

U.S. Department of State  
Information Access Guide



April 13, 2010

Office of Information Programs and Services

Information Access Guide

I	<b>Introduction</b>	3
II	<b>Freedom of Information Act (FOIA)</b>	4
	1. General	
	2. FOIA Exemptions	
	3. FOIA Reading Room	
III	<b>Department of State Records</b>	5
	1. Records Maintained by the Department of State	
	2. Records Available Without Making a FOIA Request	
	3. Records Available at the National Archives	
	4. Department of State Public Reading Room	
IV	<b>Requesting information under the Freedom of Information Act (FOIA)</b>	7
	1. Where to Make a FOIA Request	
	2. How to Make a FOIA Request	
	3. What to Expect Next	
	4. Expeditious Handling	
V	<b>Requesting Personal Records under the FOIA</b>	11
	1. General	
	2. Types of Personal Records Maintained at the Department of State	
	3. Making a Request for Your Own Records	
	4. Access to Someone Else's Records	
	5. U.S. Passport Records	
	6. Visa Records	
	7. Deceased Persons	
VI	<b>Requesting Personal Records under the Privacy Act</b>	17
	1. General	
	2. Filing a Privacy Act Request	
VII	<b>Fees</b>	18
	1. Introduction	
	2. Requester Categories	
	3. Agreement to Pay Applicable Fees	
	4. Fee Waivers	
	5. Fees Charged	
VIII	<b>Appeals</b>	21
	1. Denial of Access	
	2. Fee Waiver/Expeditious Handling	

IX **Mandatory Declassification Review (MDR)**

23

1. General
2. Where to File a Request for MDR
3. How to Request MDR
4. Appealing an MDR decision

## **I Introduction**

The Electronic Freedom of Information Act Amendments of 1996 (E-FOIA) was signed into law on October 2, 1996. The amendments require agencies to prepare a guide for requesting access to information maintained by the appropriate agency.

On December 14, 2005 President George W. Bush issued Executive Order 13392, part of which required each agency to provide a plan for improving the implementation of the Freedom of Information Act (FOIA). The Department of State's plan, entitled "Review of Department FOIA Operations and Plan for Improvement" lists a number of milestones for improving the Department's FOIA operations. One of these milestones requires the Department to consolidate information on requesting access to Department of State records into a single document.

Consistent with these requirements, the Office of Information Programs and Services (IPS) has prepared this guide for requesting Department of State records. These guidelines, along with **Title 22 Code of Federal Regulations (CFR), part 171**, will provide all of the necessary information needed to file a request for access to Department of State records.

## II Freedom of Information Act (FOIA)

### 1. General

The Freedom of Information Act (FOIA) is found in Title 5 of the United States Code, Section 552. The FOIA was last amended by the “Openness Promotes Effectiveness in our National Government Act of 2007.”

- The Freedom of Information Act (FOIA) generally provides that any person has the right to request access to federal agency records or information except to the extent the records are protected from disclosure by any of nine exemptions contained in the law or by one of three special law enforcement record exclusions.
- The FOIA applies only to federal agencies and does not create a right of access to records held by Congress, the courts, or by state or local government agencies.
- The FOIA does not require agencies to do research for you, answer written questions, or in any other way create records (such as lists or statistics) in order to respond to a request.

### 2. FOIA Exemptions

The nine exemption categories that authorize government agencies to withhold information are:

- 1) classified information for national defense or foreign policy;
- 2) internal personnel rules and practices;
- 3) information that is exempt under other laws;
- 4) trade secrets and confidential business information;
- 5) inter-agency or intra-agency memoranda or letters that are protected by legal privileges;
- 6) personnel and medical files;
- 7) law enforcement records or information;
- 8) information concerning bank supervision; and
- 9) geological and geophysical information.

The three exclusions pertain to particularly sensitive law enforcement and national security matters.

### 3. FOIA Reading Room

Subsection (a)(2) of the FOIA requires that certain types of records -- final agency opinions and orders rendered in the adjudication of cases, specific policy statements, certain administrative staff manuals, and some records previously processed for disclosure under the Act -- be routinely made "available for public inspection and copying." This was commonly referred to as the "Reading Room" provision. You may access these records by visiting the Department's [Electronic Reading Room](#).

