



U.S. TRADE AND DEVELOPMENT AGENCY

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FREEDOM OF INFORMATION ACT (FOIA) REFERENCE GUIDE

I. Introduction

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, was enacted in 1966 and generally provides that any person has the right to request access to federal agency records or information. All agencies of the Executive Branch of the United States Government are required to disclose records upon receiving a written request for them, except for those records (or portions of them) that are protected from disclosure by the nine exemptions and three exclusions of the FOIA. This right of access is enforceable in court.

In 2016, Congress enacted the FOIA Improvement Act of 2016, which strengthened the presumption of openness in government. Under this law, the U.S. Trade and Development Agency (USTDA) is required to withhold information only if the agency reasonably foresees that disclosure would harm an interest protected by one of the FOIA exemptions or if disclosure is prohibited by law. This requirement is known as the “foreseeable harm” standard and applies to all determinations made under FOIA.

The FOIA does not, however, provide access to records held by Congress or the federal courts, by state or local government agencies, or by private businesses or individuals. All states have their own statutes governing public access to state and local government records; state agencies should be consulted for further information about them.

This Reference Guide is designed to familiarize you with the specific procedures for making a FOIA request to the USTDA. The process is neither complicated nor time consuming. 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 possible.

Initially, it is important to understand that there is no central office in the government that processes FOIA requests for all federal agencies. Each agency responds to requests for its own records.

II. Access to Certain Records Without a FOIA Request

All agencies are required by statute to make certain types of records, created by the agency on or after November 1, 1996, available electronically. If you have access to the World Wide Web, you will not need to make a FOIA request to obtain access to these records. These records include:

(1) final opinions and orders made in the adjudication of cases; (2) final statements of policy and interpretations which have not been published in the *Federal Register*; (3) administrative staff manuals and instructions to staff that affect members of the public; (4) copies of records that have been the subject of a FOIA request and that also are the subject of sufficient public interest or curiosity that the agency believes that other persons are likely to request (or already have requested) them; and (5) the agency's annual FOIA report -- which includes such information as the number of FOIA requests received by the agency, the amount of time taken to process

requests, the total amount of fees collected by the agency, information regarding the backlog of pending requests, and other information about the agency's handling of FOIA requests.

USTDA maintains a FOIA home page, which can be accessed from USTDA's home page. This Web site includes USTDA's annual FOIA report, a variety of reference materials, and information on how to make a FOIA request. Additionally, this Web site provides links to component electronic reading rooms that contain the records the FOIA requires to be made available automatically in electronic form. Many potential FOIA requesters can save time by carefully reviewing what is already posted on USTDA's Web site before making a FOIA request.

III. Where to Make a FOIA Request

You may submit your request via mail or email:

- **By Mail:**

FOIA Requester Service Center
U.S. Trade and Development Agency
1101 Wilson Boulevard, Suite 1100
Arlington, VA 22209-3901

- **By Email**

Email your request to the following email address: FOIA@ustda.gov

IV. How to Make a FOIA Request

A FOIA request can be made for any agency record. This does not mean, however, that USTDA will disclose all records sought. As noted above, there are statutory exemptions that authorize the withholding of information of a sensitive nature. When USTDA does withhold information from you, it ordinarily must specify which exemption of the FOIA permits the withholding. **Please note: FOIA does not require USTDA to perform research, analyze data, answer written questions, or create new records to respond to a request.**

Although, as discussed immediately below, certain information may be required from a FOIA requester, no special form is required by USTDA. Requests must be in writing, either handwritten or typed.

In making your request you should be as specific as possible with regard to names, titles, dates, places, events, subjects, recipients, etc. If known, you should include any file designations or descriptions for the records that you want. You do not have to give a requested record's name or title, but the more specific you are about the records or types of records that you want, the more likely it will be that USTDA will be able to locate those records.

V. Response Times

Under the statute, all federal agencies are required to respond to a FOIA request within twenty business days, excluding Saturdays, Sundays, and legal holidays. This time period does not begin until the request is actually received by USTDA.

Although USTDA makes every effort to respond to FOIA requests as quickly as possible, in some cases it simply cannot do so within the specified time period. This may be due either to the size of the request or to the fact that USTDA has a backlog of previously received requests that are

awaiting processing. Under the FOIA, USTDA may extend the response time for an additional ten business days when: (1) USTDA 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) USTDA needs to consult with another agency that has a substantial interest in the responsive information. When such a time extension is needed, USTDA 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 a determination on your request is not made within the applicable time 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 USTDA's failure to comply within the statutory time period is justified. The court may excuse the lack of a timely response if USTDA demonstrates that it has a backlog of requests that were received before yours, that it processes its requests on a first-come/first-served basis, and that it is making reasonable progress in reducing its backlog of pending FOIA requests. In such cases, the court may postpone its consideration of your lawsuit until the agency reaches your request in its processing backlog.

Alternatively, under Executive Order 13,392 (Dec. 14, 2005), FOIA requesters also may contact USTDA's FOIA Requester Service Center to check on the status of their FOIA requests. As mentioned above, USTDA has established such a center, with a FOIA Public Liaison, whom FOIA requesters may contact by telephone if they are dissatisfied with the response of USTDA's FOIA Requester Service Center. FOIA requesters are strongly encouraged to make use of these new services that are now available to them.

