and not in FIPS. We also process these types of requests on a first-in/first-out basis.

The processor must conduct a page-by-page review of the requested records. The processor will determine portions to be exempt from release according to law, then redact and apply the appropriate exemptions.

EXEMPTIONS (back to top)

The paragraphs below explain the exemptions most commonly used by USCIS.

FOIA Exemptions, 5 U.S.C. § 552

Exemption (b)(1) is used to protect from disclosure national security information concerning the nation's defense or foreign policy.

Exemption (b)(2) as applied by USCIS protects predominantly internal rules, procedures and guidelines, the disclosure of which would present reasonably foreseeable harm to an interest of the United States, such as a significant risk of circumvention of statutes or agency regulations. The types of documents and/or information we withhold under this exemption may consist of operating rules, guidelines and techniques for identifying law-violators, internal agency security techniques, law enforcement training procedures, or guidelines and manuals of procedures for examiners and adjudicating officers.

Exemption (b)(3) exempts from mandatory disclosure items specifically withheld in conjunction with other statutes requiring nondisclosure.

Exemption (b)(4) protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential."

Exemption (b)(5) protects inter-agency or intra-agency memorandums or letters, which would not be available by law to a party in litigation with the agency. The types of documents and/or information we withhold under this exemption may consist of documents containing pre-decisional information, documents or other memoranda prepared in contemplation of litigation, or confidential communications between attorney and client.

Exemption (b)(6) permits the government to withhold all information about individuals in personnel, medical and similar files where the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The types of documents and/or information we withhold under this exemption may consist of birth certificates, naturalization certificates, driver's licenses, social security numbers, home addresses, dates of birth, or various other documents and/or personal information belonging to a third party.

Exemption (b)(7)(A) provides protection for records or information compiled for law enforcement purposes, the disclosure of which could reasonably be expected to interfere with enforcement proceedings.

Exemption (b)(7)(C) provides protection for personal information in law enforcement records that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This is the law enforcement counterpart of Exemption (b)(6). Unlike Exemption (b)(6), Exemption (b)(7)(C) permits the government to withhold even the mention of an individual's name from a law enforcement file, whether or not any other personally identifying information is present, because the mere mention of a person's name in a law enforcement file will engender comment and speculation and carries a stigmatizing connotation.

Exemption (b)(7)(E) provides protection for records or information for law enforcement purposes that would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. The types of documents and/or information we withhold under this exemption could consist of law enforcement systems checks, manuals, checkpoint locations, surveillance techniques, and various other documents.

Privacy Act Exemptions, 5 U.S.C. § 552a

Privacy Act exemptions only apply to cases where the requester is an LPR or USC and proper consent is present. Refer to the paragraph titled Consent and Verification of Identity, or 6 C.F.R. § 5.21(d) for proper verification of identity. There are several exemptions applicable under the Privacy Act; however, only Exemptions (d)(5) and (k)(2) are routinely used by USCIS.

Exemption (d)(5) permits the government to withhold all documents or information that has been compiled in reasonable anticipation of a civil action or proceeding. The comparable FOIA exemption is 5 U.S.C. § 552(b)(5).

Exemption (k)(2) provides protection to investigatory material compiled for law enforcement purposes. The comparable FOIA exemption is 5 U.S.C. § 552(b)(7).

FEES (back to top)

Do not send money when you first file a FOIA/PA request. There is no initial fee to file a FOIA/PA request; however, USCIS charges fees when applicable. FOIA requesters may have to pay fees covering some or all of the cost of processing their requests. FOIA establishes three types of fee categories that may be charged. Category one includes commercial requesters. The second category consists of educational or noncommercial scientific institutions and representatives of the news media. All other requesters are included in the third category.

Fee Categories:

Commercial Use Request

Refers to a request from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester to include litigation (does not include news media).

Educational Institution

Educational Institution refers to a facility that operates a program of scholarly research.

Non-commercial Scientific Institution

Non-commercial scientific institution refers to an institution that is not operated on a "commercial" basis. The institution must exist solely to conduct scientific research the results of which are not intended to promote any particular product or service.

News Media Requests

A news media requester refers to a person actively gathering news for an entity that is organized and operating to publish or broadcast news to the public. The records would be newsworthy and about current events. Requesters make their products available for purchase or subscription by the public. To be in this category, a requester must not be seeking the records for commercial use, and is assessed copying fees only. News dissemination is not considered commercial use. In order to be considered a news media requester, your primary activity or occupation must be disseminating information to the public.

All other requests

All other requests are assessed search and duplication fees only.

Duplication of Records

For all requesters, the fee for paper photocopies of records is ten cents per page of text. For copies produced by computer (prints or tape), the fee is direct costs, to include operating time of producing the copies.