### **III Department of State Records**

#### **1. Records Maintained by the Department of State**

The Department of State maintains records dealing with:

- a. The formulation and execution of U.S. **Foreign** policy
- b. The administration and operations of the Department of State and U.S. missions abroad
- c. Applications from U.S. citizens for U.S. passports
- d. Visa requests from non-citizens to enter the U.S.
- e. Consular assistance given to U.S. citizens abroad
- f. Current and former employees of the Department of State

For more information on the organization and responsibility of the Department of State, go to [Department Organization](#).

#### **2. Records Available Without Making a FOIA Request**

Before submitting a request for Department of State records, you may wish to search through the Department's FOIA web site and the web sites of the offices and bureaus within the Department of State.

Information available on the Department's web site includes:

- a. Frequently requested documents released under the FOIA.
- b. [Declassified/Released Document Collections](#).
- c. Special records collections of continuing public interest.
- d. Regulations, policy statements, administrative rulings and manuals, and other reference materials.
- e. The Department of State's [Annual FOIA Reports](#).
- f. Major Department of State [Publications](#), including Country Reports, Human Rights Reports, and Trafficking in Persons Reports.
- g. [Foreign Relations of the United States \(FRUS\)](#) series.

Most offices or bureaus within the Department of State maintain their own web sites and post releases electronically, including reports, background notes, remarks and fact sheets. A list of the offices and bureaus within the Department is available in the [Alphabetical List of Bureaus and Offices](#).

#### **3. Records Available at the National Archives**

Generally permanent records 25 years and older, pre-1925 passport and pre-1940 visa records are property of the National Archives and Records Administration (NARA). For information on how to locate Department of State Records at the National Archives go to [State Department Records in the National Archives](#).

#### **4. Department of State Public Reading Room**

The Department of State also maintains a Public Reading Room that is open to the general public during regular business hours. To schedule a visit, please call the FOIA Requester Service Center on the FOIA Hotline at 202-261-8484. Most of the information available in our Public Reading Room is posted on the Department's web site.

## **IV Requesting Information under the Freedom of Information Act (FOIA)**

The access procedures and guidelines for the availability of Department of State records and information to the public is recorded in 22 Code of Federal Regulations (CFR) 171. A copy of 22CFR171 can be found on the Department's FOIA web site.

### **1. Where to Make a FOIA Request**

You can submit your request by mail, fax, or online by using our [Electronic FOIA Request](#).

**Fax** - (202) 261-8579

#### **Address**

Office of Information Programs and Services  
A/GIS/IPS/RL  
Department of State, SA-2  
Washington, DC 20522-8100

Re: Freedom of Information Act Request

### **2. How to Make a FOIA Request**

1. There are no special forms needed for making a request but your request must be made in writing.
2. Determine whether the information you are looking for is with the Department of State.
3. Write down what information you are seeking with as much detail as possible to help us locate the requested document(s). There are no special forms for filing a request. You may use a plain sheet of paper or your letterhead.

Please note: the FOIA does not require agencies to do research for you, answer written questions, or in any other way create records (such as lists or statistics) in order to respond to a request.

4. Provide us with your full name, current address, telephone number, and (if you would like) your email address.
5. Determine your fee category. For purposes of fees only, the FOIA divides requests into four general categories.
6. State the amount that you are willing to pay for your request. Since there may be fees associated with the processing of your request, please indicate how much you are willing to pay. If you are asking the Department to consider reducing or waiving the

## UNCLASSIFIED

fees associated with the processing of your request, please explain the reasons why your request should be granted a fee waiver.

7. If you are requesting a copy of a Department of State Contract, please provide us with the contract or solicitation number and a willingness to pay up to \$300 per contract.

The following information will assist us in conducting a search:

- Type of record;
- Timeframe of record (when was the record created);
- Specific subject matter, country, person and/or organization;
- Offices or consulates originating or receiving the record;
- Particular event, policy or circumstance that led to the creation of the record;
- Reason why you believe the record exists;
- If requesting information involving a contract with the Department of State, the contract number, approximate date, type of contract, and name of contractor.

If you are requesting personal information on yourself or on behalf of someone else, please see additional guidance in the [Requesting Personal Information under the FOIA](#) and [Requesting Personal Records under the Privacy Act](#) sections of this.