VI. Expedited Processing

Under certain conditions you may be entitled to have your request processed on an expedited basis. However, you should realize that whenever a FOIA request is expedited for a particular requester, taking that action results in an additional delay for previous requesters who have been waiting for a response. Therefore, in an effort to treat all requesters equitably, USTDA ordinarily will process an initial FOIA request or an administrative appeal of a request's denial ahead of others only in cases in which there will be a threat to someone's life or physical safety, or where an individual will suffer the loss of substantial due process rights if the records are not processed on an expedited basis.

The FOIA also requires that requests be processed on an expedited basis if there is:

1. Threat to life or physical safety.
2. Loss of substantial due process rights.
3. Urgent need by a person primarily engaged in disseminating information to inform the public about government activity.

Expedited processing decisions for initial requests on this latter basis are made by USTDA's FOIA Public Liaison.

A request for expedited processing must be accompanied by a statement setting forth the reasons why your request should be expedited. You should certify that the reasons you have given are true and correct. USTDA will be required to notify you of its decision about whether to grant expedited processing within no more than 10 calendar days after receiving your letter. If USTDA denies your request for expedited processing, you will be advised of your right to submit an administrative appeal of that denial, which will be handled expeditiously. (For information about filing administrative appeals, see Section X of this Reference Guide.)

VII.Fees

USTDA does not have a fee schedule and has made records available without charging any fees.

VIII. Initial Request Determinations

Once USTDA has processed your request and any fee issues have been resolved, USTDA will send you a written initial determination. In the vast majority of cases, USTDA will include any documents that can be disclosed along with the determination letter, though in some cases the documents themselves may be sent within a reasonable time afterward. The FOIA provides access to all federal agency records (or portions of those records), except for those records that are withheld under any of nine exemptions or three exclusions (i.e., the reasons for which an agency may withhold records from a requester). The determination letter will advise you of whether any information is being withheld pursuant to one or more of the exemptions.

The exemptions authorize federal agencies to withhold information covering: (1) classified national defense and foreign relations information; (2) internal agency rules and practices; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets and other confidential business information; (5) inter-agency or intra-agency communications that are protected by legal privileges; (6) information involving matters of personal privacy; (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; (8) information relating to the supervision of financial institutions; and (9) geological information on wells. The three exclusions, which are rarely used, pertain to especially sensitive law enforcement and national security matters.

IX. Administrative Appeals

You may file an administrative appeal if you are not satisfied with USTDA's initial response. You might disagree with USTDA's withholding of information or you might believe that there are additional records responsive to your request that USTDA failed to locate. You also may file an administrative appeal if you have requested expedited processing and USTDA has not granted that request. You also may appeal a determination that what has been requested is not reasonably described, that a record does not exist or cannot be located, that a record is not readily reproducible in the form or format requested, that the requested information is not a record subject to the FOIA. You should be advised of your right to file an appeal in the initial determination letter sent by USTDA or in a letter denying your request for expedited processing. Ordinarily, your appeal must be received within 90 days of the date of USTDA's determination letter. All appeals must be made in writing. You may mail your appeal to:

Freedom of Information Act Appeal
U.S. Trade and Development Agency 1101 Wilson Boulevard, Suite 1100
Arlington, VA 22209-3901

Both the front of the envelope and the appeal letter should contain the notation "Freedom of Information Act Appeal."

OR

Email your appeal to the following email address: FOIA@ustda.gov

The subject of the email should be "Freedom of Information Act Appeal."

There is no specific form or particular language needed to file an administrative appeal. You should identify the name and title of the employee that denied your request and include the initial request number that USTDA assigned to your request and the date of USTDA's action. If no request number has been assigned, it will help if you enclose a copy of USTDA's determination letter. Please do not attach copies of released documents unless they pertain to some specific point you are raising in your appeal. You may explain the reason or reasons why you disagree with USTDA's action, but a simple statement that you are appealing the decision ordinarily is sufficient. If, however, you are appealing because you believe there are additional records that have not been located in response to your request, you should specify why you think such records exist and, if possible, where you believe they might be located.

Administrative appeals from components of USTDA are reviewed by USTDA's FOIA Appeals Official. The FOIA Appeals Official ordinarily will have available all of the documents processed in connection with your request and will make an independent determination as to whether USTDA has properly processed your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Under the FOIA, USTDA is ordinarily required to make a determination on your administrative appeal within 20 business days. USTDA may take one of several actions on your appeal. It may affirm USTDA's action in full, in which case it will identify which exemptions (if any) have been appropriately claimed. Or it may affirm part of USTDA's action (identifying the applicable exemptions) but order the release of other information previously withheld. Finally, under some circumstances, it may return or "remand" the request for complete reprocessing. When a case is remanded, you will have an opportunity again to appeal to the Chief FOIA Officer after USTDA has reprocessed the records if at that time you remain dissatisfied with USTDA's action in any respect.

X. Judicial Review

If you still believe USTDA has not handled your FOIA request properly under the law after your appeal has been decided, you have the right to challenge the agency's action in a lawsuit filed in federal court. Before doing so, you ordinarily will be required first to have filed an administrative appeal and to have received a response. If USTDA fails to respond to either your initial request or your appeal within the time limits discussed above, however, you may file a lawsuit once the time limits have expired.

If you do bring a court action, you may file your lawsuit in a federal district court in any of the following places: (1) where you reside, (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 an administrative appeal determination, that final administrative response letter will advise you of your right to seek judicial review and will specify where you can do so.