



# FOIA Overview

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⌘ 5 USC 552 & 552a FOIA

⌘ T:\NRCS\FOIA\USDOJ FOIA Guide

⌘ <http://www.da.usda.gov/foia.htm>

interest in disclosure, if any, must be weighed against the privacy interest in nondisclosure.<sup>140</sup>

### Public Interest

Once it has been determined that a substantial privacy interest is threatened by a requested disclosure, the second step in the balancing process comes into play; this stage of the analysis requires an assessment of the public interest in disclosure.<sup>141</sup> The burden of establishing that disclosure would serve the public interest is on the requester.<sup>142</sup> In DOJ v. Reporters Committee for Freedom of the Press, the Supreme Court limited the concept of public interest under the FOIA to the "core purpose" for which Congress enacted it: To "shed[] light on an agency's performance of its statutory duties."<sup>143</sup> Information that does not directly

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<sup>139</sup>(...continued)

\*16 (stating that information must be disclosed when there is no significant privacy interest, even if public interest is also de minimis).

<sup>140</sup> See Ripaskis, 746 F.2d at 3; Favish, 541 U.S. at 171 ("The term 'unwarranted' requires us to balance the family's privacy interest against the public interest in disclosure.") (Exemption 7(C)).

<sup>141</sup> See FOIA Update, Vol. X, No. 2, at 7 ("FOIA Counselor: Exemption 6 and Exemption 7(C): Step-by-Step Decisionmaking").

<sup>142</sup> See Associated Press v. DOD, 549 F.3d 62, 66 (2d Cir. 2008) ("The requesting party bears the burden of establishing that disclosure of personal information would serve a public interest cognizable under FOIA."); Carter v. U.S. Dept of Commerce, 830 F.2d 388, 391 nn.8 & 13 (D.C. Cir. 1987); see also NARA v. Favish, 541 U.S. 157, 175 (2004) (instructing that the balance does not even come "into play" when a requester has produced no evidence to "warrant a belief by a reasonable person that the alleged Government impropriety might have occurred") (Exemption 7(C)); Rogers v. Davis, No. 08-177, 2009 WL 213034, at \*2 (E.D. Mo. Jan. 28, 2009) ("The burden of establishing that the disclosure would serve the public interest . . . is on the requester."); Salas v. Office of Inspector General, 577 F. Supp. 2d 105, 112 (D.D.C. 2008) ("It is the requester's obligation to articulate a public interest sufficient to outweigh an individual's privacy interest, and the public interest must be significant."); Lipsey v. EOUSA, No. 06-423, 2007 WL 842956, at \*5 (D.D.C. Mar. 19, 2007) ("Once a privacy interest is identified under Exemption 7(C), the FOIA records requester must establish that (1) the public interest is a significant one; and (2) the information is likely to advance that interest."); Prison Legal News v. Lappin, 436 F. Supp. 2d 17, 22 (D.D.C. 2006) ("The burden of satisfying the 'public interest standard' is on the requester.").

<sup>143</sup> 489 U.S. 749, 773 (1989); see Consumers' Checkbook Ctr. for the Study of Servs. v. HHS, 554 F.3d 1046, 1051 (D.C. Cir. 2009) ("The requested information must 'shed[] light on an agency's performance of its statutory duties.'" (quoting Reporters Comm., 489 U.S. at 773)); see also OKane v. U.S. Customs Serv., 169 F.3d 1308, 1310 (11th Cir. 1999) (per curiam) (affirming that Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, 110 Stat. 3048, do not overrule Reporters Committee definition of "public interest"); cf. Favish, 541 U.S. at 172 (reiterating the Reporters Committee "public interest" standard, and characterizing it as "a structural necessity in a real democracy" that "should not be dismissed" – despite

(continued...)

What is the rule if you receive a subpoena or are asked to provide notes and decisions regarding a visit to one of your applicants properties?

It's this one

- A. Appear in court with the records.
- B. Send the request or subpoena to the State FOIA Officer.
- C. Ignore it -- you are a government employee and not subject to local subpoenas.
- D. Refuse to accept it, and claim you don't know the person named on the subpoena.



# Law and Policy

⌘ Freedom of  
Information Act  
(FOIA)



**GM - 120, Part 408,  
Subpart C**

⌘ Privacy Act (PA)





# Privacy Act Provisions

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- ⌘ Protects individuals against unwarranted invasion of privacy - personal information held by Federal agencies (Exemption 6) .
- ⌘ Grants individuals the right to access their records.
- ⌘ Procedures for correcting errors.



