

## Frequently Asked Questions

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Q1. How do I request documents under the FOIA?

A1. [Requesting Documents](#)

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Q2. Who can file a FOIA request?

A2. Any "person" can file a FOIA request, including U.S. citizens, foreign nationals, organizations, universities, businesses, and state and local governments.

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Q3. Who is subject to the FOIA and what type of information can be requested?

A3. FOIA's scope includes Federal Executive Branch Departments, agencies, and offices, Federal regulatory agencies, and Federal corporations. Congress, the Federal Courts, and parts of the Executive Office of the President are not subject to the FOIA. State and local governments are likewise not subject to the Federal FOIA, but some states have their own equivalent access laws for state records. For Washington State records try [Here.](#)

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Q4. What is a record?

A4. A record is the product(s) of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in Army possession and control at the time the FOIA request is made.

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Q5. Can we ask questions under the FOIA?

A5. FOIA does not require Federal Agencies to answer questions, render opinions, or provide subjective evaluations. Requesters must ask for existing records, such as those mentioned above.

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Q6. What are reasons for not releasing a record?

A6. There are seven reasons why the Army may not release a record requested under FOIA. They are:

1. The request is transferred to another Army Component or Federal agency;
2. The Army Component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record;
3. A record has not been described with sufficient detail to enable the Army Component to locate it by conducting a reasonable search;
4. The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by the FOIA and AR 25-55;
5. The request is withdrawn by the requester;
6. The information requested is not a record within the meaning of the FOIA and the AR 25-55; or
7. The record is denied in whole or part in accordance with procedures set forth in the FOIA and AR 25-55. (See FOIA exemptions, below)

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Q7. What are FOIA exemptions?

A7. There are nine FOIA exemptions, described in 5 U.S.C. 552(b) (1)-(9).

1. (b) (1) -- records currently and properly classified in the interest of national security;
2. (b) (2) -- records related solely to internal personnel rules and practices, which, if released, would allow circumvention of an agency function;
3. (b) (3) -- records protected by another law that specifically exempts the information from public release;
4. (b) (4) -- trade secrets and commercial or financial information obtained from a private source which would cause substantial competitive harm to the source if disclosed;
5. (b) (5) -- internal records that are deliberative in nature and are part of the decision making process that contain opinions and recommendations;
6. (b) (6) -- records which, if released, would result in a clearly unwarranted invasion of personal privacy;
7. (b) (7) -- investigatory records or information compiled for law enforcement purposes;
8. (b) (8) -- records for the use of an agency responsible for the regulation or supervision of financial institutions; and
9. (b) (9) -- records containing geological and geophysical information (including maps) concerning wells.

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Q8. What is a denial?

A8. When information is withheld, whether partially or fully, this constitutes a denial under FOIA. A request may be denied for one or more of the aforementioned exemptions. When this happens, you will be notified in writing by an Initial Denial Authority (IDA) and given appeal rights. IDAs are denial authorities for records that fall under their custodial control. If your request is denied partially, you will receive information that has portions deleted. Redacted records have the denied information removed from where it was originally located within the document. The appropriate exemption(s) for deletion of the information should be listed next to the sanitized area(s) on the document. There are usually two methods for sanitizing a document; one is to blacken out the denied information, and the other is to completely remove it.

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Q9. Can I appeal a denial?

A9. Yes. If your request is initially denied in whole or in part under one or more of the above exemptions or denied for some other reason, you will be advised of your appeal rights and the proper procedures for submitting the appeal within 60 days. If you are not satisfied with the appeal determination, you may seek a judicial review.

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Q10. How long will it take for my request to be processed?

A10. Whenever possible, an initial determination to release or deny a record is made within 20 working days after receipt of the request. If unusual circumstances exist that preclude a timely response, you will be given an estimated completion date and reason(s) for delay. Unusual circumstances are:

1. Need to search for and collect the requested records from other facilities that are separate from the office determined responsible for a release or denial decision on the requested information;
2. The need to search for, collect, and examine a voluminous amount of separate and distinct records which are requested in a single request; or
3. The need for consultation, which shall be conducted with all practicable speed, with other agencies having a substantial interest in the determination of the request, or among two or more DOD Components having a substantial subject-matter interest in the request.

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Q11. How do I qualify for expedited processing of my request?

A11. To receive expedited processing, the requester must demonstrate one of the following compelling needs:

1. Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
2. Information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity; or
3. Other reasons that merit expedited processing are an imminent loss of substantial due process rights and humanitarian need.

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Q12. Do I have to pay for a FOIA request?

