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U.S. Department of Labor

Office of the Solicitor  
Washington, D.C. 20210



MAR 16 2017

John Greenwald, Jr.  
[REDACTED]  
[REDACTED]

Dear Mr. Greenwald:

This correspondence is in response to your Freedom of Information Act (FOIA) request dated November 3, 2016 (tracking number 817855) wherein you requested, "a copy of records, electronic or otherwise, of the Internal FOIA Desk Reference Guide, published September 2010 and mentioned in this report... [https://www.dol.gov/sol/foia/2011Chief FOIA Officer Rpt.htm](https://www.dol.gov/sol/foia/2011Chief%20FOIA%20Officer%20Rpt.htm)."

The Office of the Solicitor has completed a search and review process and enclosed are 20 pages of responsive records pertinent to your request.

Under 29 CFR § 70.40(c)(2), charges assessed for the production of records for members of the news media is limited to reproduction costs with no charge for the first one hundred pages. Therefore, there are no costs associated with processing your request.

All questions regarding this response should be directed to Sharon Hudson, SOL FOIA Coordinator on (202) 693-5406.

While we do not consider this to be a denial of your request, you may file an appeal of this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state in writing the grounds for the appeal, and it may include any supporting statements or arguments, but such statements are not required. In order to facilitate processing of the appeal, please include your mailing address and daytime telephone number, as well as a copy of the initial request and copy of this letter. The envelope and letter of the appeal should be clearly marked "Freedom of Information Act Appeal." Any amendment to the appeal must be made in writing and received prior to a decision. The appeal should be addressed to the Solicitor of Labor, Division of Management and Administrative Legal Services, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2420, Washington, DC 20210. Appeals may also be submitted by email to [foiaappeal@dol.gov](mailto:foiaappeal@dol.gov). Appeals submitted to any other email address will not be accepted.

If you need any further assistance or would like to discuss any aspect of your request please do not hesitate to contact this office or the DOL FOIA Public Liaison, Thomas Hicks, at 202-693-5427 or by email at [hicks.thomas@dol.gov](mailto:hicks.thomas@dol.gov).

Sincerely,

*Susan Harthill*

Susan Harthill  
Deputy Solicitor for National Operations

Enclosures

FREEDOM OF INFORMATION ACT (5 U.S.C. § 552)

# FOIA DESK REFERENCE GUIDE



INTRODUCTION

FOIA PROCESSING TIME LIMITS & EXPEDITED PROCESSING PROCEDURES

TYPES OF FEES AND FEE WAIVERS & TYPES OF REQUESTERS

NINE FOIA EXEMPTIONS

DEPARTMENTAL FOIA OVERSIGHT

OFFICE OF INFORMATION SERVICES

LINKS & REFERENCE MATERIALS



U.S. Department of Labor  
Office of Information Services  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# INTRODUCTION

The Freedom of Information Act (FOIA) provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that records or portions of them are protected from public disclosure based upon one of nine exemptions. The FOIA encourages accountability through transparency.

Within the Department of Labor (DOL), day-to-day FOIA operations are largely decentralized. The Chief FOIA Officer and Office of Information Services (OIS) are within DOL's Office of the Solicitor (SOL) and provide overall guidance and department-level administration of FOIA. However, individual DOL component agencies continue to be responsible for directly answering FOIA requests and providing requesters with documents from their agency. Each agency has the flexibility to design a FOIA program that meets its needs, while adhering to the provisions of the statute and DOL's implementing FOIA regulations. Most agencies have delegated their disclosure responsibilities to officials at the Office Director or Division Chief level in the National Office, as well as to their regional offices. Others have delegated their field FOIA responsibilities to district or area offices while some small agencies handle all of their FOIA requests centrally in Washington, DC. When requests involve particularly sensitive matters or involve records maintained by multiple agency components, the Office of the Solicitor may make a consolidated response on behalf of the Department.

