

## ***U.S. Department of Agriculture Office of Inspector General Freedom of Information Act Reference Guide***

### **I. Introduction**

The Freedom of Information Act (FOIA)<sup>1</sup> generally provides that any person has the statutory right to obtain access to Federal agency records in the Executive Branch, except to the extent those records, or portions of them, are exempt from disclosure under the FOIA.

This reference guide is designed to provide additional information about the procedures for submitting a FOIA request or an administrative appeal to the Department of Agriculture's (USDA) Office of Inspector General (OIG). USDA has a decentralized FOIA process, and each agency within USDA processes its own records. OIG is an independent agency within USDA. Due to OIG's statutory independence, OIG has its own FOIA Program within USDA. Accordingly, OIG's Office of Counsel (OC) handles initial requests and appeals.

### **II. Where and How to Request Records**

No specific language or form is required to submit a FOIA request to OIG. Requesters may make a request for records, which must be in writing, through electronic mail, regular mail, delivery service, or facsimile. Requests may be submitted electronically to [FOIA.STAFF@oig.usda.gov](mailto:FOIA.STAFF@oig.usda.gov). For mail or delivery service, the mailing address is FOIA Officer, USDA, Office of Inspector General, Room 441-E Jamie Whitten Building – Legal Staff, 1400 Independence Avenue SW., Washington, DC 20250-2308. The facsimile number is (202) 690-6305.

If you choose to e-mail or fax your request, please include the following information:

- The date of the request;
- name (first and last);
- address (street, city, State, and zip);
- phone number;
- fax number (if available);
- e-mail address (if available); and
- a detailed description of the records requested. Please provide as much information as you have available to you such as, audit report number, investigation report number, program area, etc.

To protect your privacy, as well as the privacy of others, whenever you request information about yourself you must provide either a notarized statement or a statement signed under penalty of

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<sup>1</sup> 5 U.S.C § 552, as amended.

perjury, declaring that you are the person you claim to be. Original signatures are required. A model declaration form is available at <https://www.usda.gov/oig/webdocs/Penofperjury.pdf>.

OIG will not process requests from individuals seeking information about themselves if this requirement is not met. This requirement helps to ensure that private information about any individual is not improperly disclosed to third parties.

Similarly, when responding to third-party requests for investigative records pertaining to another person, OIG generally requires requesters to provide consent by the person to whom the investigative records pertain, proof that the subject third party is deceased, or a meaningful evidentiary showing of an overriding public interest that would outweigh the privacy interest in nondisclosure. For example, if a requester seeks information that would reveal that another person (including an immediate family member) has been the subject of or referenced in a criminal investigation, and the requester has not met one of the conditions listed above, OIG will generally respond that it will “neither confirm nor deny” the existence of such records.

### **III. Response Times**

OIG processes requests on a first-in, first-out, basis using “multi-tracks.” There are four tracks: a simple track for relatively simple requests; a complex track for more complex and lengthy requests; an expedited track; and a remanded track, when a FOIA appeal is granted.

Under FOIA, when an agency meets one of the following three criteria, the agency qualifies for an “unusual circumstances” extension of ten additional working days:

- (1) the documents requested are located in other agency offices;
- (2) there are voluminous records to review; or
- (3) the agency must consult with another agency regarding releasing records.

When OIG qualifies for such an extension, OIG will notify the requester in writing and provide the requester with an opportunity to modify the scope of the request. Alternately, the requester may agree to a different timetable for processing their request. OIG’s FOIA Public Liaison can assist with this process. Contact information for OIG’s FOIA Public Liaison is available at <https://www.usda.gov/oig/foia.htm>.

### **IV. FOIA Fee Schedule**

There is no initial fee to file a FOIA request. Under FOIA, however, agencies may recover a portion of the costs involved in processing a request. The fees charged depend on the following categories of FOIA requesters:

- **Commercial requesters** – refers to requesters who will use the records requested to further a commercial, trade, or profit interest;

- **Educational and non-commercial scientific institutions** – refers to certain schools and institutions of higher learning which conduct scholarly research;
- **Representatives of the news media** – refers to requesters who are actively gathering news for an entity that is organized and operated to publish or broadcast news to the public; and
- **All other requesters** – refers to requesters that do not fall within the three categories above.

When a requester is submitting a FOIA request on behalf of another person or organization, OIG will determine the applicable fee category based on the underlying requester's identity and intended use.

The following table indicates the chargeable fees for each category of requester.

<b>Type of Request</b>	<b>Type of Charge</b>	<b>Price</b>
<b>Commercial requesters</b>	Duplication fees	\$.20 per page
	Search fees	Hourly salary rate of employee involved, plus 16 percent for benefits.
	Review fees	Hourly salary rate of employee involved, plus 16 percent for benefits.
<b>Education or Non-Commercial Scientific</b>	Duplication fees	No charge for first 100 pages, then \$.20 per page.
	Search fees	Hourly salary rate of employee involved, plus 16 percent for benefits.
	Review fees	Hourly salary rate of employee involved, plus 16 percent for benefits.
<b>News Media</b>	Duplication fees	No charge for first 100 pages, then \$.20 per page.
	Search fees	Free
	Review fees	Free
<b>All Other</b>	Duplication fees	No charge for first 100 pages, then \$.20 per page.
	Search fees	No charge for first two hours of search, then hourly salary rate of employee involved, plus 16 percent for benefits.
	Review fees	No charge for first two hours of review, then hourly salary rate of employee involved, plus 16 percent for benefits.

