



# Freedom of Information Act/ Privacy Act Explained

Compiled by Prisoners of the Drug War  
and The November Coalition

Information is power, it is said. The question is, how does one get it? Under the Freedom of Information Act and Privacy Act (FOIA/PA), citizens of the United States are entitled to access to “agency records” (FOIA) and to information about themselves contained in government files (PA). While this sounds like a star spangled right on first blush, the truth is that a person has to fight tooth and nail to procure the information he or she seeks.

Some agencies, the DEA and US Marshall's Service, for example, will often disgorge information upon receipt of a notarized FOIA/PA request. However, most agencies will not, and the following is a valuable step by step process to extract from them the information you require.

## Step One: The Request

The first move in your FOIA/PA chess game is to send a notarized request to the agency that has the information you seek. There are several possible formats for this request, but the one shown here is a good, basic model. Note that state prisoners will have to check their legal libraries to replace the federal codes in these examples with state statutes, or at least title the request “**Freedom of Information/Privacy Act Request under the State of \_\_\_\_\_.**”

The FOIA requires that a request “reasonably describe” the records sought. Courts recognize that broad, sweeping requests lacking specificity are not permissible under the FOIA. See *Keese v. U.S.*, 632 F. Supp. 85, 91 (S.D. Tex. 1985) (requests for all documents containing a requestor's name are not “reasonably specific”). The more precise and limited the request, the more likely you are to get a prompt response. Be certain that your request is made “in accordance with published rules” [the agency's rules - not absolutely a requirement 5 USC 552(a) (3)(B).

In general, the Act requires release of all material not otherwise exempted; it does not permit the agency to consider the requestor's need or intended use in determining whether to disclose. There are instances where a statement of need is relevant to the agency's determination, e.g., to justify a fee waiver or to justify requiring an overburdened agency to answer an FOIA request out of turn; however, an explanation of need should ordinarily relate to the general public value of the information, rather than the particular need of the requestor. Usually you need not explain in your request why you want the material unless you think it will encourage the agency to release the data, or to waive or reduce fees.

It is important that you make copies of everything you submit, to be used as exhibits if you are forced to sue the agency to force compliance with the statutes. It is also important to type “FOIA/PA Request” on the lower left corner of your envelope. This aids the agency in delivering your request to the proper department. Your letter should be sent certified, registered return mail, that way you will know the agency has received it, when it was signed for, and is later proof that the agency has not complied with your request in a timely manner.

Under s 552(a)(6)(A)(i) of the Act, the contacted agency has ten (10) working days from their receipt of your request to make a determination on just what records are disclosable and to claim exemptions on those they wish to withhold. The agency will also tell you the fee to pay if you want the records. In most cases you will receive a form letter stating that the agency has placed you on a waiting list. You should also be assigned a number. Always use that number when corresponding with the agency. Keep copies of this correspondence, but disregard the agency waiting list: they can take years, if they are honored at all.

(Example #1)

FREEDOM OF INFORMATION / PRIVACY ACT REQUEST

REQUESTOR DATE OF BIRTH\_\_\_\_\_

REG. NO\_\_\_\_\_

PLACE OF BIRTH\_\_\_\_\_

ADDRESS\_\_\_\_\_

SOC. SEC. NO.\_\_\_\_\_

AGENCY REQUESTED FROM:\_\_\_\_\_

CASE NUMBER\_\_\_\_\_

DISTRICT COURT\_\_\_\_\_

Pursuant to the Freedom Of Information Act, 5 USC 552, and the Privacy Act of 1974, 5 USC 552a, I hereby request copies of the following documents. If for any reason you chose not to send me any of the documents or papers requested then please furnish me with a "Vaughn Index" as set forth in Vaughn v. Rosen, 484 F2d 820(D.C.D.C. 1973).

I am requesting all records, documents, and information you have in your files pertaining to me or mentioning my name.

