

# FOIA Bootcamp for Journalists

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# Basics of FOIA

The Freedom of Information Act, 5 U.S.C. § 552

# Public Records Laws – Generally

## Federal Level

- Freedom of Information Act (5 U.S.C. § 552)
- First Amendment right of access, motions to unseal

## State Level

- State-level public records act / freedom of information law / sunshine laws
  - California Public Records Act (Cal. Gov. Code § 6250 et seq.)
- Court Documents or Administrative Records
  - California Court Rule 2.400, 10.500

## Local Level

- Ordinances like San Francisco Admin. Code § 67

# History & Purpose of FOIA

## History

- Took effect in 1967
- Passed in response to series of congressional investigations into misuse of the classification apparatus and media leaks
- FOIA creates “a general philosophy of full agency disclosure”

## Purpose

“The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.”

*N.L.R.B. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)

# Who?

## “Agencies”

- Federal executive “agencies”
  - “Each authority of the Government of the United States, whether or not it is within or subject to review by another agency” 5 U.S.C. § 551(1)
  - Includes executive and military departments, Government corporations, Government-controlled corporations, and independent regulatory agencies 5 U.S.C. § 552(f)(1)
  - Excludes: some parts of the Executive Office of the President, Congress, courts, state/local/territorial/D.C. governments, courts martial/military commissions, military authority exercised in the field in time of war, etc. 5 U.S.C. § 551(1)

# What?

## “Records”

- “Any info . . . maintained by an agency in any format, including an electronic format”
- 9 Exemptions and Privacy Act
  - b(1) National security information
  - b(2) Internal personnel rules and practices
  - b(3) Information exempt under other laws
  - b(4) Confidential business information
  - b(5) Privileged inter- or intra-agency communications
  - b(6) Personal privacy
  - b(7) Law enforcement records
  - b(8) Financial institutions
  - b(9) Geological information

# How? When?

## Method of Request

- Request must be in writing
- By mail, email, or e-filing depending on agency

## Timeline for “Determination”

- 20 working days to issue a determination
- Agency can have up to 10 more working days, if it invokes and explains “unusual circumstances” are present

# FOIA Requests

Requirements, Tips, and Strategies



# Getting Started

## Tips and Strategies Before You Draft

- Reverse engineer what you'd like to say
- Figure out what you want to know and who holds that info
- Explain what you are looking for
- Clarify definitions as needed
- Set timeframe for records
- Cite relevant statutes or regulations

# Drafting a Request

## Statement of Request

- Clearly indicate you are making a request pursuant to the Freedom of Information Act (invoke statute by name)

## Describe Records Sought

- Be clear and specific about what you want
- Make sure request is reasonable
- Include date range
- Ask for particular format of records

# Drafting a Request (cont.)

## Fee Status / Waiver

- Explicitly indicate status as a “representative of the news media” pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)
  - Must pay for duplication costs (~\$0.10–\$0.35/page)
  - Do not pay search costs
- Public Interest Fee Waivers / Fee Reductions
  - Explicitly indicate you’re seeking a public interest fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii)
  - Describe scholarly, historical, or current public interest served by request
  - Describe significance of contribution to public understanding

# Drafting a Request (cont.)

## Request for Expedited Processing

- 5 U.S.C. § 552(a)(6)(E) permits requests for expedited processing if requestor establishes a “compelling need”
  - Compelling need:
    - Failure to obtain requested records on an expedited basis “could reasonably be expected to pose an imminent threat to the life or physical safety of an individual”
    - If request is made by a “person primarily engaged in disseminating information” there is “urgency to inform the public concerning actual or alleged Federal Government activity”
    - Must certify that statements about alleged activity / public concern are true

## Commitment to Pay Fees

## Contact Information

# Exercise:

Write a FOIA Request

## Migrant Children Moved Under Cover of Darkness to a Texas Tent City



Migrant children at a detention facility in Tornillo, Tex. Mike Blake/Reuters

By Caitlin Dickerson

Sept. 30, 2018

[Leer en español](#)



Source: <https://nyti.ms/2QioCIY>

In shelters from Kansas to New York, hundreds of migrant children have been roused in the middle of the night in recent weeks and loaded onto buses with backpacks and snacks for a cross-country journey to their new home: a barren tent city on a sprawling patch of desert in West Texas.

