

## **CMS FOIA Frequently Asked Questions**

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### **1) What information is available under the FOIA?**

Federal agencies are required to disclose records upon receipt of a written request, with some exceptions. This right of access is enforceable in court. The Freedom of Information Act (FOIA) provides public access to all federal agency records except for those records (or portions of those records) that are protected from disclosure by any of nine exemptions or three exclusions (reasons for which an agency may withhold records from a requester).

The exemptions cover:

1. classified national defense and foreign relations information,
2. internal agency rules and practices,
3. information that is prohibited from disclosure by another law,
4. trade secrets and other confidential business information,
5. inter-agency or intra-agency communications that are protected by legal privileges,
6. information involving matters of personal privacy,
7. certain information compiled for law enforcement purposes,
8. information relating to the supervision of financial institutions, and
9. geological information on wells.

The three exclusions, which are rarely used, pertain to certain sensitive law enforcement and national security matters.

### **2) How do I request information under the FOIA?**

In order to make a FOIA request, you may submit an online request to the agency FOIA portal or simply email, fax, or write a letter to the CMS FOIA Office. For the quickest possible handling, mark your communication "Freedom of Information Act Request." You should identify the records that you seek as specifically as possible in order to increase the

likelihood that the CMS will be able to locate them. Any facts that you can furnish about the time, place, authors, events, subjects, and other details of the records will be helpful to us in deciding where to search for the records that you seek.

When you make a FOIA request, you must describe the records that you seek as clearly and specifically as possible and comply with the agency's regulations for making requests. If the agency cannot identify and locate records that you have requested with a reasonable amount of effort, it will not be able to assist you.

### **3) What information is not available under the FOIA?**

The FOIA does not apply to the Congress, the courts, or the central offices of the White House, nor does it apply to records in the custody of state or local governments. However, all state governments have their own FOIA-type statutes. You may request details about a state's records access law by writing to the Office of the Attorney General of that State.

The FOIA does not require a state or local government or a private organization or business to release any records directly to the public, whether such records have been submitted to the federal government or not. However, records submitted to the federal government by such organizations or companies may be available through a FOIA request if it is not protected by a FOIA exemption, such as the one covering trade secrets and confidential business information.

Under the FOIA, you may request and generally receive electronically, or by mail, a copy of any record that is in an agency's files that is not protected from disclosure by one of the exemptions or exclusions. For example, suppose you want to read the latest inspection report on conditions at a nursing home certified for Medicare. You could use the FOIA to request information from CMS.

### **4) May I request records in a specific format?**

Yes, but the records may not be available in the requested format. If you request records that already exist in an electronic format, the FOIA requires agencies in almost all cases to provide these records to you in that same format, if that is what you prefer. However, if you request records that exist only in paper form, and you would like them in an electronic format, the agency is obligated to provide the records in that electronic format only if it can do so with a reasonable amount of effort.

### **5) What happens after my FOIA request is received by CMS?**

When CMS receives your FOIA request it is entered into the automated tracking system and assigned a control number. A FOIA analyst will review your request to understand the types(s) or records you wish to obtain and assign your request to the appropriate program office(s) to search for responsive records. You will receive an acknowledgement letter with a control number and instructions for checking the status of your request.

A FOIA analyst will conduct a line-by-line review of records responsive to your request and prepare a release determination for issuance by the CMS FOIA Officer or designee.

**6) Can I ask questions under the FOIA?**

The FOIA does not require CMS to answer questions, render opinions, or provide subjective evaluations. Requesters must ask for existing records.

**7) What is the cost for getting records under the FOIA?**

The FOIA permits CMS to charge fees to FOIA requesters. For noncommercial requesters, CMS may charge only for the actual cost of searching for records and the cost of making copies. Search fees usually range from about \$23 to \$83 per hour, depending upon the salary levels of the personnel needed for the search.

For noncommercial requests, agencies will not charge for the first two hours of search time or for the first 100 pages of document copying. CMS will not charge if the total processing cost is less than \$25.