### 3. What to Expect Next

- The Department of State will make every attempt to meet the statutory time requirements to respond to your request. The Department's initial response will advise you of the date of receipt, the case number assigned to your request, and whether or not the records you are seeking are under the Department's control.
- Please be aware that some requests, depending on the volume of records, the complexity of the search, and/or the sensitivity of the subject matter, will require additional time to complete. If a request presents unusual circumstances -- such as the volume of the records sought -- you will be notified and offered an opportunity to limit the scope of your request in order to facilitate its processing. For the latest statistics regarding the average time it takes to process a FOIA request, go to the most recent **Department of State FOIA Annual Report**.
- In general, requests are handled in the order in which they are received. The Department of State does, however, have a "multi-track" response system to facilitate the processing of simpler requests, rather than putting all requests in a single "queue." However, we usually do not know the number and complexity of responsive records until all searches have been returned. Similarly, until we have had the opportunity to review the records we will not know how much consultation with other offices or agencies is necessary. Thus, requests can move between tracks. For more on multi-track processing, go to **22 CFR 171.12(e)**.

## UNCLASSIFIED

- Once your request is perfected, the Department must look for, identify, and retrieve material, in paper or electronic form that is responsive to your request including page-by-page or line-by-line identification of material within documents. Many FOIA/PA requests to the Department require searches of multiple records systems, offices and/or overseas posts. For more information on how Department of State Records are organized, go to the **Records Management** page.
- After the search is completed, the Department must examine each record to determine whether and to what extent the record is responsive to the FOIA request and the extent to which it may be disclosed. This often requires IPS to consult with the offices and bureaus within the Department and other federal agencies.
- You will receive a substantive response when your request is fulfilled, denied in part or denied in full. If your request is complex, you may receive more than one substantive response on a rolling basis.
- It is the Department of State's policy to release information to the maximum extent possible. If some information must be deleted from a record which is released in part, you will see that the amount of information deleted will be indicated at the place where the deletion is made. If an entire record is withheld, you will be informed of the volume— number of documents, for example— which has not been released. If information is withheld, you will be notified of the approximate amount of information withheld and the basis for the withholding. For information withheld in part or in full, you will be provided instructions on how to appeal the Department's decision.
- Once your case is completed, the Department will assess the fees accrued during its processing and you will be notified in writing of any payment that you may owe.

#### **4. Expeditious Handling**

Requests and appeals shall be taken out of order and given expedited treatment whenever a requester has demonstrated that there exists a "compelling need" for the information.

A "compelling need" is deemed to exist where the requester can demonstrate one of the following:

1. Failure to obtain requested information on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.
2. Substantial due process rights of the requester would be impaired by the failure to process immediately. In most cases, a request will not be expedited merely on the basis that the requester is facing a court deadline in a judicial proceeding.
3. Substantial humanitarian concerns would be harmed by the failure to process immediately.

UNCLASSIFIED

4. The information is urgently needed by an individual primarily engaged in publicizing information in order to inform the public concerning actual or alleged government activity. News media requesters would normally qualify; however, other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public, not just a particular segment or group.

(a) Urgently needed means that the information has a particular value that will be lost if not distributed quickly. Ordinarily this means a breaking news story of general public interest. Information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the breaking nature of the story.

(b) Actual or alleged Federal Government activity. The information concerns some actions taken, contemplated, or alleged by or about the government of the United States, or one of its components or agencies, including the Congress.

A request for expedited processing must be accompanied by a statement setting forth the reasons why your request should be expedited. For more on Expeditious Handling, go to **22 CFR 171.12(b)**.

## V Requesting Personal Records under the FOIA

### 1. General

In order to protect your privacy as well as the privacy of others, you will need to provide us with either a notarized statement or a statement signed under penalty of perjury stating that you are the person that you say you are. If you are signing under penalty of perjury, your request must be **dated** and must have your **original signature** with the following statement:

*"I [declare, certify, verify, or state] under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct."*

We cannot accept a copy or facsimile of your signature so your request must be sent by mail.

Please note: we do not accept Form DS 5505 Authorization for Release of Information Under the Privacy Act. We also do not accept Department of Justice or Department of Homeland Security forms.

