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## 12 Freedom of Information Act (FOIA)

### 12.1 Generally

The Freedom of Information Act (FOIA) provides the public with access to federal agency records, with certain exceptions. See 5 U.S.C. § 552. The Executive Office for Immigration Review, Office of the General Counsel, responds to FOIA requests for Immigration Court records. See Appendix B (EOIR Directory).

### 12.2 Requests

For detailed guidance on how to file a FOIA request, individuals requesting information under the Freedom of Information Act should consult the Executive Office for Immigration Review (EOIR) website at [www.usdoj.gov/eoir](http://www.usdoj.gov/eoir) or contact the EOIR FOIA unit. See Appendix B (EOIR Directory). General guidelines are as follows.

**(a) Who may file. —**

**(i) Parties. —**

**(A) Inspecting the record. —** Parties to an Immigration Court proceeding, and their legal representatives, may inspect the official record of proceedings by prior arrangement with Immigration Court staff. A FOIA request is not required. See Chapter 1.6(c) (Records).

**(B) Obtaining copies of the record. —** As a general rule, parties may only obtain a copy of the record of proceedings by filing a FOIA request. See subsection (b), below. However, in limited instances, Immigration Court staff have the discretion to provide a party with a copy of the record or portion of the record, without a FOIA request. See Chapter 1.6(c) (Records).

**(ii) Non-parties. —** Persons who are not a party to a proceeding before an Immigration Court must file a FOIA request with the EOIR Office of General Counsel if they wish to see or obtain copies of the record of proceedings. See subsection (b), below.

**(b) How to file. —**

**(i) Form. —** FOIA requests must be made in writing. See 28 C.F.R. § 16.1 et seq. The Executive Office for Immigration Review (EOIR) does not have an official form for filing FOIA requests. The Department of Homeland Security Freedom of Information /Privacy Act Request (Form G-639) should not be used to file such requests. For information on where to file a FOIA request, see Appendix B (EOIR Directory).

**(ii) Information required. —** Requests should thoroughly describe the records sought and include as much identifying information as possible regarding names, dates, subject matter, and location of proceedings. For example, if a request pertains to an alien in removal proceedings, the request should contain the full name and alien registration number (“A number”) of that alien. The more precise and comprehensive the information provided in the FOIA request, the better and more expeditiously the request can be processed.

**(iii) Fee. —** No fee is required to file a FOIA request, but fees may be charged to locate, review, and reproduce records. See 28 C.F.R. § 16.3(c).

**(iv) Processing times. —** Processing times for FOIA requests vary depending on the nature of the request and the location of the records.

**(c) When to file. —**

**(i) Timing. —** A FOIA request should be filed as soon as possible, especially when a party is facing a filing deadline.

**(ii) Effect on filing deadlines. —** Parties should not delay the filing of an application, motion, brief, appeal, or other document while awaiting a response to a FOIA request. Non-receipt of materials requested pursuant to FOIA does *not* excuse a party’s failure to meet a filing deadline.

**(d) Limitations. —**

**(i) Statutory exemptions. —** Certain information in agency records, such as classified material and information that would cause a clearly unwarranted invasion of personal privacy, is exempted from release under FOIA. See 5 U.S.C. § 552(b)(1)-(9). Where appropriate, such information is redacted (i.e., removed or cut out), and a copy of the redacted record is provided to the requesting party. If material is redacted, the reasons for the redaction are indicated.

**(ii) Agency's duty.** — The FOIA statute does not require the Executive Office for Immigration Review, its Office of the General Counsel, or the Immigration Courts to perform legal research, nor does it entitle the requesting person to copies of documents that are available for sale or on the internet.

**(iii) Subject's consent.** — When a FOIA request seeks information that is exempt from disclosure on the grounds of personal privacy, the subject of the record must consent in writing to the release of the information.

### 12.3 Denials

If a FOIA request is denied, either in whole or in part, the requesting party may appeal the decision to the Office of Information and Privacy, Department of Justice. Information on how to appeal a denial of a FOIA request is available on the Office of Information and Privacy website at [www.usdoj.gov/oip](http://www.usdoj.gov/oip). The rules regarding FOIA appeals can be found at 28 C.F.R. § 16.9.