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This reference guide was developed to provide Department of Labor FOIA Disclosure Officers, FOIA Coordinators and contacts with an overview of the Freedom of Information Act (5 U.S.C. § 552). It also outlines key principles and information that will provide you with a better understanding of the statute, DOL's implementing FOIA regulations, DOJ guidance and related instructions. It will also serve as a quick guide to assist FOIA Coordinators in processing initial FOIA requests, including those asking for fee waivers and reductions and/or expedited processing.

**FOIA PROCESSING TIME LIMITS & EXPEDITED PROCESSING PROCEDURES**

**TYPES OF FEES AND FEE WAIVERS & TYPES OF REQUESTERS**

**NINE FOIA EXEMPTIONS**

**DEPARTMENTAL FOIA OVERSIGHT**

**OFFICE OF INFORMATION SERVICES**

**LINKS & REFERENCE MATERIALS**



U.S. Department of Labor  
**Office of Information Services**  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# INTRODUCTION

## **WHAT IS THE DEPARTMENT OF LABOR POLICY REGARDING FOIA?**

The Department of Labor is committed to the goal of a more open government. In accordance with the President's January 19, 2009 memos on the "Freedom of Information Act" and "Open Government," DOL looks for opportunities to proactively make information available to the public. In response to a FOIA request, DOL also makes every effort to disclose as much information as possible, only withholding information when we find that its disclosure would result in foreseeable harm to an interest protected under FOIA.

## **WHO MAY MAKE A FOIA REQUEST?**

The Freedom of Information Act provides that any person, regardless of citizenship, has the right to request access to federal agency records. Organizational entities and corporations are "persons" for FOIA purposes as well as state, local and tribal governments. Excluded from this definition are fugitives from justice (if the requested records relate to the requester's fugitive status) and Federal agencies. Members of Congress generally have the same right of access as any other person except that a request from the chair of a committee or sub-committee (not the ranking minority member) is treated as a congressional oversight request.

**FOIA PROCESSING TIME LIMITS & EXPEDITED PROCESSING PROCEDURES**

**TYPES OF FEES AND FEE WAIVERS & TYPES OF REQUESTERS**

**NINE FOIA EXEMPTIONS**

**DEPARTMENTAL FOIA OVERSIGHT**

**OFFICE OF INFORMATION SERVICES**

**LINKS & REFERENCE MATERIALS**



U.S. Department of Labor  
**Office of Information Services**  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# INTRODUCTION

## HOW ARE FOIA REQUESTS MADE?

So that DOL can respond to FOIA requests in an accurate, timely and complete manner, DOL requires that all FOIA requests to be submitted in writing and received by postal mail, delivery service/courier, facsimile or e-mail. If the request is made by e-mail, it must be sent to [foiarequest@dol.gov](mailto:foiarequest@dol.gov). Requests submitted to any other e-mail address will not be accepted.

Initial FOIA requests submitted to DOL should be sent to the appropriate official/ officer for the component that maintains the records. If requesters cannot determine who the request should be addressed to, they may submit request directly to the Office of the Solicitor (SOL). Whether sent by email or other means, requests should also include a mailing address and a telephone number so that the requester can be contacted if issues arise during the processing of their request and so that responsive records can be sent to the requester.

Requests must "reasonably describe" the records sought. The description must be sufficiently detailed to allow DOL FOIA processors to identify the requested records. The request should specify the subject of the record, the date or approximate date the record was created, the person or office that created it and any other identifying information that will help the agency locate the records. If the request is not clear, you should contact the requester to clarify his/her request. If a request is clarified or narrowed, you must document that modification to the FOIA request in writing. Remember that there is no requirement under the statute or DOL's regulations for agency components to create a new record in order to respond to a FOIA request.