Direct Costs

Direct costs are those expenses actually incurred in searching for and duplicating (and in the case of commercial requests, include reviewing) records to respond to a FOIA.

Fee Rates

Fee schedules are published in DHS Regulations (6 C.F.R. 5 §11(4)(k)). Current Departmental fees are:

- duplication at ten cents per page;
- clerical search/review at $4.00/15 minutes;
- professional search/review at $7.00/15 minutes;

- managerial search/review at $10.25/15 minutes.

Copies

Except for "Commercial Use Requests" the first 100 pages of duplication are free. Additional pages are available at a rate of ten cents per page. Except for "Commercial Use Requests" the first two hours of search are free.

Search Time

Search time includes all the time we spend looking for material that is responsive to a FOIA/PA request. This may include a page-by-page or line-by-line identification of material contained in a document. In addition, agencies may charge for search time even if the search fails to produce any records relating to the request, or even if the records we locate are subsequently determined to be exempt from disclosure.

The term "search," as it is defined by the Electronic Freedom of Information Act Amendments of 1996, means locating information or records by either manual or automated means and requires agencies to use reasonable efforts in electronic searches, if requested to do so by the requester and if the requester is willing to pay for this search activity.

We search for responsive records in the most efficient and least costly manner. USCIS does not charge for search time to locate lost or misplaced files.

Review

We may charge "commercial requesters" at the rate of $7.00 per quarter hour for the time required to review records for release determination.

Notification of Fees

When we determine that fees are chargeable to the requester and the amount is more than $25.00, and the requester has not been notified or expressed a willingness to pay the cost:

- We send an interim response advising requesters of the actual amount due prior to releasing the requested material and ask if they are willing to pay.
- We advise requesters that the total amount may be remitted in the form of a check or money order made payable to the United States Treasury, Attn: FOIA/PA Office.
- We advise requesters that we will close the request if we do not receive a response within 30 days of the date of the interim response letter.

Where the total fee to be charged exceeds $250.00, USCIS is authorized to require an advance payment of the fee by the requester.

Charging Interest

See 6 C.F.R. §5.11(4)(k).

Records Released on CD

Currently there is no fee for records released on CD.

Other Charges

For services other than above, refer to 6 C.F.R. §5.11(4)(k).

Fee Waiver Requests

The requester may ask for a waiver of fees, either in his or her request or in accompanying documentation submitted with his or her request. In order for a fee waiver to be granted, two requirements must be met:

(1) First, the disclosure of the requested information must be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(2) Second, the disclosure of the information is not primarily in the commercial interest of the requester.

APPEALS

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A requester or his or her representative may appeal any adverse determination regarding a FOIA/PA request in whole or in part. Appeals must be in writing and must be directed to:

USCIS FOIA/PA Appeals Office
150 Space Center Loop, Suite 500
Lee's Summit, MO 64064-2139

Appeals must be submitted within 60 days of the date of the letter containing notice of the adverse determination. The appeal letter should clearly identify the adverse determination being appealed and should include the assigned request number, if known. For the quickest possible handling, the letter and the envelope should both be marked: “Freedom of Information Act Appeal.”

If you are appealing the denial of a petition/benefit or any other matter with USCIS other than a FOIA/PA appeal, you must direct your appeal to the office designated by USCIS. If you require assistance in identifying the office responsive to your appeal you may contact the USCIS National Customer Service Center at the following (800) 375-5283 or (800) 767-1833 Hearing Impaired TTY.

Response to Appeals

A denial of an appeal by the USCIS Office of Chief Counsel will be the final agency action, and will provide the decision in writing. A decision affirming an adverse determination in whole or in part will contain a statement of the reason(s) for the affirmance, including any FOIA exemptions applied and will also advise of the FOIA provisions concerning court review of the decision. If the adverse determination is reversed or modified on appeal, in whole or in part, USCIS Office of Chief Counsel will notify the requester by written decision and the request will be reprocessed in accordance with the appeal decision. If the request becomes a matter of FOIA litigation, our action on an appeal ordinarily stops until the litigation is resolved.

Prior to seeking court review of an adverse determination of a FOIA/PA request, a requester must first exhaust all administrative remedies and appeal the adverse determination to the Appeals Office at the address listed above.

ACCESS TO ADDITIONAL INFORMATION

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The USCIS website www.uscis.gov, subheading "About USCIS" will give you access to the USCIS FOIA site as well as the USCIS Electronic Reading Room (ERR). The ERR provides access to frequently requested records (administrative decisions, immigration handbooks and manuals, data reports, and various other information of significant interest) in accordance with 5 U.S.C. §552 Amendments of 1996. Listed below are links to various sites that may be useful.

