Public Records & Immigration
How to use public records requests to improve government transparency
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Why Seek Public Records?</td>
<td>2</td>
</tr>
<tr>
<td>Freedom of Information (FOI) Laws: An Overview</td>
<td>3</td>
</tr>
<tr>
<td>How to Draft Public Records Requests</td>
<td>4</td>
</tr>
<tr>
<td>Following Up on Your Request</td>
<td>8</td>
</tr>
<tr>
<td>Helpful Tips</td>
<td>12</td>
</tr>
<tr>
<td>Frequently Asked Questions</td>
<td>13</td>
</tr>
<tr>
<td>Additional Resources</td>
<td>14</td>
</tr>
<tr>
<td>Notes</td>
<td>15</td>
</tr>
</tbody>
</table>
Introduction

The Freedom of Information Act (FOIA) has secured the U.S. public’s right to know for more than 50 years. Concerned citizens and journalists use it to rollback government secrecy and uncover government actions carried out in our name, but often without our knowledge. The law gives anyone the right to request information from federal, state, and local government agencies.

Open The Government (OTG), a nonpartisan coalition dedicated to transparency and accountability in government, is committed to putting the power of FOIA in the public’s hands. This guide will walk you through the process of using public records requests to uncover information about the secretive interaction between local governments and the U.S. immigration system.

The public still doesn’t know all of the details about the Department of Homeland Security’s (DHS) creation, implementation, and overall impact of its family separation policy. The full story of the conditions in which families and children are being detained is still untold. Local law enforcement facilitates and enforces detentions and deportations, but a full accounting of its role is incomplete due to a lack of transparency.

Your FOIA requests can counteract that secrecy. We hope you will exercise your right to access information, and that this guide empowers you to do so in the most effective manner.

Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves with the power knowledge gives.

– James Madison
Public records laws can be antidotes to secrecy at all levels of government. They can shed light on government agencies’ inner workings and help the public hold power to account. As Thomas Jefferson once said, “An informed citizenry is at the heart of a dynamic democracy.”

For example, on the federal level, a public records request by OTG definitively proved that DHS had a policy of family separation at the border, contrary to former Secretary Kirstjen Nielsen’s testimony before Congress.

OTG’s request for DHS memos provided evidence that Secretary Nielsen had signed off on the policy of separating families, knowing its purpose was to deter migration. On the local level, a records request by OTG uncovered a secretive agreement between Immigration and Customs Enforcement (ICE) and the Chicago Police Department to deputize police as “customs officers,” allowing them to partner with the federal government—potentially violating sanctuary city laws.
Freedom of Information (FOI) Laws: An Overview

The federal government and all 50 states have laws providing the public the right to request information from government bodies. Local and state records laws model themselves after the federal law, the Freedom of Information Act (FOIA). For simplicity, we use the term “FOIA” throughout to describe the process of obtaining records, regardless of jurisdiction. Records are generally available through FOIA requests if the requested records relate to the administration of public business, such as running a school or managing a park. It is important to remember:

- Records could mean emails, forms, memos, expense reports, videos, photos, or spreadsheets.
- The process can be complicated so you may need help along the way.
How to Draft Public Records Requests

Public records requests usually consist of a single-page letter that can become routine to draft by following a few key steps.

**Step 1**

*Define what you want to know.* The first step to submitting a FOIA request is having in mind a question about the government’s work that you’d like to learn more about. When looking into immigration issues, it’s common want to know about the conditions at local detention facilities. For example, you might have questions about the number of people being held, whether inmates are receiving adequate medical care, or how often physical force is used against detainees. Each question would be answered by a different set of documents. While you have the right to ask for any information that interests you, odds are greater that your request will be fulfilled more promptly if it addresses a narrow question.
Step 2

**Research.** Once you have a question in mind, you need to identify the types of documents that will answer it. Agencies are not required to answer questions, so you have to state a request for documents that might provide you with answers.

- First, determine what type of record you need to request to answer your questions. For example, to determine how many people are being held in a detention center on a given day, you would request documents about the capacity of a detention center and its average operating capacity. You could request medical logs or inspector general reports to determine the adequacy of a jail’s medical care. To understand how often officers use physical force against inmates, you might request several months’ worth of “use of force” reports that document such incidents.

- Second, find out where the records might be stored. Each agency has a “System of Records Notices” (SORN) that details how it collects and stores information. You can find information online in the SORN about databases, intake forms, videos, and other records you might be interested in. If you are still struggling with locating records, consider contacting the agency directly. At many agencies, the office that processes your records request is also in charge of maintaining records and can quickly answer questions.

- Third, search for information outside of the SORN that is already public. News stories may cite relevant documents or official statements by an agency that you can reference. Previously released records, such as budgets and inspector general reports, will often cite additional agency records and can be found online. The agencies’ websites may also have information such as organizational charts or employee directories that can further assist you. Be sure to guide the FOIA officer’s search for records by including relevant information from your research that would indicate where he or she might find the documents you are seeking.
Once you’ve determined what records you’d like to request, and which agency—or officer in the agency—might possess a copy, it’s time to figure out where to direct your FOIA request. For immigration-related issues, that may be a federal agency, like DHS or the Federal Bureau of Prisons, or a local agency like a police department. You can submit your request to multiple agencies if you think the records might be in multiple locations. There is no central office for processing FOIA requests at agencies, but you can often find the right contact information online. Federal offices usually have a dedicated intake office but smaller local agencies might not.