Please consider this as a first-party request under the FOIA, 5 USC 552, and as a Privacy Act request, 5 USC 552a also.

In the event that some of the material is considered by you to be exempt from disclosure under both Acts, then please include all segregable portions of documents and the specific exemption you are relying upon to deny disclosure of the excised portions. Please note that in order to avoid disclosure you must claim an appropriate exemption under both Acts.

I am requesting that you abide by the statutory time within which to make a determination on this request, that being ten (10) working days from your receipt under Section 552(a) (6)(A)(i).

I request a fee waiver or at least a fee reduction, however, in the event you deny this request for waiver I hereby agree to pay the fees for search and duplication while retaining my right to appeal your denial of waiver. The information requested will not be used for any commercial purpose.

I \_\_\_\_\_ hereby swear under the penalty of perjury that I am requesting all the above information and documents for my personal use.

DATED\_\_\_\_\_

STATE OF\_\_\_\_\_

COUNTY OF\_\_\_\_\_

BEFORE ME, A NOTARY PUBLIC, on this day personally appeared known to me to be the person whose name is subscribed above and, being by me first duly sworn, declared that the information above is true and correct.

Given under my hand and seal of office this\_\_\_\_day of\_\_\_\_\_,20\_\_\_\_.

NOTARY PUBLIC\_\_\_\_\_

My commission expires:\_\_\_\_\_

## Step Two: The Appeal

If the agency does not agree to release the requested records within the mandated ten working days, or you do not believe the exemptions claimed are valid, then file your appeal directly to the Office of Information and Privacy. Usually an agency will send back the standard "ten day letter reply." The ten day letter reply is an acknowledgement that the agency has received your letter and that it is processing your request. What the agency is really hoping for is that you will lose interest and abandon your request.

Most FOIA/PA requests end at this point, simply because the agency successfully stalls the requestor and the requestor hasn't a clue as what to do next.

You must give the agency ten working days to act before filing an appeal to the Office of Information and Privacy. The following is the basic format for an appeal letter. It should also be sent certified, registered return receipt. Keep a copy for your files.

### (Example #2)

Office of Information and Privacy  
U. S. Department of Justice  
Suite 570, Flag Bldg.  
Washington, D. C. 20530

April 14, 2002

RE: FOIA/PRIVACY ACT APPEAL, DENIAL OF ACCESS  
PURSUANT TO 5 USC 552(a) (6); 5 USC 552a

Dear Sir/Madam,

This is an appeal from the denial of records by the Bureau of Prisons, Central Office, as noted in the attached request and for the following reasons and facts:

1. On March 17, 2002, I mailed a request for records to the Central Office of the Bureau of Prisons. A copy of that request is attached to this appeal. I have not received any responsive records, nor have I received a determination on my request.

2. The Bureau of Prisons has failed to comply with the provisions of the Freedom of Information Act/Privacy Act regarding release of records.

3. The Bureau of Prisons has exceeded the statutory time limits for providing the records requested.

Therefore, and for the above reasons and facts, it is evident that the Bureau of Prisons has denied me access to records and documents to which I am entitled under the statutes. This appeal is being submitted in a good faith attempt to obtain compliance by the Bureau of Prisons to the statutory provisions of the FOIA/PA regarding disclosure and to avoid the costs of litigation.

Please instruct the Bureau of Prisons, Central Office to furnish the records as requested. I would also appreciate your compliance with Section 552(a)(6)(A)(ii) regarding the response time to this appeal.

Respectfully submitted,

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John Doe  
1900 Simler Avenue  
Big Spring, TX 79720

## Step Three: The Lawsuit

After allowing the Office of Information and Privacy twenty (20) working days, it may be time to file suit. Filing a lawsuit against the requested agency is the only way to obtain the information that you are after. The Prison Litigation Reform Act has made filing suit come with a price tag. It now costs \$150.00 to file your complaint, so obviously you have to be serious about what you want.