To assist FOIA requesters in submitting requests, DOL has a *Guide for Requesting FOIA Records* on the DOL website — <http://www.dol.gov/dol/foia/guide6.htm>. ■

**FOIA PROCESSING TIME LIMITS & EXPEDITED PROCESSING PROCEDURES**

**TYPES OF FEES AND FEE WAIVERS & TYPES OF REQUESTERS**

**NINE FOIA EXEMPTIONS**

**DEPARTMENTAL FOIA OVERSIGHT**

**OFFICE OF INFORMATION SERVICES**

**LINKS & REFERENCE MATERIALS**



U.S. Department of Labor  
**Office of Information Services**  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# FOIA PROCESSING TIME LIMITS

## WHAT ARE THE FOIA PROCESSING TIME LIMITS?

If you receive a FOIA request for records that are not maintained by your agency you have 10 working days to forward that request to the appropriate office for processing. The statutory time limits begin on the date the request is first received by the agency that maintains the responsive records but no later than 10 working days after it was first received in any DOL component.

In general, the FOIA says that a requester is to receive a response to a FOIA request or administrative appeal within 20 working days from the date it was first received by the component or appeal official responsible for processing the request or appeal. However, in unusual circumstances, such as if the responding agency needs more time to collect or review a large volume of records, the FOIA allows the agency to notify the requester that it needs an additional 10 working days to respond. If the required extension exceeds 10 days, you must allow the requester an opportunity to narrow the scope of the request so that it can be processed within the time limits or arrange for an alternative time frame for responding. If any DOL agency fails to comply with the statutory time limits a requester has the right to consider the request denied and sue the agency to compel disclosure. There is no requirement that a requester exhaust his/her administrative remedies (appeal) when the agency has failed to respond to a request within the statutory time limit. In addition, if you miss the deadline and have not notified the requester that you have unusual circumstances, you cannot charge search fees, or if the requester is a representative of the news media or educational or scientific institution, you cannot charge for copies.

TYPES OF FEES AND FEE WAIVERS & TYPES OF REQUESTERS

NINE FOIA EXEMPTIONS

DEPARTMENTAL FOIA OVERSIGHT

OFFICE OF INFORMATION SERVICES

LINKS & REFERENCE MATERIALS



U.S. Department of Labor  
**Office of Information Services**  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

### **FOIA PROCESSING TIME LIMITS, CONT'D**

The amended FOIA allows FOIA Coordinators to toll (meaning stop the clock) the twenty-day time limit. You may toll a request "one time" to obtain information from the requester (e.g., to seek additional information concerning the subject matter of the request). You may toll a request "as necessary" to clarify issues pertaining to fee assessments.

Once a request has been processed and a response letter has been issued to the requester, DOL's FOIA regulations give the requester 90 days from the date of the response letter to file an administrative appeal. If the requester is not satisfied after the appeal is adjudicated, he/she can file suit in federal court.

## **EXPEDITED PROCESSING PROCEDURES**

### **WHAT ARE THE PROCEDURES FOR GRANTING EXPEDITED PROCESSING?**

Upon the receipt of a request for expedited processing, the agency component must decide whether or not the request will be granted and notify the requester of the final decision within 10 calendar days. In order for an expedited request to be granted, the requester must establish one of the following: there is an imminent threat to life or physical safety of an individual; there is an urgent need to inform the public about an actual or alleged government activity and the requester is someone primarily engaged in the dissemination of information; failure to disclose the requested records expeditiously will result in substantial loss of due process rights; or the records sought relate to matters of wide spread or exceptional news interest in which there exists possible questions about the government's integrity. ■

**TYPES OF FEES AND FEE WAIVERS & TYPES OF REQUESTERS**

**NINE FOIA EXEMPTIONS**

**DEPARTMENTAL FOIA OVERSIGHT**

**OFFICE OF INFORMATION SERVICES**

**LINKS & REFERENCE MATERIALS**



U.S. Department of Labor  
**Office of Information Services**  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# TYPES OF FEES AND FEE WAIVERS

## FEES

**REPRODUCTION COSTS** – the process of making a copy of a record necessary to respond to a request. Such copy can take the form of paper, microform, audio-visual materials or electronic records.

- \$0.15 per page for black and white copies
- The same as the direct cost for color copies, computer tapes, disks, etc.