Until now, most undocumented children being held by federal immigration authorities had been housed in private foster homes or shelters, sleeping two or three to a room. They received formal schooling and regular visits with legal representatives assigned to their immigration cases.

But in the rows of sand-colored tents in Tornillo, Tex., children in groups of 20, separated by gender, sleep lined up in bunks. There is no school: The children are given workbooks that they have no obligation to complete. Access to legal services is limited.

These midnight voyages are playing out across the country, as the federal government struggles to find room for more than 13,000 detained migrant children — the largest population ever — whose numbers have increased more than [fivefold](#) since last year.

The average length of time that migrant children spend in custody has nearly doubled over the same period, from 34 days to 59, according to the Department of Health and Human Services, which oversees their care.

But the mass transfers are raising alarm among immigrant advocates, who were already concerned about the lengthy periods of time migrant children are spending in federal custody.

The roughly 100 shelters that have, until now, been the main location for housing detained migrant children are licensed and monitored by state child welfare authorities, who impose requirements on safety and education as well as staff hiring and training.

The tent city in Tornillo, on the other hand, is unregulated, except for guidelines created by the Department of Health and Human Services. For example, schooling is not required there, as it is in regular migrant children shelters.

Mark Greenberg, who oversaw the care of migrant children under President Barack Obama, helped to craft the emergency shelter guidelines. He said the agency tried “to the greatest extent possible” to ensure that conditions in facilities like the one at Tornillo would mirror those in regular shelters, “but there are some ways in which that’s difficult or impossible to do.”

Several shelter workers, who spoke on condition of anonymity for fear of being fired, described what they said has become standard practice for moving the children: In order to avoid escape attempts, the moves are carried out late at night because children will be less likely to try to run away. For the same reason, children are generally given little advance warning that they will be moved.

The number of detained migrant children has spiked even though monthly border crossings have remained relatively unchanged, in part because harsh rhetoric and policies introduced by the Trump administration have made it harder to place children with sponsors.

Traditionally, most sponsors have been undocumented immigrants themselves, and have feared jeopardizing their own ability to remain in the country by stepping forward to claim a child. The risk increased in June, when federal authorities announced that potential sponsors and other adult members of their households would have to submit fingerprints, and that the data would be shared with immigration authorities.

Last week, Matthew Albence, a senior official with Immigration and Customs Enforcement, [testified before Congress](#) that the agency had arrested dozens of people who applied to sponsor unaccompanied minors. The agency later confirmed that 70 percent of those arrested did not have prior criminal records.

“Close to 80 percent of the individuals that are either sponsors or household members of sponsors are here in the country illegally, and a large chunk of those are criminal aliens. So we are continuing to pursue those individuals,” Mr. Albence said.

[Register](#) [Log In](#) [Help](#)

[Home](#) [FOIA Resources](#) [FOIA Reading Room](#) [Request Status](#)

Home

# Welcome to the Health and Human Services - Online FOIA Public Access Link

## Submit or check the Status of a FOIA Request or Appeal Online

Click *Register* above to register to submit a FOIA request or appeal. Once signed in, the ability to submit a request, appeal and check the status of a request is available.

As you navigate the log in procedures, please follow all prompts, look for red system warnings, and make sure that all required fields are completed.

If you have requested *Download via PAL Account* as your method of delivery, you will receive an email telling you when those documents are available. In order to retrieve those documents, you will need to log in to the system and check the status of your request. Upon reaching that screen, you will see a small download icon next to your request status. Click there in order to download the documents relating to your case onto your computer.

[Search the FOIA Electronic Reading Room](#)

Individuals to request access to information exempt from disclosure under one or more FOIA exemptions. If you have any questions or need assistance, please contact FOIA@hhs.gov.

[FOIA Requester Service and Privacy](#)

IS FOIA Requester Service (ISRS) that respond to FOIA requests and IS records.

[FOIA Electronic Reading Room](#)

Manuals, agency policy and opinions developed in the cases.