If the OIG FOIA Office estimates that the total fees for processing a request will exceed \$25, the requester will be notified in writing of the estimate and be given an opportunity to narrow the request. The requester will be asked to agree in writing to pay the estimated fees. FOIA Staff will

stop processing the request and the statutory response time will be tolled until a written agreement to pay the estimated fees is received.

## **V. FOIA Exemptions**

The following categories of information may be exempt from disclosure under FOIA:

(1) 5 U.S.C. 552(b)(1) covers records properly and currently classified in the interest of national defense or foreign policy, as authorized under criteria established by an Executive order.

(2) 5 U.S.C. 552(b)(2) protects records which relate solely to OIG's internal personnel rules and practices.

(3) 5 U.S.C. 552(b)(3) covers records specifically exempted from disclosure by statute (other than section 552b of this title), provided that the statute: (A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) 5 U.S.C. 552(b)(4) pertains to trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

(5) 5 U.S.C. 552(b)(5) exempts information contained in inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with OIG.

(6) 5 U.S.C. 552(b)(6) covers information which, if disclosed, would constitute a clearly unwarranted invasion of individual privacy and might adversely affect the individual or the individual's family.

(7) 5 U.S.C. 552(b)(7) protects from disclosure records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) could reasonably be expected to interfere with enforcement proceedings;

(B) would deprive a person of a right to 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, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by 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 if such disclosure could reasonably be expected to risk circumvention of the law; or

(F) could reasonably be expected to endanger the life or physical safety of any individual.

(8) 5 U.S.C. 552(b)(8) protects information pertaining to examination, operating, or condition reports that are prepared for the use of an agency responsible for the regulation or supervision of financial institutions.

(9) 5 U.S.C. 552(b)(9) covers geological and geophysical information and data, including maps, concerning wells.

## **VI. Administrative Appeals**

Requesters may file an appeal for any adverse determination made by OIG. For example, requesters may submit an appeal if: they are not satisfied with OIG's initial response; they disagree with the information withheld; or they believe there are additional records responsive to the request which OIG failed to locate. Requesters may also file an appeal if their request for a fee waiver or expedited processing was denied.

Requesters may submit an appeal to OIG through electronic mail, regular mail, delivery service, or facsimile. Appeals may be submitted electronically to [FOIA.STAFF@oig.usda.gov](mailto:FOIA.STAFF@oig.usda.gov). For mail or delivery service, appeals may be addressed to the Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW., Whitten Building, Suite 441-E, Washington, DC 20250-2308. The facsimile number is (202) 690-6305.

Though no specific language or form is required to submit an appeal, requesters submitting an appeal should include the following information:

- A copy of their initial FOIA request;
- a copy of the letter denying the initial request in whole or in part; and
- an explanation of the reason(s) supporting the appeal.<sup>2</sup>

OIG may respond to your appeal in one of the following ways:

- grant the appeal in full and provide requested records;
- grant the appeal in full and remand the request to FOIA Staff for further processing;
- deny the appeal in full;
- affirm the appeal in part and deny in part; or

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<sup>2</sup> Appeals must be received within 90 calendar days of the date of the initial decision made by OIG. Note that timeliness is determined by OIG's receipt of the appeal, not the day the appeal letter is dated.

- affirm the appeal in part and deny in part, remanding the request to FOIA Staff for further processing.

After an administrative appeal is decided, requesters have the right to challenge OIG's action in Federal court. They may also seek assistance from the Office of Government Information Services (OGIS) at the National Archives and Records Administration (NARA). OGIS offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS' services does not affect a requester's right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), note that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. Additional information about OGIS is available at <https://www.archives.gov/ogis>.

## **VII. Laws, Regulations, and Guidelines**

### **Laws**

- [The Freedom of Information Act](#), as amended
- [FOIA Improvement Act of 2016](#)
- [OPEN FOIA Act of 2009](#)
- [OPEN Government Act of 2007](#)
- [Executive Order 13392](#), "Improving Agency Disclosure of Information"
- [Executive Order 12600](#), "Predisclosure Notification Procedures for Confidential Commercial Information"

### **Regulations**

- [OIG FOIA Regulations](#)
- [USDA FOIA Regulations](#)

### **Administrative Guidance**

- [President's Memorandum for Heads of Executive Departments and Agencies on FOIA](#) (January 21, 2009)
- [President's Memorandum for Heads of Executive Departments and Agencies on Transparency and Open Government](#) (January 21, 2009)
- [Attorney General's Memorandum for Heads of Executive Departments and Agencies on FOIA](#) (March 19, 2009)
- [OMB Fee Guidance](#)

[OIG Electronic Reading Room](#)

[OIG FOIA Reports](#)

[Department of Justice FOIA](#)