**SEARCH TIME** – the process of looking for and retrieving records.

- Clerical Employee Conducting Search: \$20.00 per hour
- Professional Employee Conducting Search: \$40.00 per hour

**REVIEW TIME** – the process of examining records, including audio-visual, electronic mail, etc., located in response to a request to determine whether any portion of the located record is exempt from disclosure.

- Clerical Employee Conducting Review: \$20.00 per hour
- Professional Employee Conducting Review: \$40.00 per hour

## WHAT ARE THE PROVISIONS FOR GRANTING A FEE WAIVER?

A requester may be entitled to a waiver or reduction of fees when he/she demonstrates that disclosure of the requested record is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and when disclosure is not primarily in the commercial interest of the requester. The agency Disclosure Officer is responsible for making fee waiver determinations, applying the statute, DOL's regulations and related guidance.

NINE FOIA EXEMPTIONS

DEPARTMENTAL FOIA OVERSIGHT

OFFICE OF INFORMATION SERVICES

LINKS & REFERENCE MATERIALS



U.S. Department of Labor  
Office of Information Services  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# TYPES OF REQUESTERS

## REQUESTERS

### COMMERCIAL REQUESTERS

*(example: a requester making a request for a commercial purpose)*

- May charge all three fees.

### MEMBERS OF THE MEDIA

- May only charge for costs of copying with no charge for the first 100 pages.

### EDUCATIONAL ENTITIES ENGAGED IN SCHOLARLY RESEARCH

- May only charge for costs of copying with no charge for the first 100 pages.

### ALL OTHERS

- May charge copying costs and search fees
  - No charge for first 100 pages of copying
  - No charge for first two hours of search time

NINE FOIA EXEMPTIONS

DEPARTMENTAL FOIA OVERSIGHT

OFFICE OF INFORMATION SERVICES

LINKS & REFERENCE MATERIALS



U.S. Department of Labor  
Office of Information Services  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# NINE FOIA EXEMPTIONS

- Exemption 1** 5 U.S.C. § 552(b)(1) exempts from disclosure "National Security Classified Information."
- Exemption 2** 5 U.S.C. § 552(b)(2) exempts records that are related solely to the internal personnel rules and practices of an agency. Exemption 2 encompasses two different categories of information:
- Low Two: Internal matters of a relatively trivial nature, where there is no public interest in disclosure (e.g., file designations, statements of policy on sick leave, and similar administrative records).
  - High Two: More substantive internal matters, the disclosure of which would risk the circumvention of a legal requirement, thereby assisting someone in evading the law (e.g., guidelines for conducting investigations, information relating to the security of the Francis Perkins building, and agency credit card numbers).
- Exemption 3** 5 U.S.C. § 552(b)(3) permits agencies to withhold matters that are "specifically" exempted from disclosure by another Federal statute provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters withheld. Examples include:
- Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), Title V of Public Law 107-347 (confidential respondent data)
  - Federal Rules of Criminal Procedure, Rule 6(e) (grand jury information)

DEPARTMENTAL FOIA OVERSIGHT

OFFICE OF INFORMATION SERVICES

LINKS & REFERENCE MATERIALS



U.S. Department of Labor  
**Office of Information Services**  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# NINE FOIA EXEMPTIONS

- Exemption 4** 5 U.S.C. § 552(b)(4) protects "trade secrets and commercial or financial information obtained from a person that is privileged or confidential." This exemption is intended to protect two categories of information:
- (1) Trade secrets – are defined as a secret, commercially valuable plan, formula, process or device that is used in making, preparing, or processing a trade commodity (e.g., manufacturing descriptions, product formulas and schematics or drawings).
  - (2) Commercial or financial information obtained by a person and privileged or confidential. Includes confidential business data submitted to the government, either because it is mandated or because the submitter [person] voluntarily provides it. Disclosure would harm an identifiable private or governmental interest (e.g., overhead costs, unit prices, copyrighted videos, manuals or software).