# FOIA Provisions

⌘ Right of access to Federal records

⌘ Underlying principles

☑ Inherent in democratic ideal

☑ Informed citizenry

☑ Vital to democratic society functioning

☑ Check against corruption

☑ Hold “governors” accountable



# FOIA Requests

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- ⌘ Most common -- cooperator case file information, to ensure compliance
- ⌘ Request must be in writing and sent to State FOIA Officer.
- ⌘ FOIA requests need not be made for publications, directives, and similar documents
- ⌘ Other agencies may have access without requests being made.

<b>Number</b>	<b>Date of Req.</b>	<b>Charges</b>	<b>Notes</b>
NRCS-MO-2009-1	12/29/2008	\$0.00	CAFO Permit
NRCS-MO-2009-2	3/12/2009	\$0.00	CAFO Permit
NRCS-MO-2009-3	3/15/2009	\$0.00	CAFO Permit
NRCS-MO-2009-4	5/4/2009	\$0.00	Farmers who received Federal funding for fencing projects thru EQIP
NRCS-MO-2009-5	5/20/2009	\$0.00	Job Announcement – Resume of Selected Party
NRCS-MO-2009-6	5/20/2009	\$0.00	Job Announcement – Resume of Selected Party
NRCS-MO-2009-7	5/20/2009	\$0.00	Job Announcement – Resume of Selected Party
NRCS-MO-2009-8	5/20/2009	\$0.00	Job Announcement – Resume of Selected Party
NRCS-MO-2009-9	5/20/2009	\$0.00	Job Announcement – Resume of Selected Party
NRCS-MO-2009-10	5/26/2009	\$0.00	Landowner – Operator Dispute
NRCS-MO-2009-11	5/22/2009	\$0.00	Job Announcement – Resume of Selected Party
NRCS-MO-2009-12	5/22/2009	\$0.00	Job Announcement – Resume of Selected Party
NRCS-MO-2009-13	5/22/2009	\$0.00	Job Announcement – Resume of Selected Party
NRCS-MO-2009-14	6/2/2009	\$0.00	Copy of termination of contract letter
NRCS-MO-2009-15	6/24/2009	\$0.00	Public concern regarding farming operation
NRCS-MO-2009-16	6/29/2009	\$0.00	Landowner Concern regarding Agency decision
NRCS-MO-2009-17	7/28/2009	\$0.00	Landowner – Operator dispute
NRCS-MO-2009-18	8/11/2009	\$0.00	Landowner dispute with Agency





# Farm Bill Provision

- ⌘ Not releasable - information provided by individuals to participate in conservation programs
- ⌘ Exceptions
  - ☑ Statistical or aggregate information
  - ☑ To other agencies to enforce or assist in providing conservation programs



# FOIA Requests

## ⌘ Information usually not given:

- ☑ Trade secrets/financial information (impair government's ability to obtain) -- Exemption (b)(4)
- ☑ Personal information that would clearly be an unwarranted invasion of personal privacy -- Exemption (b)(6)

## ⌘ Information available on you the employee.

- ☑ Name, position, grade, and salary
- ☑ Office location

# FOIA

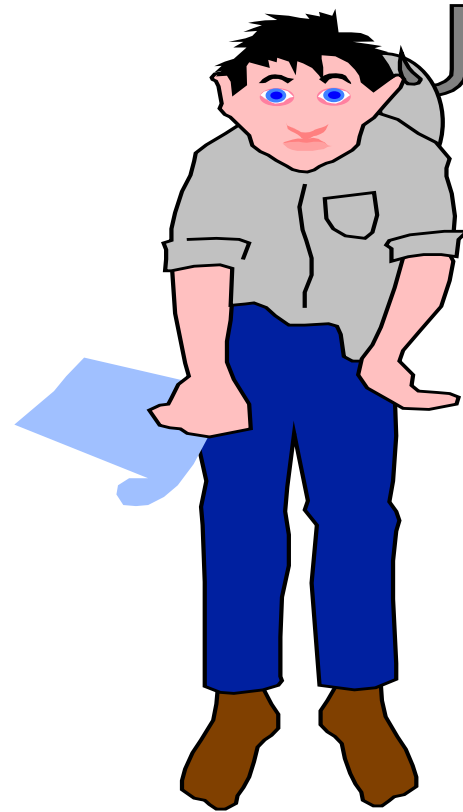
⌘ Who ever releases the information is on the Hook. Be careful what you release.

⌘ Personal liability

☑ Misdemeanor

☑ \$5000 fine

☑ Farm Bill -- \$10,000 fine  
or 1 year in prison!



# FOIA

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## Questions?