A12. FOIA allows fees to be charged to certain types of requesters, but it also provides that waivers or reductions in fees be given if disclosing the information is in the public interest. Public interest is defined as information which significantly enhances the public's knowledge of the operations and activities of the agency. FOIA requires that requesters be placed into one of the below categories, which are explained in more detail in the Department of Defense Freedom of Information Act Program publication DoD 5400.7-R, which is available at [DefenseLink](#):

1. Commercial. Requesters who seek information for a use or purpose that furthers their commercial, trade, or profit interest are considered commercial requesters. Commercial requesters pay all fees for search, review, and duplication.
2. Educational. Institutions of education, including preschools, elementary or secondary schools and institutions of higher learning, qualify as educational institutions. The records must be sought in furtherance of scholarly research. Educational requesters pay only duplication fees, unless it is determined that fees are waived or reduced in the public interest. The first 100 pages are provided at no cost.
3. Non-Commercial Scientific. A non-commercial scientific institution is operated solely for conducting scientific research. The records must be sought in furtherance of scientific research. Like educational requesters, these requesters pay only duplication fees, unless it is determined that fees are waived or reduced in the public interest. The first 100 pages are provided at no cost.

4. News Media. A representative of the news media is a person actively gathering news for an entity organized and operated to publicize or broadcast news to the public. News media pay only duplication fees, unless it is determined that fees are waived or reduced in the public interest. Again, the first 100 pages are provided at no cost.
5. "Other" Requester. Requesters who do not qualify in another category are considered "other" requesters, and normally make requests for agency records for their personal use. "Other" requesters receive two hours search, all review costs, and the first 100 pages at no cost.

All requesters must include a "willingness to pay statement" in their request, regardless of the fee category, however, this does not mean you will be charged fees. Fees are not charged unless they exceed \$25 for all categories of requesters. Also, the requester can set a limit on the costs to be incurred. For example, he/she may state "not to exceed \$50." If the estimate for answering the request exceeds the limit, the FOIA Officer will call the requester to discuss his/her options. The requester has four options: accept the copied documents up to the previous specified amount of money; cancel the entire request; authorize the money needed to complete the request; or authorize additional funds up to another specified amount.

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Q13. What fees and fee rates may I expect?

A13. Collection of fees will be made at the time of the production of documents, except when a requester has previously failed to pay assessed fees within 30 days or fees are anticipated to exceed \$250.00. Fees and fee rates are explained in more detail in the Department of Defense Freedom of Information Act Program publication DoD 5400.7-R, which is available at [DefenseLink](#). Standard prescribed fees which may be assessed include, but are not limited to the following:

| <i>Service</i>  | <i>Cost</i>      |
|---|------------------|
| Professional Search and Review  | \$44.00 per hour |
| Clerical assistance with search and review  | \$20.00 per hour |
| Office photocopies (8 ½" x 11" or 11" x 14")  | \$0.15 per page  |
| Pre-printed material  | \$0.02 per page  |
| Aerial photographic maps, specifications, permits, charts, blueprints and other technical engineering documents | \$2.50 per sheet |

Engineering drawings

\$1.50 per sheet

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Q14. Do I qualify for a fee waiver?

A14. Except for commercial requesters whose fees total more than \$25, waivers may be considered. Fee waivers may be granted when disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. The following factors are weighed in making a fee waiver determination:

1. The subject of the request;
2. The informative value of the information to be disclosed;
3. The contribution to an understanding of the subject by the general public likely to result from the disclosure;
4. The significance of the contribution to public understanding;
5. Disclosure of the information is not primarily in the commercial interest of the requester; and
6. The ability of the requester to disseminate the information.

Fee waivers are granted on a case-by-case basis and upon the merits of the information provided in each request. Unions, not-for-profit, and other public interest groups are not automatically entitled to fee waivers. For more information on fee waivers please see Part 286 of Chapter 32 of the Code of Federal Regulations, available [on-line](#) and in most libraries.

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Q15. Must I use FOIA to obtain all agency records?

A15. No. There are many frequently requested documents available on Seattle District's public Internet sites.

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Q16. What is a "willingness to pay statement"?

A16. All requesters must include a "willingness to pay statement" in their request, regardless of the fee category, however, this does not mean you will be charged fees. The requester can set a limit on the costs to be incurred. For example, you may state "not to exceed \$50." If the estimate for answering the request exceeds the limit, the FOIA Officer will call the requester to discuss options. The requester has four options: accept the

copies documents up to the previous specified amount of money, cancel the entire request; authorize the money needed to complete the request; or authorize additional funds up to another specified amount. Except for commercial requesters whose fees total more than \$15, waivers are always considered.

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Q17. Which Division or District office of the Corps of Engineers should I send my request?

A17. If a FOIA request is received by the wrong office, it will be forwarded to the correct office. However, this will add several days to a response, so if you do not know the correct office check [Here](#).

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Q18. Can my request be for documents that may materialize subsequent to the date of my request?

A18. No. A FOIA request is only for documents the Agency has in its possession at the time it receives the request. Also, it would be extremely difficult to track these type of requests. The best bet would be to submit a new FOIA request anytime you feel new responsive documents have been generated.

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We trust this information will be helpful to you when pursuing FOIA requests with the Seattle District. If you have any suggestions, you may call (206) 764-3735.

Point of Contact: Richard Hynes Phone: 206-764-3735 Email: [Richard.M.Hynes@usace.army.mil](mailto:Richard.M.Hynes@usace.army.mil)