### 2. Types of Personal Records Maintained by the U.S. Department of State

The Department of State maintains the following personal records:

- Applications from U.S. citizens for U.S. passports
- Visa requests from non-citizens to enter the U.S.
- Personal correspondence with U.S. Embassies, Consulates, and Missions abroad
- Employment records of current and former employees of the Department of State

Generally, pre-1925 passport and pre-1940 visa records are with the National Archives and Records Administration (NARA).

For more information on Department of State records maintained on individuals, go to the **Privacy Act** page.

If you would like copies of the following:

- Birth certificate abroad
- Marriage certificate abroad
- Death certificate abroad

Write to:

Passport Services  
Vital Records Section  
1111 19th Street, NW, Suite 510  
Washington, DC 20522-1705

### 3. Making a Request for Your Own Records

1. Determine whether the information you are looking for is with the Department of State. For more information on the types of records maintained by the Department of State, go to [About Department of State Records](#).
2. There are no special forms for making a request for personal information. You may use a plain sheet of paper or your letterhead. Please note: we do not accept Form DS 5505 Authorization for Release of Information Under the Privacy Act. We also do not accept Department of Justice or Department of Homeland Security forms.
3. Write down what information you are looking for with as much detail as possible to help us locate the information. Do not write your request in the form of a question but clearly state what records you are requesting.
4. Please provide the following information:
  - a. Your full name, including distinguishing information (such as Dr., Jr., Sr., III), and any aliases or other names used (such as maiden name);
  - b. Your present mailing address;
  - c. Your date and place of birth;
  - d. Types of records sought;
  - e. Timeframe of record;
  - f. Specific subject matter, country and/or organization;
  - g. The offices or consulates originating or receiving the record;
  - h. The particular event, policy, or circumstance that led to the creation of the record;
  - i. The reason you believe that the record exists within the Department of State and not another government agency;
  - j. Your original signature, as discussed above; and
  - k. Any other information that might help in identifying the record.

Helpful data includes:

- Social security number (at the requester's option)
  - Passport number
5. Your original signature (not a copy or facsimile) and a statement that you are the individual who is the subject of the requested records are required. Your signature must be dated and either notarized or submitted under penalty of perjury by adding the following:

*"I [declare, certify, verify, or state] under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct."*

UNCLASSIFIED

6. Mail your request to the following:

Office of Information Programs and Services  
A/GIS/IPS/RL  
U. S. Department of State, SA-2  
Washington, D. C. 20522-8100

Write "Freedom of Information Act" or "Privacy Act" on the envelope of your request.

#### 4. Access to Someone Else's Records

The Department allows third party access to records under certain conditions.

If you would like to request personal information about another individual or if you are requesting personal records on behalf of someone else, you must provide the following:

- a. Personal verification from the individual(s) whose records are being requested. Please provide a signed, notarized statement from the individual(s), swearing that they are individual whose records are being requested.
- b. Written consent from the individual whose records are being requested. Please provide a signed, notarized statement from the individual(s), authorizing the Department of State to release information to you.

The above statements should bear the original signature of the individual and original seal of the notary and be dated within six months of the date of the request.

If notarization is not possible, the individual(s) whose records are being requested may give authorization under penalty of perjury. The penalty of perjury statement must be mailed to us **with a current date and an original signature** (not a copy or facsimile).

You may submit the authorization on your letterhead or plain paper but **DO NOT submit Third Party Authorizations on the Department of Justice or U.S. Citizenship and Immigration Services forms**. Those forms only authorize the release of records from their respective agencies, not the Department of State. If you cannot provide the authorization please state so; note, however, that the possibility of obtaining documents will be severely limited as a result. For more information on Third Party Authorization, see **22 CFR 171.32(c)**.

#### 5. U.S. Passport Records

If you are requesting U.S. Passport Records, you may request the information from the Office of Information Programs and Services or you may go directly to **Passport Services**. Please note that, while you may receive a quicker response if you go directly to Passport Services, you may be charged additional fees, and it will not be processed under the Freedom of Information Act. To learn more about obtaining passport records directly from Passport Services, go to **[www.travel.state.gov](http://www.travel.state.gov)**.

## UNCLASSIFIED

The following information assists us in searching for your passport records:

- a. Name the passport was issued under;
- b. Passport number;
- c. Date and place of birth of individual;
- d. The date issued (or, if unknown, an approximate range of dates);
- e. The location where the passport was issued;
- f. Additional comments to help locate the record.