You may request a waiver of FOIA processing fees if you can show that the records, when disclosed to you, will contribute significantly to the public's understanding of the operations or activities of the government, and that your request is not predominantly commercial in nature.

**8) Is there any way for me to speed up the response time?**

As a FOIA requester, you may ask CMS for "expedited processing" of your request. However, you should know that the agency will grant this request only under very specific circumstances. In order to qualify, you must certify that there is an imminent threat to the life or physical safety of an individual or, if you are a person primarily engaged in disseminating information to the public and you must demonstrate that there is an urgency to inform the public about certain federal government activity. CMS must decide whether to grant a request for expedited processing within 10 calendar days.

**9) How do I obtain the status of my request?**

CMS strives to handle all FOIA requests in a customer-friendly fashion, in accordance with the FOIA. CMS provides a telephone number and web site that you can use to obtain information about the status of your pending FOIA request. Further, if you wish to raise a concern about the service provided to you by an agency's FOIA office, you may contact the agency official known as a "FOIA Public Liaison."

The CMS website for tracking FOIA requests is:

[http://www.cms.gov/FOIA/04b\\_CheckStatus.asp#TopOfPage](http://www.cms.gov/FOIA/04b_CheckStatus.asp#TopOfPage)

The CMS FOIA Public Liaison can be contacted on (410) 786-5353.

## **10) What happens if CMS denies my request?**

If CMS locates records in response to your request, it can withhold them (or any portion of them) only if they are exempt from disclosure under the FOIA or are prohibited from release by some other law. For records that contain portions of information that is withheld, CMS will clearly mark those portions with the applicable FOIA exemption(s). If CMS denies your request, in whole or in part, it will provide an estimate of the amount of material withheld, state the reason(s) for the denial, and inform you of your right to appeal to the CMS Principal Deputy Administrator.

## **11) Besides withholding any portion of a record, are there other reasons for not releasing records?**

Yes, CMS may not release a record under the following circumstances:

1. A reasonable search for requested information failed to identify / locate responsive records.
2. The request is transferred to another Federal Agency to identify / locate responsive records.
3. The request is withdrawn by the requester.
4. The requester is unwilling to pay fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with the fee estimate.
5. A record has not been described with sufficient specificity to enable CMS personnel or contractors to locate it by conducting a reasonable search.
6. The information requested is not a record within the meaning of the FOIA or HHS regulation.
7. The request is a duplicate request, i.e., the requester asks for the same information more than once. This includes identical requests received via different means, e.g., electronic mail, facsimile, mail, and/or courier, at the same or different times. CMS will act only on the initial request.

## **12) How do I appeal a denial?**

In order to appeal a denial, promptly send a letter to the agency. CMS requires that appeals be submitted within 30 days after the denial. The CMS denial letter should tell you the office to which your appeal letter should be addressed. For the quickest possible handling, you should mark your communication “Freedom of Information Act Appeal.”

As illustrated in the “Sample FOIA Appeal Letter” download on our Overview page, simply ask the CMS Principal Deputy Administrator to review your FOIA request and its denial decision. It is a good idea also to give your reason(s) for believing that the denial was wrong. Be sure to refer to any pertinent communications you have had with CMS on the request and include any tracking number the agency may have assigned to your request. To save time in acting on your appeal, include copies of your FOIA request and the CMS denial letter. You do not need to enclose copies of any documents released to you.

Under the FOIA, CMS has 20 working days (excluding Saturdays, Sundays, and federal holidays) to decide your appeal. Under certain circumstances, CMS may extend the deadline for responding to your appeal by up to 10 working days. Please note that as with initial requests, some appeals may take longer to decide.

### **13) What can I do if my appeal is denied?**

If CMS denies your appeal, or does not respond within 20 working days, you may file a lawsuit. You can file a FOIA lawsuit in the U.S. District Court where you live, where you have your principal place of business, where the documents are kept, or in the District of Columbia. In court, CMS will have to prove that any withheld information is covered by one of the exemptions or exclusions listed in the FOIA or is prohibited from release by some other law. If you win a substantial portion of your case, the court may require the government to pay your court costs and reasonable attorney fees.