

FEDERAL COMMUNICATIONS COMMISSION

FREEDOM OF INFORMATION ACT

REFERENCE GUIDE



May 2013

Office of Managing Director

Program Evaluation and Records Management

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FEDERAL COMMUNICATIONS COMMISSION

FREEDOM OF INFORMATION ACT

REFERENCE GUIDE

The purpose of this Reference Guide is to familiarize you with the Federal Communications Commission's (FCC's) procedures and regulations concerning the processing of requests for documents made under the Freedom of Information Act (FOIA). Following the guidance below will make it more likely that you will receive the information that you are seeking in the shortest amount of time, and without unnecessary expense. This Reference Guide also provides information on how to obtain routinely available FCC documents through means other than making a FOIA request.

Introduction to FOIA

The Freedom of Information Act, which can be found in Title 5 of the United States Code, section 552, was enacted in 1966 and provides an important means through which the public can obtain information regarding the activities of federal agencies. Under the FOIA, the Commission is required to disclose its records upon receiving a written request for them, except for those records (or portions of them) that are protected from disclosure by exemptions and exclusions established by the FOIA.

There is no central office that processes FOIA requests for all federal agencies. Each agency responds to requests for its own records. Therefore, before sending a request to the FCC, you should determine whether the Commission is likely to have the records that you are seeking. Each agency has information about its programs and operations on its website, so you may wish to review various agencies program descriptions on their respective websites before making a FOIA request. A good starting point for this review is the U.S. Government's Official Web Portal at <http://www.usa.gov>. You may wish to consult the *United States Government Manual* (<http://www.gpoaccess.gov/gmanual/index.html>) which also describes programs within each federal agency. In addition, you can request a copy of an agency's Freedom of Information Act guide from its FOIA office or view FOIA reference materials on that agency's website. Links to the FOIA websites of all federal agencies can be found at the Department of Justice FOIA website at http://www.usdoj.gov/oip/other_age.htm.

The FOIA does not apply to records maintained by Congress or the federal courts, by state and local governments, or those held by private businesses or individuals. If you are seeking documents from these types of entities, you will have to contact them directly. All states have statutes similar to the FOIA, and most have websites to provide information and access to records. You may request details about a state's records access law by contacting the office of the attorney general of that state.

Since enactment of the FOIA, there have been two major enhancements to its requirements. The Electronic Freedom of Information Act of 1996 expanded the scope of

the FOIA to encompass electronic records and require the creation of “electronic reading rooms” to make records more easily and widely available to the public. More recently, in December 2005, President Bush issued an executive order concerning the FOIA, entitled "Improving Agency Disclosure of Information" (Executive Order No. 13392). This order directs that the right of access to records be supported at the agency level by a “citizen-centered and results-oriented approach” to implementation of the FOIA. It requires all federal agencies to establish a FOIA Requester Service Center as well as a FOIA Public Liaison to assist requesters with inquiries about the FOIA process in general and their requests in particular.

Contact information about the FCC’s FOIA Requester Service Center and FOIA Public Liaison can be found in Appendix A of this Guide and on the Commission’s FOIA home page at <http://www.fcc.gov/foia>. This page will also provide you with a link to the FCC’s agency regulations for implementing the FOIA (47 C.F.R. Sections 0.441 to 0.470) and enables you to file a FOIA request over the Internet. In most cases, this Reference Guide should provide you with all the basic information that you will need to find materials that are routinely available to the public or to make a FOIA request with the Commission.

There are other useful sources of information concerning access to information under the FOIA:

- “Your Right to Federal Records” is a joint publication of the General Services Administration and the Department of Justice. It is available on the World Wide Web at http://www.pueblo.gsa.gov/cic_text/fed_prog/foia/foia.pdf. It is also available for sale for one dollar per copy from the Federal Citizen Information Center by calling (888) 878-3256.
- “A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records.” This report is published by the Committee on Government Reform of the House of Representatives. It can be accessed at <http://www.fas.org/sgp/foia/citizen.pdf>.
- The U.S. Department of Justice’s “Freedom of Information Act Guide” contains an extensive analysis of the statute and FOIA case law. It is available at <http://www.usdoj.gov/oip/foi-act.htm>.