**Step 3**

**Draft and submit your request.** Using the information you gathered in your research, draft a letter or email to the appropriate agency requesting records. In the subject of your email or the body of your letter, be sure to state that you are requesting the records under the relevant public records law; for example, FOIA, the Virginia Public Records Act, or the San Francisco Sunshine Ordinance. Specify the name of the record you are looking for if you know it.

Remember, instead of asking an open-ended question, you must ask for documents that answer your question. So, rather than ask “how many lawsuits were filed against the Bureau of Prisons last year?” instead request “documents sufficient to show the number of lawsuits filed against the Bureau of Prisons in 2019.”

Once you’ve submitted your request, save a copy of your request and set a reminder to follow up in 20 business days if you have not received a response to your request by that date. Agencies are required to acknowledge the request within that timeframe and begin processing your request.
Here’s a **sample public records request**, drafted by OTG, and submitted to the DHS Office of Inspector General, seeking records regarding investigations by ICE’s Office of Professional Standards.

<table>
<thead>
<tr>
<th>Contact info of agency FOIA officer(s)</th>
<th>Add name, address or email address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cite relevant public records law</td>
<td>Pursuant to the Freedom of Information Act, I hereby request the following records: The Department of Homeland Security Office of Inspector General has previously released an audit of ICE’s Office of Professional Standards</td>
</tr>
<tr>
<td>State request as a statement, not question</td>
<td>For the dates covering October 1st 2016 to September 31st 2018, I seek documents sufficient to show the number of completed investigations.</td>
</tr>
<tr>
<td>Guide officer to possible location of records, if known.</td>
<td>These documents should be in the Joint Integrity Case Management System (JICMS). If it is a separate system, please search both the JICMS and Enforcement Data System.</td>
</tr>
<tr>
<td>Your contact information</td>
<td>Add your contact info</td>
</tr>
</tbody>
</table>


Following Up on Your Request

Agencies are required to respond to your request within a defined timeline. The federal government is supposed to process your request and provide copies of records within 20 business days. Local timelines vary but typically range from 10 to 20 business days. However, receiving the records can often take longer. Here are some tips on how to follow up on your request, and how OTG can assist you.

Receipt. Upon receiving your request, the public information officer at the agency — the person tasked with handling your request — will typically give you an estimate for when you should receive your records, or he or she will request additional processing time. Processing times can vary depending on the complexity of the records request, the agency, and the jurisdiction. If you have not received an acknowledgment of your request within a few days of sending it, call the agency to verify it received the request and that the office understood it. Remember that the public information officer who reads your request may not be as familiar with the subject as you are. You should work with him or her to clarify what you are looking for.

Review. While reviewing a request, a public information officer may contact you with additional questions about the scope of the request or to ask that you “narrow” the request for fewer records. For example, if you sent a request for records from a specific calendar year, the public information officer may ask you to limit your search to only three months. This process may require several rounds of communication. After searching for records, the agency will either provide all of the records you requested, give you some relevant documents, or reject the request. You can always submit a new, revised request if your request was rejected, but you should not have to send in a new FOIA request when clarifying your request with the public information officer.
Response. The agency may respond to your request within the mandated timeline with all of the records you requested. If so, you can celebrate and begin analyzing the records to see if they answer your guiding questions. However, the process can often be more complicated than that and you may need to challenge fees or redactions, appeal a response, or litigate for records.

Fees. Most agencies charge fees for searching for records, copying pages and the time spent redacting documents. Some agencies may require a deposit but most can waive fees upon request. To keep costs low, ask for records electronically or offer to inspect them in person. Always ask the agency to explain how it calculated its fees. Fees are often higher if you are requesting for a commercial purpose.

Exemptions and Redactions. Agencies can reject requests, or redact portions of records if the records are defined as exempt from disclosure under the federal or state FOIA. There are nine exemptions from disclosure that range from issues of national security to geological information on wells. An agency must cite an exemption when it withholds information, and it will redact the portions of the records it believes it is not required to release. When applying redactions, agencies are supposed to black out only the information that is truly exempt and should not withhold the whole record, although they sometimes abuse the system. It’s important to keep in mind that government records are presumed to be open, even records pertaining to sensitive topics such as national security or law enforcement, so don’t assume your request for information will be denied even if it seems to fall within one of the exemptions.
**Creative Denials.** Even though you have a right to obtain records, it is not uncommon to get what is colloquially referred to as a “creative denial” — a way for an agency to block a request without formally saying no. For example, one agency attempted to charge a requester $33 million dollars but eventually settled for $40. Sometimes agencies will delay a FOIA response for five years and then ask if you are “still interested” in the records. In one case, an agency estimated it would finish redacting records after 150 years. If it strikes you that an agency is stonewalling or otherwise unfairly deterring you from pursuing your request, appeal the processing of the request.