### 6. Visa Records

Records relating to visas are maintained in various locations. Please review the [Visa Records Chart](#) below before submitting a request for visa records.

The following information must be provided with your request:

- a. Full Name (surname(s), given name(s), other distinguishing information (such as Jr., Sr., III), and any aliases or other names used);
- b. Date and place of birth;
- c. Visa type (immigrant/non-immigrant, and specific type of visa within these broad categories);
- d. Location of embassy/consulate where visa was issued/denied/pending;
- e. Case number (this is for immigrant visas only);
- f. Whether the visa was issued or denied, and date of such action (if unknown, please provide an approximate range of dates);
- g. What specific documents are requested;
- h. Additional comments to help locate the record.

Please Note:

- If you are requesting information concerning the application of an immigrant visa, you must provide personal verification from both the beneficiary and the petitioner and a statement from the petitioner and the beneficiary authorizing you to receive their personal information. This statement must have an original signature (not a copy or facsimile) and be dated and either notarized or submitted under penalty of perjury.
- Inquiries on visa cases in progress overseas must contact the appropriate **U.S. Embassy or Consulate** handling your case. For a listing of U.S. Embassies and Consulates, go to **<http://usembassy.state.gov/>**.
- Immigration records for individuals who already immigrated to the United States and have been issued a permanent resident alien card, also known as a “green card,” are with the **Department of Homeland Security, Bureau of Citizenship and Immigration Services (USCIS)**.

UNCLASSIFIED

- Section (b)(3) of the Freedom of Information Act exempts from disclosure those agency records that are otherwise protected from release by federal statutes other than the FOIA. One such statute is section 222(f) of the Immigration and Nationality Act (8 USC, section 1202 (f)), which renders confidential those records of the Department of State pertaining to the issuance or refusal of visas or permits to enter the United States. As a result, you should be aware that Department of State visa records are generally exempt from disclosure under the (b)(3) exemption to the FOIA. This is the case regardless of whether the requester is a third party or the visa applicant him/herself, and regardless of whether the visa applicant has authorized the FOIA request. This exemption also applies if the subject is deceased.

Visa Records Chart

The following chart indicates the most likely location for information relating to visa matters. Please note: U.S. Embassies and Consulates do not accept FOIA or Privacy Act requests. All requests for Department of State visa records should be sent to the Office of Information Programs and Services.

Requested Information	Location
<ul style="list-style-type: none"> <li>▪ Inquiries into visa cases in progress overseas</li> </ul>	The U.S. Embassy or Consulate handling the case.
<ul style="list-style-type: none"> <li>▪ Visa denials</li> <li>▪ Non-immigration visa records</li> <li>▪ Immigrant visa inquiries</li> <li>▪ Correspondence to and from an overseas post</li> <li>▪ Copies of visa applications</li> </ul>	Office of Information Programs and Services A/GIS/IPS U.S. Department of State, SA-2 Washington, DC 20522-8001
<ul style="list-style-type: none"> <li>▪ Correspondence to or from the National Visa Center</li> <li>▪ Civil documents presented by petitioner</li> </ul>	National Visa Center Attention: Written Correspondence 32 Rochester Avenue Portsmouth, NH 03801-2909
<ul style="list-style-type: none"> <li>▪ Immigration records for permanent resident aliens</li> <li>▪ Alien Files</li> <li>▪ Copy of visa approval notice</li> <li>▪ Authorization of permission to work in the U.S.</li> <li>▪ Adjudication of:                             <ul style="list-style-type: none"> <li>-immigrant visa petitions;</li> <li>-naturalization petitions;</li> <li>-asylum and refugee applications</li> </ul> </li> </ul>	U.S. Citizenship and Immigration Services National Records Center, FOIA/PA Office P.O. Box 648010 Lee's Summit, MO 64064-8010
<ul style="list-style-type: none"> <li>▪ Visa records from 1910-1940</li> </ul>	Civilian Reference (NWCTC), Room 2600 National Archives at College Park 8601 Adelphi Road College Park, MD 20740-6001

## **7. Deceased Persons**

You may request the records of a deceased person if you can provide proof of death. You should provide the person's date and place of birth and a copy of the death certificate or a newspaper obituary. You should explain the type of material you seek and why you think that the Department of State would have records. Your request will be processed under provisions of the FOIA.