There is no getting around this, but if you do not have the money, you file in forma pauperis status with the court for a long-term payment schedule you can cope with. Then again, if you prevail in your lawsuit, the cost of filing will be

remitted and paid by the agency that resisted you. This is true even if the agency immediately upon receiving notice of the suit releases the records you requested, thereby mooting the suit. Courts are aware of an agency's tactics of not releasing clearly disclosable records unless they are sued.

To discourage such an abuse of the FOIA by forcing citizens to the expense of filing suit to obtain the requested records the Courts have determined that agency release after suit is filed but prior to adjudication on the merits to be the legal equivalent of "prevailing" on the merits. In federal cases you can file in the United States District Court for the District Of Columbia, 333 Constitution Avenue, NW Washington, D.C. 20001. Or you can sue in the district of your choice. It is a wise and helpful move to send the Clerk of Courts a letter requesting the local rules and other paperwork you will require.

**(Example NO. 3)**

District Clerk  
District of Columbia  
U.S. Courthouse  
333 Constitution Ave. NW  
Washington, DC 20001

December 8, 2002

Dear Sir/Madam,  
I am requesting the following documents from your office:  
1. A copy of the local court rules governing civil' actions.  
2. A standard summons form.  
3. Civil cover sheet(s).  
4. A standard form for civil actions under 42 USC 1983.  
5. Any special instructions regarding suits brought under 28 USC 1331.  
Thank you for your prompt response.  
Sincerely, \_\_\_\_\_

John Doe  
1900 Simler Avenue  
Big Spring, TX 79720

Generally speaking, FOIA/PA lawsuits are short, direct and to the point. The complaint will be styled as you the Plaintiff, your address and phone numbers versus the agency which withheld the information as the Defendant and that agency's address and phone numbers. The complaint should state at least the following: 1) that it is an action under the Freedom of Information Act to order the production of agency records previously denied; 2) that the Court has jurisdiction over the action (must cite appropriate state statutes if state action); 3) that the Plaintiff is a prisoner and where (or a private citizen and address); 4) that the agency is a department of the United States (or of an individual state) and 5) that the agency has possession and control over the records that the Plaintiff seeks. The following is a short complaint delineating the proper federal statutes for an FOIA/PA lawsuit:

**THE COMPLAINT:**

**(Example NO. 4)**

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOHN DOE  
1900 SIMLER AVENUE  
BIG SPRING, TEXAS 79720  
(915) 555-8304 - Plaintiff, Civil Action NO. \_\_\_\_\_

v.  
FEDERAL BUREAU OF PRISONS  
320 FIRST STREET, NW  
WASHINGTON, DC 20534 - Defendant.

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (FOIA), 5 USC S 552, as amended, and the Privacy Act (PA), S USC § 582a, to order the production of agency records previously requested by plaintiff pursuant to the above-referenced Acts and which requests have either been ignored or denied by the defendant agency.

2. This Court has jurisdiction over this action pursuant to 5 USC § 552(a) (4) (B) and 5 USC § 552a(g)(1)(B); (g)(1)(D); (g)(3)(A); (g)(3)(B); (g)(4)(A) and (g)(4)(B).

3. Plaintiff, John Doe, is a federal [state] prisoner in the Federal Correctional Institution at Big Spring, Texas. He is the requestor of the withheld records.

4. Defendant Bureau of Prisons is an agency of the United States, and it has possession of, and control over, the records that Plaintiff seeks.

5. The following is a list of the requests made by Plaintiff to the defendant agency and disposition, if any: [this is an example only]

On 10/15/01, plaintiff mailed a FOIA request to the defendant agency. On 10/24/01 a response was received in the form of the standard "10 day letter" assigning a request no. 96-61. No responsive records were furnished and Plaintiff submitted an appeal designated as A-1 on 2/3/02. No responsive records resulted from that appeal. On 4/2/02, plaintiff received yet another "10 day letter" from the agency but no responsive records were sent. A true copy of the above request, appeal and letters attached as Exhibit A.