Follow these steps to make a request:

- The request must include a daytime phone number so that we may contact you.
- Provide as much information as possible about the subject matter of the records you are requesting. This will help expedite the search process.
- You may mail your request to:

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U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009  
Washington, D.C. 20536-5009

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- Requests can also be faxed to (202) 732-4265.
- Requests or questions may also be emailed to [ICE-FOIA@dhs.gov](mailto:ICE-FOIA@dhs.gov)
- Whether you are submitting your request electronically, by mail, or by fax, a signed Verification of Identity, Verification of Guardianship, Accompanying Persons, and/or PA Amendment Request forms are requirements for making a PA request. PA requests should be marked "Privacy Act Request."
- Requests are deemed to constitute an agreement to pay any applicable fees that may be chargeable up to \$25 without notice. Most requests do not require any fees; however, if fees exceed \$25, we will notify you beforehand.

An "**AFFIRMATION/DECLARATION**" form indicating your name, date of birth, name of the person you want your records disclosed to (where applicable) and their address and a statement indicating that you understand that knowingly or willingly seeking or obtaining access to records about another person under false pretenses and or without their consent is punishable by a fine of up to \$5,000.

If you wish to submit a Privacy Act amendment request (to request that ICE records about you be corrected), please send your detailed request to the [ICE Privacy Office](mailto:iceprivacy@ice.dhs.gov) email address, [iceprivacy@ice.dhs.gov](mailto:iceprivacy@ice.dhs.gov), or to the following address:

U.S. Immigration and Customs Enforcement  
ICE Privacy and Records  
ATTN: Privacy Branch  
500 12th Street SW, Stop 5004  
Washington, D.C. 20536-5004

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## Contact Information

Name (First, MI, Last): \*

Address: \*

City: \*

State: \*

Zip Code: \*

Daytime Phone Number: \*

(555-555-5555)

Fax Number:

(555-555-5555)

Email:

## Describe the type(s) of document(s) you are requesting

Enter company name, address, and any other information relevant to the request: \*

Select a suitable description of yourself and the purpose of the request:

- A. An individual seeking information for personal use and not for commercial use. If the subject matter of your request is yourself, ICE staff may contact you to verify your identity.
- B. Affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for commercial use.
- C. Affiliated with a private corporation or law firm and seeking this information for use in the company's business.
- D. A representative of the news media and this request is made as part of news gathering and not for commercial use.

## FOIA allows agencies to charge fees for processing FOIA requests (see fee schedule):

\* Enter the maximum amount that you are willing to pay: \*

### CAPTCHA

This question is for testing whether or not you are a human visitor and to prevent automated spam submissions.

**Math question \***

3 plus 5 =

Solve this simple math problem and enter the result. E.g. for 1+3, enter 4.

Select a suitable description of yourself and the purpose of the request:

- A. An individual seeking information for personal use and not for commercial use. If the subject matter of your request is yourself, ICE staff may contact you to verify your identity.
- B. Affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for commercial use.

# Denials vs. Silence

Reponses, Appeals, and Other Remedies

# Potential Responses

Silence

*Glomar* Response

Denial of Request

## Records-Related Responses

- Documents released in full
- Documents released in part
- Documents withheld in full
- Agency found no documents responsive to your request

Continuation of FD-302 of \_\_\_\_\_

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[Redacted]

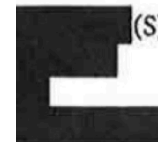
[Redacted]

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Withheld pursuant to exemption

(b)(5)-(b)(7)(E)

of the Freedom of Information and Privacy Act



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# Denials and Adverse Determinations

## Filing an Administrative Appeal

- Determination letter will inform you of your right to appeal
- You *must* file an administrative appeal in time specified if you want relief
- Should include:
  - Statement that it's an appeal and statutory reference (5. U.S.C. § 552(a)(6))
  - Request reference number
  - Background on denial (can include letter as an attachment)
  - Argument in support of appeal
  - Any additional materials
  - Contact information

# Other Remedies

## Litigation

- If you exhausted administrative remedies, can sue to enforce request / challenge agency withholdings
- Can be expensive and time consuming
- Other info:
  - Usually quicker than most federal cases
  - \$400 filing fee in federal court
  - Cases concluded by settlement or summary judgment (no trials)
  - Attorney's fees may be recoverable

# Additional Resources

# Additional Resources

## MuckRock

- <https://www.muckrock.com/>

## Reporters Committee for Freedom of the Press

- <https://www.ifoia.org/>
- <https://www.rcfp.org/foia>

## National Security Archive at George Washington University

- <https://nsarchive.gwu.edu/project/foia>

## DOJ FOIA Guide

- <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>