## **VI Requesting Personal Records under the Privacy Act**

### **1. General**

The Privacy Act provides safeguards against invasion of personal privacy through the misuse of records by Federal Agencies. The Act was passed in 1974 to establish controls over what personal information is collected, maintained, used and disseminated by agencies in the executive branch of the Federal Government.

The Privacy Act guarantees three primary rights:

1. The right to see records about oneself, subject to Privacy Act exemptions;
2. The right to request the amendment of records that are not accurate, relevant, timely or complete; and
3. The right of individuals to be protected against unwarranted invasion of their privacy resulting from the collection, maintenance, use, and disclosure of personal information.

### **2. Filing a Privacy Act Request**

The procedures for filing a Privacy Act request for personal records maintained by the Department of State are the same as those described under [Requesting Personal Records under the FOIA](#) in this guide with the following exceptions:

1. You must be a citizen of the United States or an alien lawfully admitted for permanent residence to make a request under the Privacy Act.
2. The Privacy Act permits access to your own records only if those records are within a system of records maintained by the Department of State that are retrieved by an individual's name or personal identifier. For a complete list of the Departments records collections systems, go to Systems of Records Notices (SORNS), located in the [Privacy Act](#) page on the Department's FOIA web site.
3. Records retrieved in the processing of a request made under the Privacy Act will be processed under both the Privacy Act and the FOIA to ensure the greatest possible disclosure of those records.
4. No fees shall be charged for access to or amendment of records requested under the Privacy Act.

All requests for access to a record must reasonably describe the System of Records and the individual's record within the system in sufficient detail to permit identification of the requested record.

At the time the Department grants access to a record, it will also furnish guidelines on how to make a request to amend a record.

## VII Fees

### 1. Introduction

The Freedom of Information Reform Act of 1986 significantly changed the way agencies assessed fees in FOIA requests. FOIA requesters are placed in categories based on their qualifications and intended dissemination (publication/distribution) of released material. Determinations are made on a case-by-case basis. The fact that a requester has previously qualified for inclusion in a particular category will be taken into consideration, but the category may be different in subsequent requests if, for example, the intended use of the records sought is different.

Fees are generally assessed by the Department at the conclusion of processing a request. If it is estimated that allowable charges are likely to exceed \$250, the Department may require a requester to make an advanced payment.

Please note: All checks and money orders sent to the Department prior to the processing of your request (unless a prior agreement exists between you and the Department) will be returned to you.

### 2. Requester Categories

For purposes of fees only, the FOIA divides requests into the following categories:

#### Commercial Use Requests

Commercial use request means a request from or on behalf of one who requests information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. **(22 CFR 171.11(i))**

The Department will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. **(22 CFR 171.15(a))**

#### Educational Institution Requests

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program or programs of scholarly research. **(22 CFR 171.11(m))**

*Note: For Colleges and Universities, a statement signed by the chairperson of the department to which the requester belongs, attesting to the fact that the request is being made on the institution's behalf in accordance with the criteria stated in 22CFR171.15(b), will serve as documentation supporting the requester's inclusion in this category.*

The Department shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. **(22 CFR 171.15(b))**

Noncommercial Scientific Institution Requests

Non-commercial scientific institution means an institution that is not operated on a ``commercial" basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. **(22 CFR 171.11(n))**

The Department shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. **(22 CFR 171.15(b))**

Representatives of the News Media Requests

Representative of the news media means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. News media include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of ``news") who make their products available for purchase by the general public. **(22 CFR 171.11(o))**

The Department shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. **(22 CFR 171.15(c))**

Freelance Journalists Requests

Freelance journalists may be regarded as working for a news organization if they can demonstrate, such as by past publication, a likelihood of publication through a representative of the news media, even though not actually employed by it. **(22 CFR 171.11(o))**

The Department shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. **(22 CFR 171.15(c))**

All Others Requests

Requests from persons not falling within any of the above categories. **(22 CFR 171.11(p))**

The Department shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. **(22 CFR 171.15(d))**

**3. Agreement to Pay Applicable Fees**

By making a FOIA request, the requester shall be considered to have agreed to pay all applicable fees up to \$25.00 unless a fee waiver has been granted. If the Department estimates that the search costs will exceed \$25.00, the requester shall be so notified. Such notice shall offer the requester the opportunity to confer with Department personnel with the object of reformulating the request to meet the requester's needs at a lower cost. The request shall not be processed further unless the requester agrees to pay the estimated fees. **(22 CFR 171.14-16)**

## UNCLASSIFIED

### Fee Limits

It is recommended that the requester indicates the maximum amount of fees that they are willing to pay with their initial request. If it is anticipated that fees will exceed the fee limit set by the requester, or if in processing the request, fees begin to exceed the requester's fee limit, the Department will contact the requester. If the requester has provided a telephone number, the Department will attempt to call the requester to resolve the matter quickly.