6. Over ten (10) working days have passed since the Bureau of Prisons received Plaintiff's FOIA/PRIVACY ACT requests and he has not received the responsive records and documents as indicated in paragraph 6, exhibit A. Over twenty (20) working days have passed since the Office of Information and Privacy received plaintiff's appeals and he has not received the responsive records and documents as indicated above. The agency has not claimed any exemptions for non-disclosure that are identifiable under the FOIA or the Privacy Act.

7. Plaintiff has a statutory right to the records that he seeks, and there is no legal basis for the defendant's refusal to disclose them to him. Plaintiff has made a showing that the Federal Bureau of Prisons has improperly withheld agency records.

8. Therefore, Plaintiff prays that this Court:

(1) Declare that defendant's refusal to disclose the records requested by Plaintiff is unlawful;

(2) Issue an injunction to prevent the Bureau of Prisons from relying on their invalid practice of either a) not responding at all to FOIA/PA requests, or b) responding with a standard form "10 day letter, and then not taking any action honoring or denying the request;

(3) Make a written finding that the circumstances surrounding the withholding raise questions whether there has been arbitrary or capricious agency action and make a referral of the matter to the Merit Systems Protection Board for investigation, pursuant to subsection (a) (4) (F);

(4) Award Plaintiff his costs and reasonable attorney's fees in this action;

(5) Expedite this lawsuit pursuant to 28 USC § 1657(a) ; and

(6) Grant such other and further relief as the Court may deem just and proper.

Signed this \_\_\_\_\_ day of \_\_\_\_\_20\_\_\_\_.

John Doe  
1900 Simler Avenue  
Big Spring, TX 79720

I declare under penalty of perjury that the foregoing is true and correct.  
John Doe, \_\_\_\_\_

This document is hereby filed on the \_\_\_\_\_th day of \_\_\_\_\_, 20\_\_\_\_,  
pursuant to the holding in Houston v. Lack, 487 US 266 (1988), by placing it in  
the prison mail receptacle designated for outgoing legal mail.

The exhibits referred to in the complaint are copies of your correspondence to the requested agencies and its replies showing lack of compliance to your requests. Normally you will provide the Clerk of Courts with a cover letter listing all of the documents you are enclosing. This greatly helps the Clerk keep things organized and is the professional way to do things.

**(Example NO. 5)**

Clerk  
United States District Court  
District of Columbia  
333 Constitution Ave., NW  
Washington, D.C. 20001

July 4, 2002

RE: JOHN DOE V. (AGENCY)

Dear Sir/Madam,

Enclosed please find for filing the following documents:

1. COMPLAINT, 5 originals.
2. SUMMONS, 5.
3. APPLICATION TO PROCEED IN FORMA PAUPERIS, 2 originals.
4. PRISONER TRUST ACCOUNT REPORT, 1 original and one copy.
5. CONSENT TO COLLECTION OF FEES FROM TRUST ACCOUNT, 2 originals.
6. CIVIL COVER SHEET, one original.

Pursuant to 28 U. S.C. s 1915(c), I request that you effect service of the SUMMONS and COMPLAINT on the defendants.

Sincerely,

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John Doe  
1900 Simler Avenue  
Big Spring, TX 79720  
CERTIFIED MAIL - Z 111 111 000

[Note: you must include a copy of the complaint and a summons for The Honorable \_\_\_\_\_, Attorney General of the United States; one for the U. S. Attorney, Civil Division; one for the Agency, and two for the Clerk - be sure to use their correct addresses]