- Administrative Decisions
- System Notices
- USCIS Contracts
- G-639. Freedom of Information Act/Privacy Act Request
- Resources for Congress
- Reports and Studies
- Freedom of Information and Privacy Acts (FOIA)
- USCIS History
- Leadership
- Careers at USCIS
- Electronic Reading Room

DEFINITIONS (back to top)

Below words and phrases that frequently appear in FOIA and PA requests are defined. The list is arranged in alphabetical order.

Access - Includes any form of disclosure, to include oral, visual, or reproduced copy. A reproduced copy, whether in paper or electronic format, always satisfies FOIA/PA access requirements.

Accounting for Disclosures - A record of the date, nature, purpose, and the name and address of the person or agency to whom a disclosure is made when disclosing information from a Privacy Act System of Records without the prior written consent of the record subject. Form G-658 is utilized for this purpose. It is not required for intra-agency disclosures, or disclosures required by the FOIA.

Agency - Any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency. This does not include the legislative (Congress) or judicial (Courts) branches of the Government, nor does it apply to state, local, or foreign government agencies. The Department of Homeland Security (DHS) is an agency as defined above. The following are components or bureaus of the Department of Homeland Security: United States Immigration and Customs Enforcement (ICE), United States Customs and Border Protection (CBP), United States Secret Service (USSS), etc.

Agency Record - Any tangible recording of information and/or any item, collection, or grouping of information, including electronic that is maintained and controlled by an agency.

Notes or documents which are made by an employee, kept purely voluntarily, not circulated to nor used by anyone other than the author, and discarded or retained at the author's sole discretion for his/her own individual purposes are personal records. These are not generally agency records because they are not subject to the rules and controls of the agency for records management and disposition. These may, however, become agency records for purposes of the FOIA or PA if used to carry out an agency function (e.g., as the basis for a performance rating).

Business Information - Business information means commercial or financial information provided to USCIS by a person that may be protected from disclosure under Freedom of Information Act (5 U.S.C. § 552(b)(4)), because disclosure could reasonably be expected to cause competitive harm to the submitter or another person.

Submitter means any person or entity that provides business information, directly or indirectly, to DHS. A submitter includes, but is not limited to, corporations, state governments, and foreign governments. It does not include other Federal agencies.

Component - Each separate bureau, office, board, division, commission, service, or administration of an agency. For example: Customs and Border Protection (CBP), Citizenship and Immigration Services (USCIS), Federal Emergency Management Agency (FEMA), Immigration and Customs Enforcement (ICE) are components of the DHS Agency.

Conditions of Disclosure - Specific provisions in the Privacy Act (5 U.S.C. § 552a(b)(1) through (12)) allows the agency to disseminate information from a PA system of records without the prior written consent of the record subject.

Congressional Committee Request - A request from either House of Congress, to the extent of matters within its jurisdiction; a subcommittee thereof; any joint committee of Congress; any subcommittee of any such joint committee. Agencies may not use FOIA or PA exemptions to deny records that are the subject of such a request.

Congressional Request - A request from a Member of Congress on his or her own behalf, or on behalf of a constituent. After acknowledgment under congressional correspondence procedures, congressional requests are to be processed in the same manner, (first in/first out), as any other FOIA or PA request.

Consultation - Obtaining the views of another DHS component or Federal agency concerning the release of information that has been incorporated into immigration documents or a reciprocal request. The National Records Center, FOIA/PA Division, makes the final overall determination on release.

Derivative Information - Information, classified or unclassified, originated by another DHS component or Federal agency, that has been extracted or paraphrased and incorporated in immigration documents.

Freedom of Information Act Request - A request **in writing** by any person for access to any record maintained by any Federal agency. "Person" for FOIA purposes is a real person, or a business, or a company, or an agency of a foreign government, or a Native American tribe, or an agency of a state government, but a "person," as defined by the courts, is NOT a federal agency.

Included are requests for access to Privacy Act records of another person without the written consent of the record subject, as well as requests from nonimmigrant aliens for access to their own records.

FOIA/PA Information Processing System (FIPS) – An electronic database, which by imaging, workflow, and graphical user interface technologies, allows USCIS to electronically manage and process FOIA and PA requests.

First Party Requester - A subject or designated representative asking for access to his/her record. A notarized signature or a sworn declaration under penalty of perjury from the record subject is required for access to records.