### Requests for Copies of Contracts

Requests for copies of contracts require an agreement to pay up to \$300 per contract.

### Fees Owed for Previous Requests

Requesters who owe fees incurred in connection with the processing of previous requests must pay the fees owed prior to the Department processing any new requests. Such requests will be designated "invalid" until payment in full is received. (**22 CFR 171.16(2)**)

## **4. Fee Waivers**

The FOIA permits agencies to furnish documents without charge or at a reduced rate if it is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. (**22 CFR 171.17**)

### Fee Waiver Justification

It is the Department's policy to treat each request for a fee waiver on a case-by-case basis. The Department will not consider a waiver or reduction of fees for requesters (persons or organizations) from whom unpaid fees remain due for a previous FOIA request. To help us make a decision about your request for fee waiver or fee waiver appeal, requesters should provide the following information in your request:

- a. State why you believe the subject matter of your request concerns the operations or activities of the Department of State.
- b. From what other sources have you attempted to obtain this information? Have you tried to obtain this information from the Foreign Relations of the United States Series, the National Archives and Records Administration, or public libraries? Demonstrate the absence of the requested information from the public domain.
- c. Provide a summary of your educational background and work experience, particularly in the field of foreign affairs, and your expertise in the subject area of your request.
- d. Expand on your ability and intent to disseminate the information requested, e.g., Have you published or disseminated information in this or related fields in the past? Is the information requested to be used in a specific article or paper currently being prepared? When is the article to be published or the program to be aired? To what audience is the article or program aimed?

## UNCLASSIFIED

- e. Identify the particular person who will actually use the requested information in scholarly or other analytic work and then disseminate it.
- f. Describe any commercial interest that would be furthered by the disclosure of the requested information, e.g., Will you be paid for the publication or dissemination of the requested information? If so, how much will you be paid and in what manner will you receive payment? Will you receive any other type of commercial benefit due to your dissemination of the requested information? A "commercial interest" is one that furthers a commercial, trade, or profit interest as those terms are commonly understood.

If your request for a fee waiver is not granted, we need your written assurance that you are willing to pay the fees associated with the processing of your request. You may set a limit on the amount you are willing to pay. In some cases, we will not be able to make a determination about a fee waiver until the processing of the request has been completed, at which time an independent evaluation will be made of the releasable material.

For information regarding the requirements for a fee waiver, go to **22 CFR 171.17**

### **5. Fees Charged**

Search and review costs will be calculated based upon the pay scale of the person conducting the search or review. Duplication costs are assessed for only those documents that ultimately are released in full or denied in part; duplication costs are not assessed for documents denied in full, or referred to originating agencies for direct reply.

The Department charges the following fees:

#### Searches

For both manual and computer searches, the Department will charge the estimated direct cost of each search based on the average current salary rates (including benefits) of the categories of personnel doing the searches. The categories of personnel that may conduct searches and the estimated hourly costs based on the average current salary rates (including benefits) for those categories are:

- 1) Administrative/clerical – \$19/hour;
- 2) Professional – \$38/hour;
- 3) Executive -- \$71/hour

#### Review of records

Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are releasable. Charges may be assessed for the initial review only; i.e., the review undertaken the first time the Department analyzes the applicability of a specific exemption to a particular record or portion of a record.

UNCLASSIFIED

Duplication Costs

Duplication of records. Records shall be duplicated at a rate of \$.15 per page.

**No Charge For Requests Under \$10.00**

The Department will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.. This means that if billable costs are less than \$10.00, the requester is not charged.

## **VIII Appeals**

Any adverse determination, including the failure to find material responsive to the request or the denial of access to material, may be administratively appealed within 60 days of the date of receipt by the requester of the Department's denial.