Access to FCC Records without a FOIA Request

You may not need to submit a FOIA request for the documents you seek. A vast amount of information about the FCC and its activities is already routinely available for public inspection. Many of these documents are available on the FCC website at <http://www.fcc.gov>. You need not make a FOIA request to obtain these documents. Among the types of information routinely available without making a FOIA request are:

1. Notices of Proposed Rulemaking and Orders that have been adopted by the Commission (<http://www.fcc.gov>);
2. FCC Rules and Regulations (<http://www.fcc.gov/searchtools.html#rules>);
3. License applications for broadcast stations and other radio services (<http://www.fcc.gov/licensing.html>);
4. FCC Public Notices and News Releases (<http://www.fcc.gov>);
5. The Commission's Strategic Plan, annual Budget Estimates, and annual Performance and Accountability Report (<http://www.fcc.gov/omd/strategicplan>);
6. Consumer information, including fact sheets and consumer alerts on a variety of communications topics (<http://www.fcc.gov/cgb>);
7. FCC forms available in either paper or electronic format (<http://www.fcc.gov/formpage.html>);
8. The FCC's annual FOIA report, which includes such information as the number of FOIA requests received by the agency, the average amount of time taken to process requests, the total amount of fees collected by the agency, and other information about the agency's handling of FOIA requests (<http://www.fcc.gov/foia>).

The FCC also provides a variety of search tools to assist in finding information. The Electronic Document Management System (EDOCS) lets you search a database of FCC documents posted to its website. Instructions for performing a search using EDOCS can be found at http://hraunfoss.fcc.gov/edocs_public/SilverStream/Pages/instructions.html. The Electronic Comment Filing System (ECFS) serves as the repository for official records in the FCC's docketed proceedings and rulemakings from the year 1992 onward. You can research, retrieve, view, and print any document in ECFS, including earlier non-electronic FCC documents that have been scanned into the system. Information on using ECFS, including a user manual, can be found at <http://www.fcc.gov/cgb/ecfs>. In addition, a variety of special-purpose search tools providing access to information from several Commission data bases is available at <http://www.fcc.gov/searchtools.html>.

The Electronic Freedom of Information Act of 1996 directs federal agencies to make indexes of their major information systems available in electronic form. Major information systems are automated or manual systems that require special management attention because they fall into at least one of the following categories below:

1. A financial system that conducts monetary transactions between the FCC and a financial institution.
2. A licensing system that directly supports the FCC's charter for regulating interstate and international communications.

3. Has the potential to cause severe or catastrophic harm to the Commission if its data were compromised.

A listing of the Commission's major information systems can be found at <http://www.fcc.gov/omd/privacyact/info-systems.html>.

In addition, the FCC Reference Information Center, located at the Commission's headquarters building (445 12th Street, S.W., Washington, DC 20554), provides the public with a facility at which records may be inspected free of charge without a FOIA request. The Reference Information Center maintains manual and computerized files concerning broadcast stations, wireless radio stations, satellite licensing and other international files, court citation files, and legislative histories concerning telecommunications matters. The FCC Reference Information Center is open from 8:00 AM to 4:30 PM Mondays through Thursdays and 8:00 AM to 11:30 AM on Fridays, except for federal holidays. Anyone who wants to inspect publicly available FCC records need only appear at the FCC Reference Information Center and ask to see the records. Copies of any available materials can be made in the FCC Reference Information Center. You may also obtain copies through the FCC's copy contractor for a fee. The current FCC copy contractor is Best Copy Printing, Inc. which may be reached at (202) 488-5300, (202) 488-5563 or on the internet at <http://www.bciweb.com>.

How to Make a FOIA Request to the FCC

Although no special form is required by the FCC, FOIA requests must be made in writing. Requests may be handwritten or typed. They may be submitted using the secure online Electronic FOIA (E-FOIA) Request Form at <http://www.fcc.gov/foia>, via e-mail (FOIA@fcc.gov), by fax (202-418-0521), or through the U.S. Mail to

**Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554**

FOIA requests sent through overnight delivery services other than the U.S. Postal Service should be addressed to

**Federal Communications Commission
Freedom of Information Act Request
9300 East Hampton Drive
Capitol Heights, MD 20743**

Please write the words "Freedom of Information Act Request" at the top of your e-mail or letter, and on the outside of the envelope if you are submitting your request through the U.S. Mail.

