

The 411 on FOIA

Freedom of Information Act



According to FOIA federal employees cannot consider the motives or agenda of the requester when responding to a request. All requesters must be treated equally.

Freedom of Information Act (FOIA)

1966

The **Freedom of Information Act (FOIA)** is a federal freedom of information law that allows for the full or partial disclosure of previously unreleased information and documents controlled by the United States Government. The Act defines agency records subject to disclosure, outlines mandatory disclosure procedures and grants nine exemptions to the statute. It was signed into law by President Lyndon B. Johnson on July 4, 1966 (Public Law 89-554, 80 Stat. 383; Amended 1996, 2002, 2007), and went into effect the following year.

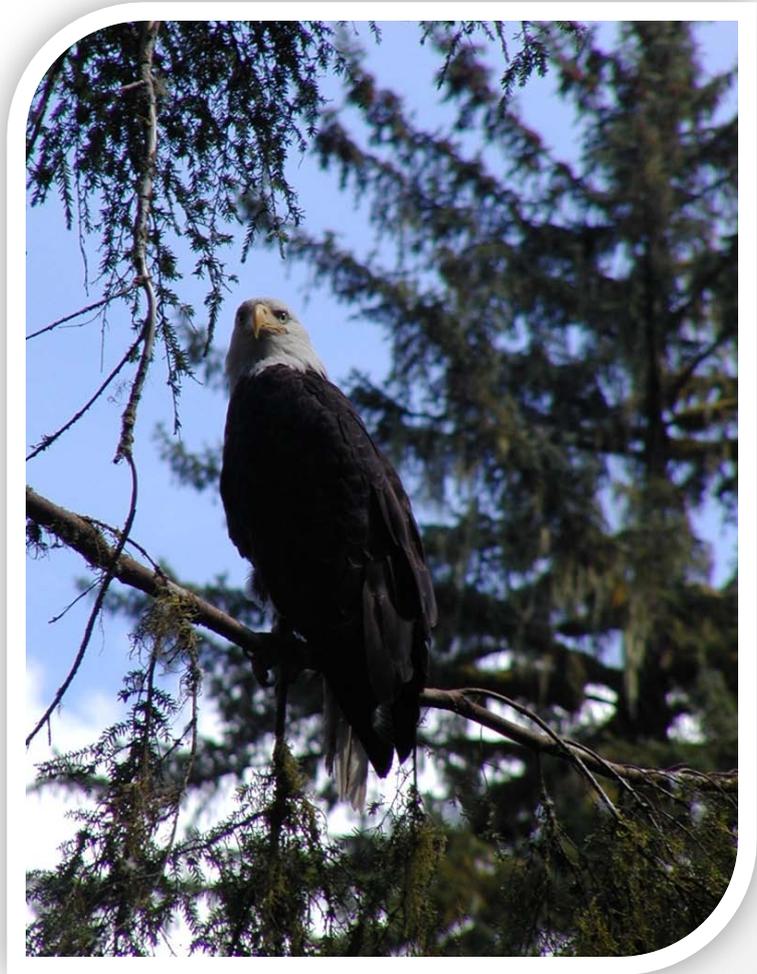
Freedom of Information Act (FOIA) 1966

FOIA grants public access to agency records or records held by the Forest Service, including records we obtained from entities outside the Federal arena which we have in our possession.

A “record” has form and matter (e.g. handwritten paper, typed paper, videotape, audiotape, drawing, photo, other electronic media).

Electronic FOIA (EFOIA) 1996

The EFOIA amended the FOIA to include requirements such as posting on the web all final decisions on administrative appeals and records frequently requested under the FOIA.



Open Government Act of 2007

Amended FOIA procedural issues:

- Allows requesters recovery of attorney fees and litigation costs for Forest Service non-response within 20 working days (must be paid directly from agency program dollars).
- If the requester prevails in court
- Clarified records in possession of our contractors are Forest Service records under FOIA.

USDA's Open Gov Initiative

Established by the Secretary of Agriculture to emphasize transparency, collaboration, and commitment among USDA agencies and internally among agency program areas.



Where are requests received?

- FOIA requests can be received by any employee at any office;
- Requests must be immediately forwarded to the Forest, Region, Station or WO FOIA Service Center for processing.

[BLM] Unperfected requests should be handled by the FOIA officer who corresponds with the requester directly, providing them a period of 20 working days to reply to clarify requests.

Who can release records?

Only the following or their acting have the authority to release FS records:

- Forest Supervisors
- Regional Foresters Station Directors and Area Director
- Regional Special Agents in Charge
- WO Staff Directors
- WO Deputy Chiefs, Associate Chief, or Chief

BLM has a similar process, where we obtain solicitor approval if there is a question. BLM also uses the 1203 MS to note appropriate delegation of authority to release or deny records.

We do not have forest supervisors, rather we have Field Office directions who may release once a FOIA officer has reviewed to determine if any exemptions apply.

We have State Directors rather than Station Directors and Deputy Center directors. Only our WO IRM (Information Resources Management) Governance can release in WO.

Who can withhold records?