- Exemption 5** 5 U.S.C. § 552(b)(5) allows an agency to withhold "inter-agency or intra-agency" information that would be "normally privileged" in the civil discovery context. For example:
- Deliberative process privilege includes documents that are pre-decisional or deliberative in nature. Factual information is not usually protected under this privilege.
  - Attorney-work product privilege includes documents that are prepared by an attorney (or under his/her direction) in anticipation of litigation. Facts may be protected in this context.
  - Attorney-client privilege includes confidential communication between a client and an attorney.

DEPARTMENTAL FOIA OVERSIGHT

OFFICE OF INFORMATION SERVICES

LINKS & REFERENCE MATERIALS



U.S. Department of Labor  
Office of Information Services  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# NINE FOIA EXEMPTIONS

- Exemption 6** 5 U.S.C. § 552(b)(6) permits the withholding of information contained in "personnel and medical files" and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- Disclosure determinations under (b)(6) require a balancing of any privacy interest (an individual's right to privacy) against the public interest in disclosure (shedding light on an agency's operations or activities).
  - Privacy rights are limited to living individuals. The Supreme Court has recognized, however, that in some cases, surviving family members may have privacy interests in information concerning deceased individuals.
  - Examples include social security numbers, medical and financial information, biometric information, etc.

- Exemption 7** 5 U.S.C. § 552(b)(7) allows agencies to withhold records compiled for law enforcement purposes under any one of six circumstances (identified as exemptions 7(A) through 7(F)). Law enforcement within the meaning of exemption 7 includes enforcement of both civil and criminal statutes, including labor laws enforced by DOL such as OSHA, MSHS, FLSA and ERISA.

**7(A):** Disclosure could reasonably be expected to interfere with a pending law enforcement matter (includes both pending and contemplated law enforcement proceedings where disclosure would cause some sort of identifiable harm).

**7(B):** Disclosure would deprive a person of a right to a fair trial or an impartial adjudication. To invoke this exemption a trial or adjudication must be pending or imminent and it is more probable than not that the disclosure would interfere with a person's due process rights.

DEPARTMENTAL FOIA OVERSIGHT

OFFICE OF INFORMATION SERVICES

LINKS & REFERENCE MATERIALS



U.S. Department of Labor  
Office of Information Services  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# NINE FOIA EXEMPTIONS

**7(C):** Disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.

- The statutory language of 7(C) establishes a lesser burden of proof than exemption (b)(6) to justify withholding, because law enforcement files are inherently more invasive of privacy than other types of records.
- Individuals have a strong privacy interest in being associated with law enforcement activity, whether their roles is as a suspect, witness or investigator.
- Glomar responses may be appropriate to protect privacy interests of individuals who are named in investigatory records and who are the subject or target of FOIA requests.

**7(D):** Disclosure could reasonably be expected to identify persons or entities providing data to the government in confidence or under circumstances implying confidentiality. This includes identifying factors that would reveal the identity of a confidential source or all information provided by confidential sources if such information is compiled during a criminal or law enforcement investigation).

- Glomar responses may be appropriate if a more specific response to a narrowly targeted request would disclose whether or not an individual acted as a confidential source. It may also be used when disclosure would permit the "linking" of a source to specific source-provided information.

**7(E):** Disclosure would reveal investigative techniques and procedures for law enforcement investigations or prosecutions if disclosure could result in circumvention of the law. This includes techniques that are not generally known to the public as well as law enforcement guides or manuals, where disclosure would render these materials useless for the purpose for which they were created (this exemption has some overlap with FOIA exemption (b)(2)).

DEPARTMENTAL FOIA OVERSIGHT

OFFICE OF INFORMATION SERVICES

LINKS & REFERENCE MATERIALS



U.S. Department of Labor  
Office of Information Services  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# NINE FOIA EXEMPTIONS

**7(F):** Disclosure could reasonably be expected to endanger the life or physical safety of any individual (e.g., undercover agents, witnesses subject to violent reprisals, etc.).

**Exemption 8** 5 U.S.C. § 552(b)(8) allows an agency to withhold information that may impede the regulation of financial institutions.

**Exemption 9** 5 U.S.C. § 552(b)(9) protects geological and geophysical information, including maps, related to oil wells.