**Appeals.** FOIA not only gives the public a right to access information, but it also provides additional administrative rights in the event you are not satisfied with how your request was processed. At a minimum, you can appeal the following:

- Response times that are unreasonably delayed.
- Requests that are denied in full.
- The adequacy of a search for records that found no documents.
- The appropriateness of redactions and where they were applied.

In most jurisdictions, the public information officer will respond with instructions on how to appeal. Often, you simply need to send a letter or email to appeal the decision. An appeal is typically handled by a separate office from the one that processed your request, to provide an independent review. As a general rule, it is always a good idea to appeal if you do not receive sufficient records in response to your request. Appeals often result in more documents or fewer redactions.
Litigation. Often the quickest way to obtain records is to file a civil lawsuit for the records. A judge who finds that an agency violated FOIA can order the agency to produce records and pay your attorney fees. Sometimes, agencies would rather settle instead of going to trial and will produce records faster. Many public interest attorneys will happily take FOIA cases on your behalf at little or no cost to you. The specifics of when you can file suit vary by jurisdiction; you can find more details in the Open Government Guide, compiled by the Reporters Committee for Freedom of the Press.
Helpful Tips

- **Keep an open line of communication.** Always be polite and courteous to the FOIA officers. Ultimately, they decide how to search and produce records. They decide how to search and produce records. Being courteous will make ongoing conversations about the scope of your request easier. FOIA officers are often the most knowledgeable about where records are stored and might help you with follow up requests.

- **Review other requests.** You can draw inspiration for your requests by looking at successful requests made by others. Often government agencies make their FOIA logs available online, making it easy for you to replicate successful requests. OTG has a list of FOIA requests and relevant resources that may be helpful. MuckRock News provides a running list of recently completed FOIA requests on its website.

- **Keep meticulous notes.** Try to create a paper trail including dates and the content of any communication with the agency. Your notes will be useful in case you have to litigate a case.

- **Use a calendar.** As part of tracking your request, remind yourself when to follow up with the agency.

- **Do not trust fee estimates.** Ask for itemized estimates for search and copying fees. Request the agency waive fees.

- **Stay in touch.** OTG is here to help in any way we can. Contact us at info@openthegovernment.org.

Obtaining government records is your right, but that does not mean all agencies will cooperate. Some agencies routinely attempt to dodge compliance with FOIA and you may need help. Open The Government has experience drafting FOIA requests and addressing obstacles in obtaining records, including challenging FOIA exemptions. If you need assistance, please feel free to reach out to us.
Frequently Asked Questions

What do I need to include in a FOIA request?

Every FOIA request should include the name of the relevant public records law, a statement requesting a specific set of records currently in the agency’s possession, and your contact information. You can also include additional information, such as relevant evidence that the records exist, such as a link to a news story that mentions the records or public comments by the agencies.

When I send a request, when should I get records back?

By law, the federal government should complete processing your request and return copies of your requested records within 20 business days, but agencies typically take longer. Local times also vary.

Does it cost money to send a FOIA request?

It depends. Some agencies have a policy to charge for documents but others do not. Most agencies charge fees for searching for records, copying pages and the time spent redacting documents. Some agencies require a deposit. To keep costs low, ask for records electronically or offer to inspect them in person. Always ask agencies to explain how it calculated its fees. Fees are often higher if you are making a request for a commercial purpose.

If my FOIA request is not clear enough and I have to talk to the public information officer, do I have to submit a new FOIA? What happens to the processing calendar in the meantime?

You do not have to send a new FOIA request but the processing of the request and its calendar will pause until you meet and discuss it.

Will Open The Government help find my legal representation?

OTG may be able to help you find pro bono attorneys that will consider your case depending on the request itself, where and to whom it was filed and other details. Please contact us for a consultation.
Additional Resources

Office of Government Information Services. OGIS is the federal FOIA ombudsman (appointed to investigate individuals’ complaints against maladministration) and will work with requestors and agencies to mediate request disputes. While OGIS cannot order an agency to produce records, it can be a useful resource to learn about your administrative rights or to bring an agency to the table. https://www.archives.gov/ogis

Reporters Committee for Freedom of the Press Open Government Guide. The Open Government Guide provides an overview of each state’s public record laws. It also provides specifics for each jurisdiction, such as how much an agency is allowed to charge for records. https://www.rcfp.org/open-government-guide

MuckRock News. MuckRock is a FOIA aggregator that provides public records assistance. After sending a request through their paid platform, it will automatically manage your FOIA calendar and host documents you receive online. In the majority of cases, you can also appeal your cases online. https://muckrock.com

FOIA Wiki. This website is helpful when researching specific FOIA language or case law and can be a resource for dealing with the appropriateness of redactions. https://foia.wiki
Contact Info

Open The Government
1612 K Street NW
Suite 600
Washington, D.C. 20006
(202) 332-6736

Visit openthegovernment.org
Donate at openthegovernment.org/donate

facebook.com/openthegovernment
@openthegov