Your FOIA request should provide as much information as possible, describing the records that you are seeking as clearly and specifically as you can. Information you may know about the documents you are requesting, such as names, titles, dates, places, events and subjects, will reduce the time required and the cost to you to process your request and increase the chances of successfully finding appropriate documents. You should also include your telephone number, in case we have any questions about your request. An example of a FOIA request letter can be found in Appendix B of this Guide.

Please note that the FOIA was designed to provide access to government documents. It is not intended to be a means to ask questions or obtain general information on program operations. You should be aware that the FOIA does not require federal agencies to analyze data, to create or recreate records, to answer written questions, or to develop information in order to respond to a request. You may ask that the records you request be provided in a specific format, such as paper or a particular electronic format. However, the FOIA only obligates a federal agency to provide records in a specified format if it can do so with a reasonable amount of effort.

You should be aware that the FCC's FOIA request logs may be disclosed to the public. Information on FOIA request records may be found in the Commission's Privacy Act system of records for the FOIA case logs, reproduced at <http://www.fcc.gov/omd/privacyact/documents/records/FCC-OMD-17.doc>

Fees that Apply to FOIA Requests at the FCC

There is no fee for filing a FOIA request. However, under the FOIA, federal agencies are allowed to charge fees for document searches, review of records to ensure that they are not subject to FOIA exceptions and exclusions, or duplication services.

Each FOIA request must specify the maximum fee amount you are willing to pay. If the FCC estimates that your search charges are likely to exceed \$25 or the amount which you have indicated you are willing to pay, whichever is larger, we will notify you of the estimated fee charge prior to doing the search. This will give you the opportunity to either revise your request to reduce the estimated fee, or indicate that you are willing to pay the estimated fee even if it exceeds the maximum fee you previously indicated. Be aware that you may be charged search and review fees even if the search does not locate any records responsive to your request or, if records are located, they are withheld as entirely exempt (see section below titled "Items that May be Withheld in Response to a FOIA Request").

The Commission charges direct costs for fees associated with the processing of FOIA requests. Fees for search and review conducted by FCC employees are based on the salary level of the employee(s) who conducts the search or review. It is computed based on the hourly pay of an employee at step 5 of a specified grade level plus 20 percent to cover personnel benefits. The current hourly rates may be found at <http://www.fcc.gov/foia>, along with the current fee for duplication services. Fees for

search and review conducted by contractors or non-salaried workers are based on the actual hourly rate paid by the FCC for those workers.

Failure to pay any fees within 30 days of the billing date may result in interest charges being levied. In certain circumstances, the FCC may request advance payment of fees. If you have made FOIA requests in the past for which a fee was charged and that fee was not paid, the Commission may determine not to process any additional FOIA requests until any fees and interest you owe for previous requests are paid and you make an advance payment of the full amount of the estimated fee. We will not otherwise require advance payment of an estimated FOIA fee(s) unless we determine that the fee is likely to exceed \$250 and you have no history of payment. If you have made FOIA requests previously and paid your fees promptly, we may notify you of the cost and rely on your promise to pay.

Fees for processing requests are assessed according to requester categories established in the FOIA:

1. Commercial use requesters will be assessed charges that recover the full direct costs associated with the search, review, and duplication of records.
2. Educational institutions, representatives of the news media, and non-commercial scientific institution requesters need only pay for duplication costs and will not be charged for the first 100 pages. News media requesters, however, are entitled to a reduced assessment only when the request is for the purpose of disseminating information. Otherwise they will be considered a commercial use requester.
3. All other requesters who do not fit into either of the categories above will be charged fees that recover the full, reasonable direct cost of searching for and reproducing records, except that the first 100 pages of reproduction, the first two hours of search time, and all review time will be free of charge.