## WHAT ARE THE PROCEDURAL DENIALS ALLOWED UNDER FOIA?

In addition to the nine exemptions outlined above, FOIA Disclosure Officers may also deny some part or all of a request for any of the following procedural reasons:

- no responsive records were located;
- the request was referred to another component or agency;
- a requester's refusal to assume responsibility for fees associated with processing the request;
- request was not reasonably described;
- the request was not for an agency record; or
- the request was improper for some other reason.

DEPARTMENTAL FOIA OVERSIGHT

OFFICE OF INFORMATION SERVICES

LINKS & REFERENCE MATERIALS



U.S. Department of Labor  
**Office of Information Services**  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# PROCEDURES FOR RESPONDING TO FOIA REQUESTS

## WHAT ARE THE PROCEDURES FOR RESPONDING TO FOIA REQUESTS?

After the Disclosure Officer has made a decision to grant a request or to deny it in whole or in part and all fee matters have been resolved, he or she must notify the requester in writing of the final determination. When the requested records are being released in full, the response will describe the manner in which the record will be released. When the Disclosure Officer has denied records in full or in part, the response must include: the name and title or position of the Disclosure Officer, a brief statement of the reason for the denial, including the FOIA exemption(s) or procedural denial category relied upon in denying the request. Redactions should be clearly identified within the body of document, citing which exemption applies to the marked material. The response should also include an estimate of the volume of information withheld unless it is otherwise indicated by redactions on the records withheld in part.

When a request for access is denied in full or in part, the requester must be notified of their appeal rights. Appeals must be submitted in writing within 90 days from the date of the response letter. All appeals must be addressed to the Solicitor of Labor, Management and Administrative Legal Services, US Department of Labor, 200 Constitution Avenue, NW, Room 2428, Washington, DC 20010. Alternatively, appeals may be submitted via e-mail to [foiaappeal@dol.gov](mailto:foiaappeal@dol.gov). ■

DEPARTMENTAL FOIA OVERSIGHT

OFFICE OF INFORMATION SERVICES

LINKS & REFERENCE MATERIALS



U.S. Department of Labor  
**Office of Information Services**  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# DEPARTMENTAL FOIA OVERSIGHT

## FOIA OVERSIGHT AT DOL, MANDATED BY STATUTE

Executive Order 13392, issued in December 2005, mandated the creation of three new oversight entities at each Federal agency: Chief FOIA Officer; FOIA Public Liaison; and FOIA Requester Service Centers. The Chief FOIA Officer and FOIA Public Liaison designations were codified in the OPEN Government Act, which became law on December 31, 2007. The following descriptions outline the primary functions of each entity:

**Chief FOIA Officer** is charged with:

- (1) agency-wide responsibility for efficient and appropriate compliance with the FOIA;
- (2) monitoring implementation of FOIA throughout the agency, keeping the agency head, chief legal officer, and the Attorney General appropriately informed of the agency's performance in implementing the FOIA;
- (3) recommending to the agency head such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve FOIA implementation;
- (4) reviewing and reporting to the Attorney General on the agency's performance in implementing the FOIA;
- (5) facilitating public understanding of the purposes of the FOIA's statutory exemptions by including concise descriptions of the exemptions in agency guidance and the annual report; and,
- (6) designating one or more FOIA Public Liaisons.

OFFICE OF INFORMATION SERVICES

LINKS & REFERENCE MATERIALS



U.S. Department of Labor  
**Office of Information Services**  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# DEPARTMENTAL FOIA OVERSIGHT

## **FOIA Public Liaison**

The FOIA Public Liaison serves as a supervisory official whom a FOIA requester can contact in order to raise concerns about the service the requester has received from a FOIA Requester Service Center. The FOIA Public Liaison in turn, attempts to resolve the issue as expeditiously as possible.