Forms – Various government forms available from www.uscis.gov/portal/site/uscis that are provided for the use of requesters and their representatives when submitting a FOIA or PA request with USCIS. The more common forms include:

- G-28 – Notice of Entry of Appearance as Attorney or Representative - http://www.uscis.gov/files/form/g-28.pdf

- G-639 Freedom of Information/Privacy Act Request – You may use this form to make a FOIA/PA request. When completed, it provides enough information to

complete an extensive search for records.
http://www.uscis.gov/files/form/g-639.pdf

Full Grant - The release of all records responsive to a FOIA/PA request.

GLOMAR - A response to a FOIA request when an agency can "neither confirm nor deny" the existence of a record.

Individual - The PA describes an individual as follows: a U.S. Citizen (USC) or alien lawfully admitted for permanent residence (LPR). Conditional residents are considered to be LPRs unless the time of conditional residence has expired **and** no petition to remove the conditions was filed, or if that petition was denied. Corporations and organizations are not individuals.

LPR – Lawful Permanent Resident of the United States of America.

Multi-track System - USCIS utilizes a three-track system to process all FOIA requests.

- Track 1 is for less complex cases. These are cases in which a requester needs only one or only a few specific documents from the file.

- Track 2 is for more complex cases. A complete copy of a file, requests from the news media or special interest groups are examples of Track 2 cases. If we receive a request for specific documents which implies most of the file (for instance, "the asylum application and all supporting documents,") we assign the request to the complex track.

- Track 3 is for cases involving individuals who have been scheduled to appear before an immigration judge.

Partial Denial - The nondisclosure by withholding or deleting any portion of information from a record that is responsive to a FOIA or PA request.

Partial Grant - The full disclosure of a portion or portions of a multi-part request. The remaining portion resulted in a "no record."

Privacy Act Amendment Request - A request from a USC or LPR to amend, expunge, or correct information in his/her PA record that the individual believes is not accurate, relevant, timely or complete.

Privacy Act Record - Any item, collection, or grouping of information about an individual that the maintaining agency retrieves by the person's name, identifying number, symbol, or other identifying particular assigned to that individual. This information includes, but is not limited to, a person's education, financial, medical, and criminal or employment history.

Privacy Act Request - A request in writing submitted either in person or by mail, for records that are contained in a Privacy Act system of records. The records must be under the control of DHS and be retrieved by the name of the requester or other personal identifier. Requests are received from:

- A USC or LPR for access to or his/her own records, or

- A third-party with a signed privacy waiver from the record subject acting on the subject's behalf, or

- The parent of an LPR or USC minor child or the legal guardian of a person declared incompetent by a court of competent jurisdiction.

Public Liaisons - Serve as supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester has received following an initial response from an agency's FOIA Requester Service Center staff.

Records Custodian - The official responsible for the maintenance, security, control, and final disposition of official records that are required by law, regulation, or other directive to be kept by the Agency.

Referrals - Information found in immigration records – the forwarding of a record that originated with another component of DHS or another Federal agency for direct response to the FOIA/PA requester. Also includes transferring responsibility for responding to a request regarding the release of records to the DHS component best able to determine whether to disclose, or to the Federal agency that originated the record.

Routine Use - An established use and authority for disclosure of records from a Privacy Act System of Records, other than an intra-agency disclosure. Disclosure or use must be for a purpose that is compatible with the purpose for which it was collected, that would be otherwise prohibited by the PA. Such disclosures do not require the written consent of the record subject, but require Federal Register publication prior to such use.

System of Records (for purposes of the Privacy Act) - A group of any records under the control of an agency from which information is retrieved by the name of the individual or by some other identifying number, symbol, or identifying particular assigned to the individual.

Third Agency - Other administrative agencies of the Executive Branch of the Federal government, including other components of DHS.

Third Party Request - A request from any person for access to another individual's record without that individual's written consent. The identity of a third party requester and his/her relationship to the subject does not increase (or decrease) his/her rights of access to the records.

Total Denial - The withholding of all agency records responsive to a FOIA/PA request.

USC – United States Citizen.

White House Inquiries - An official request from any member of the White House staff, or letters of the President forwarded to the agency for response.

FORMS (back to top)

The list below reflects forms and the definition of the forms used in FOIA. You may access the following link for more USCIS forms:

www.uscis.gov/portal/site/uscis

G-28 – Notice of Entry of Appearance as Attorney or Representative – Provides notice that an attorney or representative of a religious, charitable, social service or similar organization will appear before U.S. Citizenship and Immigration Services on behalf of a person involved in a matter before USCIS. http://www.uscis.gov/files/form/g-28.pdf

G-639 – Freedom of Information/Privacy Act Request – This form is used by individuals or representatives/attorneys to request access to USCIS information under the Freedom of Information and Privacy Acts. http://www.uscis.gov/files/form/g-639.pdf