Only the following or their acting have the authority to withhold FS records or to issue a “no records” determination (FSM 6270):

- Regional Foresters [BLM] only State Directors upon concurrence from solicitors can withhold records after a review is conducted by the State FOIA officer
- Station Directors and Area Director [BLM] has State Directors who surname after the regional solicitor has signed off to comment on the FOIA officer review.
- Regional Special Agents in Charge [BLM] does not have special agents unless the 1203 Manual delegation of authority has been utilized to make the delegation.
- WO Deputy Chiefs, Associate Chief, or Chief [BLM] again it is only our IRM Division Chief who can deny records.

What is Not a FOIA Request

- ✓ Questions or requests for information.
- ✓ Forest Service maps, brochures, publications.
- ✓ Request from another Federal agency.
- ✓ Request from a law enforcement entity for law enforcement purposes.
- ✓ Request from a Congressional Committee Chair for “official” committee business.

[BLM] These requests are worked in coordination with our Public affairs office and reviewed for any privileged information by FOIA officers prior to release, in some cases they also go through the OS, (Office of the Secretary)

Only some BLM maps are okay for release, only publications with a “P ” for Public are okay without a FOIA request

We have a records category listing at:

http://www.blm.gov/wo/st/en/res/FOIA/records_access.html

Employees should consult with FOIA officers to obtain detailed listing

Proactive Posting of Records:

If the requested record is already available on a Forest Service website, any employee may direct the requester directly to the website; there is no need for a FOIA request.

If you are not sure your records contain some information which may be protected by a FOIA Exemption, contact your FOIA Coordinator for assistance.



Proactive Records Release

Do you work with “hot topics” that you believe the public is interested in?

If so, consider posting records on the FS public website.



A FOIA Request

- Requests records not already publicly available.
- Does not need to state it is a FOIA.
- Must be made in writing; email acceptable.
- Request from state or local government.
- Request from an individual member of Congress.
- A subpoena for records.



20 Working Days to Respond

- Additional 10 day extension can be taken if records are voluminous or multiple locations must be searched.
- Supply a “partial” response with some of the records or a “determination” response before the due date if possible.
- If no response within 20 working days the requester can immediately file a FOIA lawsuit.



Employee Responsibilities

- Immediately forward FOIA request to a FOIA Coordinator.
- Complete the records search as soon as possible and provide records and/or background to the FOIA Coordinator.



FOIA Coordinator Responsibilities

- Review records for responsiveness.
- Immediately forward to the RO FOIA Coordinator any records which might need to be withheld or any no records determination.
- [BLM] Most offices do not send “no records” determinations to the solicitors. However they keep a record known as a Search certificate within the BLM case file showing who searched, what record keywords were used, and where the search was made. FOIA Requester can appeal this determination.



Contact Your FOIA Coordinator



If you have questions about the request -- such as the search timeframe

If you need clarification of the records to search for

If you think the request is overly broad

If there will be voluminous responsive records

Search, Review, and Duplication

- The program with the responsive records must cover the cost of searching and duplication or scanning records to respond to a request.
- Your FOIA Coordinator uses USDA Title 7 CFR to determine if fees will apply to the request.

BLM uses US CFR TITLE 43, part 2, Appendix C

To determine fees and the DOI published fees table

<http://www.doi.gov/foia/fees.html>

Questions your Coordinator may ask

Who created the records?

Are they official or personal records?

Why were the records created?

Is the information factual or comments?

How were the records used?

Is the information both deliberative and predecisional?

Have the records been shared outside the federal arena?

Personal Records

Majority of records in Forest Service possession are “official” agency records

Need not be stored in “official files” to be an agency record

It might be a personal record if:

- Employee notes from a meeting, created for employee use only and not shared with others
- Employee calendar notation for a doctor appt

Protected Information

Personal information such as a home address, home telephone number, SSN, driver's license number, work cell telephone number

Cultural resource site or reburial site description, or sites of traditional or cultural importance

Contractor's discounted unit pricing and TIN – [BLM] trade secrets, confidential information shared from contractors (Review Exemption 4 for clarification)

An Attorney's advice or opinion

Protected Information (cont.)

Identity of individuals in any kind of investigation. [BLM] These records must be weighed for the public interest and may be released once exemption 7 no longer applies, as this is an example of a temporary designation, however the FOIA officer should confirm with the Law Enforcement Officer on the status of the investigation.

An open and ongoing investigation file

A draft or deliberative document which has NOT been shared outside the Federal arena and where there would be a negative impact upon an agency process if released

FOIA Exemption 5

Deliberative Process

To withhold information under Exemption 5:

- Must be interagency or intra-agency shared only.
- Must be both deliberative and predecisional.

Current administration policy is for agencies to “waive” the right to withhold records under this exemption unless there is a “foreseeable harm” to an agency process.

Official FOIA File Contents

All records responsive to a request, where any portions are withheld or there is a no records determination, must be maintained for **6 years**.

Upon receipt of a FOIA appeal, the USDA Office of General Counsel attorneys must review the withheld records. **[DOI Appeals Office makes determination for our bureaus]**



Summary

Records search should be in every place where a reasonably knowledgeable professional could expect to find responsive records.

The search obligation includes searches of electronic media, such as computer hard drives, e-mail, electronic calendars, archives, servers, cd's, thumb drives, and etc.

Since BLM is subject to records freezes, such as Cobell, most of our records are still in hard copy. Search should also be made of the Records center 135's to see if records were transferred.

Record Preservation

Preserve records in their native format:

- if created in Microsoft Word, you must preserve it in Microsoft Word



Is a FOIA Officer in Your Network?