If you believe you are eligible for reduced fees under category 2 or 3, you must provide a statement with your FOIA request explaining the reasons you qualify for a restricted fee, including a statement certifying that the information will not be used to further your commercial interests.

You may request a waiver of FOIA fees. However, fee waivers are limited to situations in which a requester can show that the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government, and is not primarily in the commercial interest of the requester. If the information you seek meets these requirements, the FCC may waive or reduce the fee. Requests for fee waivers from individuals who are seeking records pertaining to them usually do not meet this standard because such disclosures typically will not result in any increase of the public's understanding of government operations and activities. In addition, a requester's inability to pay fees is not a legal basis for granting a fee waiver. Note that the granting of a fee waiver based on a public interest is a separate determination from that of fee category, as described above. You may wish

to consult the FCC rules, 47 C.F.R. § 0.470(c) - (e), when seeking a reduced fee or fee waiver.

How a FOIA Request is Processed

When the FOIA Requester Service Center receives your FOIA request, you will be provided with a written acknowledgement via e-mail, surface mail or fax. Under the FOIA, the FCC must determine within 20 business days of receipt of your request by the FOIA Requester Service Center whether it is appropriate to grant or deny the request. The FCC makes every effort to act on a request within this time frame.

Under the FOIA, the Commission may extend the response time an additional 10 business days when: (1) the office handling the request needs to collect records from other offices; (2) the request involves a large amount of records that must be located, compiled, and reviewed; or (3) the agency needs to consult with another government office that has a substantial interest in the information that may be provided. If the FCC determines that the request cannot be processed within this 10 day extension, we will provide you with an opportunity to modify your request so that it may be processed within the extended time limit, or provide an opportunity for you to arrange with the FCC for an alternative timeframe for processing the original or modified request. We will also advise you of any additional charges involved. For these reasons, it is important for you to include in your FOIA request a telephone number where we can call you to discuss any issues involving your FOIA request.

Expedited Processing of a FOIA Request

Under certain conditions you may be entitled to have your request processed on an expedited basis. Expedited processing may be granted if a requester certifies a compelling need that includes a reasonable expectation of imminent threat to someone's life or physical safety, or the requester is primarily engaged in disseminating information and there is an urgency to inform the public of actual or alleged federal government activity.

The FCC is required to notify you of its decision about whether to grant expedited processing within 10 calendar days after receiving your letter. If the Commission denies your request, you will be advised of your right to submit an administrative appeal of that denial.

Items that May be Withheld in Response to a FOIA Request

A FOIA request may be made for any agency record. This does not mean, however, that the FCC will disclose all records located in response to your request. There are statutory exemptions within the FOIA that authorize the withholding of certain information. When

the Commission withholds information from you, we will specify which exemption permits the withholding.

FOIA exemptions authorize federal agencies to withhold the following types of information:

1. Classified national defense and foreign policy information. Reports and information developed during security investigations and any classified materials will not be made available.
2. Internal agency personnel rules and practices. This includes, for example, internal management matters, certain materials related to contract negotiations, and materials used to conduct radio operator examinations.
3. Information that is prohibited from disclosure by another federal law. Under the Communications Act of 1934, as amended, the FCC is authorized to withhold disclosure of records containing information affecting the national defense. This includes items such as maps showing the location of submarine cables and the nationwide point-to-point microwave network. In executing its responsibilities, the FCC regularly monitors certain radio transmissions and is prohibited from disclosing information obtained in the course of these monitoring activities, except as required for enforcement purposes.
4. Trade secrets and commercial or financial information obtained from a person that is privileged or confidential. This includes, for example, network outage reports and certain financial information submitted by broadcast stations.
5. Inter-agency or intra-agency communications that are protected by legal privileges, such as the attorney-client privilege, attorney work-product privilege, or communications reflecting the agency's deliberative process (*e.g.*, internal recommendations and drafts of agency decisions).
6. Information involving matters of personal privacy, such as the official personnel file of any Commission employee.
7. Records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

There are two other FOIA exemptions for information relating to the regulation or supervision of financial institutions, and geological information concerning wells. These generally do not apply to the FCC as the Commission is not involved with these subjects. In addition there are three FOIA exclusions, which are rarely used, pertaining to especially sensitive law enforcement and national security matters.