Hopefully the foregoing will be of benefit to those of you seeking information from agency files or your own personal records maintained by a state or federal agency. For those of you anticipating litigation with an agency sometime in the future, the FOIA/PA can be an invaluable adjunct to civil discovery for the simple reason that in order to get discovery you must show how the information is relevant to your case; with the FOIA/PA you do not and this is a big difference. The FOIA/PA is therefore much broader in scope since relevance is not an issue. Remember to start well in advance of your anticipated law suit. If you must sue, then you must order the local court rules from the District Court and follow them to the letter. If the local rules state you have to two-hole punch all documents filed, then you must do it. If you don't follow the local rules, the Clerk does not have to file your pleading. Always include a cover letter showing what you are filing. Always include a certificate of service (except with the complaint). If you follow this advice your law suit will go smoothly. In upcoming articles we will explain the exemptions the agency may claim to deny you access to some of the records requested. Since the exemptions are discretionary instead of mandatory, you may be able to successfully argue for their release. The FOIA/PA can be an important tool, even for finding newly discovered evidence with which to file a second, successive § 2255, but like any tool, you have to know how to use it — and now you do.

**Good luck!**

# Government Agency Addresses:

## **DRUG ENFORCEMENT ADMINISTRATION**

*Requests for Drug Enforcement Administration records should be addressed to:*

**Chief**  
**Freedom of Information Division**  
**Drug Enforcement Administration**  
**1405 Eye Street, NW**  
**Washington, D.C. 20537**

## **FEDERAL BUREAU OF INVESTIGATION**

*Requests for Federal Bureau of Investigation records should be addressed to:*

**Director**  
**Federal Bureau of Investigation**  
**J. Edgar Hoover Building**  
**9th and Pennsylvania Avenue, NW**  
**Washington, D.C. 20535**

## **IMMIGRATION AND NATURALIZATION SERVICE**

*Requests for Immigration and Naturalization Service records should be addressed to:*

**Freedom of Information/Privacy Act Reviewing Officer**  
**Freedom of Information Act/Privacy Act Unit**  
**Immigration and Naturalization Service**  
**425 Eye Street, NW**  
**Washington, D.C. 20536**

## **EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

*Requests for Executive Office for Immigration Review records should be addressed to:*

**Director**  
**Executive Office for Immigration Review**  
**ATTN: Freedom of Information/Privacy Act**  
**Contact**  
**2 Skyline Place**  
**5203 Leesburg Pike, Suite 1609**  
**Falls Church, Virginia 22041**

## **UNITED STATES MARSHALS SERVICE**

*Requests for United States Marshals Service records should be addressed to:*

**FOIA/PA Officer**  
**Office of the General Counsel**  
**U.S. Marshals Service**  
**600 Army - Navy Drive**  
**Arlington, VA 22202-4210**

## **BUREAU OF PRISONS**

*Requests for Bureau of Prisons records should be addressed to:*

**Director**  
**Bureau of Prisons**  
**320 First Street, NW**  
**Washington, D.C. 20534**

## **UNITED STATES PAROLE COMMISSION**

*Requests for United States Parole Commission records should be addressed to:*

**General Counsel**  
**United States Parole Commission**  
**5550 Friendship Boulevard**  
**Chevy Chase, Maryland 20815**

## **INTERPOL-UNITED STATES NATIONAL CENTRAL BUREAU**

*Requests for INTERPOL-United States National Central Bureau records should be addressed to:*

**Chief**  
**INTERPOL-United States National Central Bureau**  
**Department of Justice**  
**10th and Constitution Avenue, NW**  
**Washington, D.C. 20530**

## **INTERNAL REVENUE SERVICE**

*Request for Internal Revenue Service records should be addressed to:*

**Freedom of Information Request**  
**Commissioner of Internal Revenue**  
**Ben Franklin Station**  
**Post Office Box 929**  
**Washington, D.C. 20044**

## **USDOJ TAX DIVISION**

*Requests for Tax Division records should be addressed to:*

**Assistant Attorney General**  
**Tax Division**  
**Department of Justice**  
**10th and Constitution Avenue, NW**  
**Washington, D.C. 20530**