### **1. Denial of Access**

Appeals of denial of access must be made in writing and should be sent to the *Chairman, Appeals Review Panel, c/o Information and Privacy Coordinator/Appeals Officer, U.S. Department of State, A/GIS/IPS/PP, SA-2, Washington, DC 20522-8100*. The appeal letter should state why the requester disagrees with the determination and provide any additional supporting information. This might include examples of material previously released by the State Department.

For FOIA Requests, the Department has twenty working days from the date the letter of appeals is received to respond to an appeal of denial of access. This may be extended for up to an additional 10 days in unusual circumstances.

For Privacy Act Requests, the Department has thirty working days from the date the letter of appeals is received to respond to an appeal of denial of access. The Panel may extend an additional 30 days to respond for good cause shown.

### **2. Fee Waiver/Expeditious Handling**

The Department's decision to refuse to waive or reduce fees, or grant expedition, may also be appealed within 30 days of the receipt of the denial by writing to *Chief of the Requester Liaison Division, c/o Information and Privacy Coordinator, U.S. Department of State, A/GIS/IPS/RL, SA-2, Washington, DC 20522-8100*. The appeal letter should contain as much information and documentation as possible to support the request for a waiver or reduction of fees.

For FOIA Requests, the Department has twenty working days from the date the letter of appeal is received to respond to an appeal of a decision of a refusal to reduce or waive fees. For Privacy Act requests, the Department has thirty working days from the date the letter of appeal is received to respond to an appeal of a decision of a refusal to reduce or waive fees.

For FOIA and Privacy Act Requests, the Department has ten working days from the date the letter of appeals is received to respond to an appeal of denial of expeditious processing of a case.

If, on appeal, the denial is upheld in whole or in part, the requester has the right to seek judicial review the Department's actions.

## **IX Mandatory Declassification Review (MDR)**

### **1. General**

MDR is a mechanism provided in Section 3.5 of Executive Order 13526 (which replaced Executive Order 12958) whereby an individual may request the declassification review of specific classified material that (s)he is able to identify so that the agency may retrieve it with reasonable effort.

Section 3.5 provides that information classified under this order or predecessor orders shall be subject to a review for declassification by the originating agency if:

- 1) the request for a review describes the document or material containing the information with sufficient specificity to enable the agency to locate it with a reasonable amount of effort;
- 2) the document or material containing the information responsive to the request is not contained within an operational file exempted from search and review, publication, and disclosure under 5 U.S.C 552 in accordance with law
- 3) the information has not been reviewed for declassification within the past 2 years. If the agency has reviewed the information within the past 2 years, or the information is the subject of pending litigation, the agency shall inform the requester of this fact and of the requester's appeal rights.

### **2. Where to File a Request for MDR**

MDR requests must be sent to the following address:

Office of Information Programs and Services  
A/GIS/IPS/RL  
U. S. Department of State, SA-2  
Washington, D. C. 20522-8100

### **3. How to Request MDR**

The request should specifically mention MDR under E.O. 13526, and not the Freedom of Information or Privacy Acts. The request must identify the document or information to be reviewed with as much specificity as possible, e.g., "Embassy London telegram 88994 of August 22, 1997." As a general rule, MDRs should be filed only for the declassification and release of information known to be classified. MDRs will not be opened for general requests for information, e.g. "information on Tonga-U.S. relations from 2002 to the present", though that may be an appropriate subject of a FOIA request.

UNCLASSIFIED

Although the purpose of an MDR is to provide declassification review of classified material, material that has been declassified pursuant to the review may nonetheless be withheld for other reasons, most typically because withholding is required by the FOIA.

**4. Appealing an MDR Decision**

Requesters who are denied declassification and release of information pursuant to an MDR request can file an administrative appeal with the Department's Appeals Review Panel (ARP). A negative decision by the ARP may be appealed to the Interagency Security Classification Appeals Panel (ISCAP), the highest appellate body for MDR decisions.

**Please note:** the codification of the rules for requesting mandatory declassification review in 22 Code of Federal Regulations (CFR) 171, Subpart C refer to Executive Order 12958. Although Executive Order 12958 has been superseded by Executive Order 13526, the instructions in 22CFR171, Subpart C for requesting mandatory declassification review remain valid.

**Questions regarding access to Department of State records should be directed to the FOIA Requester Service Center by calling the FOIA Hotline at (202) 261-8484.**