Administrative Appeals if a Request is Denied

If your FOIA request is denied in whole or in part, the FCC Bureau or Office that made the decision will notify you of the denial of your request and of your right to file an administrative application for review. You may also appeal the denial of a fee waiver request or the denial of a request for expedited processing. Your application for review must be in writing. The application for review and the envelope containing it should have the words “Review of Freedom of Information Action” clearly written on them and must be postmarked within 30 calendar days of the date of the Bureau or Office's written decision. A FOIA application for review should be sent to

**Office of General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554.**

If you request review, please provide your reasons for believing the denial was wrong. It can save time on acting on your appeal if you also include copies of your FOIA request, the FOIA control number that was assigned to your request, and the denial letter that you received from the FCC. The full Commission issues decisions on FOIA applications for review.

Judicial Review of the FCC's Decision

Before filing a lawsuit, you ordinarily must complete the agency appeal process. However, if we fail to issue a decision on your FOIA request within the 20 days (or any extensions of time taken or obtained) permitted by the FOIA, or if we fail to issue a decision on your application for review within the 20 days (or any extensions of time taken or obtained), you may seek judicial review.

If you disagree with the FCC's decision concerning an application for review, you have the right to challenge the agency's action in a lawsuit filed in federal court.

If you bring a court action, you may file your lawsuit in a federal district court in any of the following places: (1) where you live, (2) where you have your principal place of business (if any), (3) in the District of Columbia, or (4) where the records are located, if

they are not located in the District of Columbia. If you have received a determination from the FCC concerning your application for review, that letter will advise you of your right to seek judicial review and will specify where you can do so. Please understand that attorneys and employees of the FCC are prohibited from giving legal advice to members of the public on any matters, including Freedom of Information Act litigation.

Conclusion

We hope this Reference Guide proves helpful to you in seeking information from the Federal Communications Commission. If you have any further questions concerning any topic in this Guide, or if you have suggestions as to how we can make it more useful for you, please contact the FCC FOIA Public Liaison listed in Appendix A.

Appendix A – FCC FOIA Contact Information

To Submit a FOIA Request:

You may submit a FOIA request to the FCC by e-mail, surface mail, fax, or by using the online electronic form located at <http://www.fcc.gov/foia>.

E-mail: FOIA@fcc.gov

Surface mail:

Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

Overnight delivery (other than through the U.S. Postal Service):

Federal Communications Commission
Freedom of Information Act Request
9300 East Hampton Drive
Capitol Heights, MD 20743

Telephone: 202-418-0440

Fax: 202-418-0521

To Check on the Progress of a Request:

While the FCC works to ensure you are aware of our progress in responding to your request, if you have questions about a request that you have already filed, you can call the FOIA Requester Service Center at 202-418-0440.

To Express a Complaint or Concern About the Handling of a FOIA Request:

If you have a concern or complaint about how the FCC has handled your FOIA request. Please contact the FOIA Public Liaison - Stephanie Kost.

E-mail: Stephanie.Kost@fcc.gov

Surface mail:

FOIA Public Liaison
Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

Telephone: 202-418-1379

Appendix B – Sample FOIA Request Letter

FREEDOM OF INFORMATION ACT REQUEST

Date

Federal Communications Commission
445 12th Street SW
Room 1-A836
Washington, DC 20554

Dear Sir or Madam:

Under the Freedom of Information Act, I am requesting documents concerning [*identify the records as clearly and specifically as possible, using information such as subject, author, recipient, document title, docket number, business or entity names, FCC bureau or office name, or timeframe when documents were created or filed with the FCC*].

I would like to receive paper copies of any applicable documents. I agree to pay up to a maximum fee of \$_____ to cover search and duplication costs. [I am not using the information I receive for any commercial purpose, therefore I understand that I will not be charged for the first two hours of search time or for the first 100 pages of document copying.]

If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information and notify me of appeal procedures available under the law.

If you have any questions concerning this request, you may telephone me at _____ or contact me by e-mail at _____.

Sincerely,

Name
Address