## **FOIA Requester Service Centers**

DOL FOIA Coordinators serve as FOIA Requester Service Centers. FOIA Requester Service Centers are the first place that a FOIA requester can contact to seek information regarding the status of a pending FOIA requestor to seek appropriate information about the agency's response. The Centers must ensure appropriate staff to receive and respond to inquiries from FOIA requesters.

At the Department of Labor, the Office of the Solicitor (SOL) serves as the focal point for FOIA activities. The Department's Chief FOIA Officer is the Solicitor of Labor. In addition, the SOL Division of Management and Administrative Legal Services (MALS) houses the Office of Information Services (OIS); Counsel for FOIA, FACA and Privacy Act; as well as the Counsel for Administrative Law which includes the FOIA Appeals Unit. OIS is responsible for DOL's administrative management of the FOIA, including providing department-wide guidance regarding FOIA compliance. The counsel areas are responsible for providing legal advice on FOIA, making administrative appeal determinations, and defending FOIA litigation. ■

OFFICE OF INFORMATION SERVICES

LINKS & REFERENCE MATERIALS



U.S. Department of Labor  
**Office of Information Services**  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# OFFICE OF INFORMATION SERVICES

In the Spring of 2010, the Deputy Secretary of Labor approved the establishment of the Office of Information Services (OIS) within the Office of the Solicitor.

While DOL continues to have a decentralized FOIA operation, meaning that agencies and local offices continue to be responsible for directly answering FOIA requests and providing requesters with documents, the OIS mission is to fulfill the administrative management and coordination function required by FOIA, working with the Chief FOIA Officer and agency FOIA Coordinators to make departmental FOIA services more efficient and effective. OIS is charged with:

- Supporting the goals and initiatives established by the Chief FOIA Officer in carrying out her statutory responsibility for ensuring DOL's efficient and appropriate compliance with the FOIA;
- Providing FOIA guidance to all DOL personnel with FOIA responsibilities (consulting with legal staff as appropriate);
- Providing central administrative support to DOL component agency disclosure officers, coordinators, and contacts as they continue to process and respond to initial FOIA requests for records maintained by their agencies;
- Preparing and submitting DOL FOIA reports, including the annual FOIA Report and the Chief FOIA Officer's report;
- Evaluating and improving DOL's FOIA administrative processes;
- Providing DOL-wide training on FOIA;
- Reviewing DOL FOIA and Privacy Act regulations and guidance to ensure compliance with current law and policy, and recommending policy changes and best practices;
- Administering the Department's FOIA tracking system (SIMS-FOIA) database and FOIA web presence; and
- Assisting agency FOIA officials in resolving disputes between FOIA requesters and DOL agencies, including those involving the newly established Office of Government Information Services (OGIS) within the National Archives. ■

## LINKS & REFERENCE MATERIALS



U.S. Department of Labor  
**Office of Information Services**  
[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
(202) 693.5509

# LINKS & REFERENCE MATERIALS

**Text of the Freedom of Information Act, as amended**

<http://www.justice.gov/oip/amended-foia-redlined.pdf>

**President's Memorandum of January 21, 2009  
Freedom of Information Act**

<http://edocket.access.gpo.gov/2009/pdf/E9-1773.pdf>

**President's Memorandum of January 21, 2009  
Transparency and Open Government**

<http://edocket.access.gpo.gov/2009/pdf/E9-1777.pdf>

**Attorney General's Memorandum of March 19, 2009  
Freedom of Information Act**

<http://www.justice.gov/ag/foia-memo-march2009.pdf>

**Open Government Directive of December 8, 2009**

<http://www.whitehouse.gov/open/documents/open-government-directive>

**Executive Order 12600 of June 23, 1987**

**Predisclosure Notification for Confidential Information**

<http://www.archives.gov/federal-register/codification/executive-order/12600.html>

**Executive Order 13392 of December 14, 2005  
Improving Agency Disclosure of Information**

<http://edocket.access.gpo.gov/2005/pdf/05-24255.pdf>

**DOJ Guide to the Freedom of Information Act**

[http://www.justice.gov/oip/foia\\_guide09.htm](http://www.justice.gov/oip/foia_guide09.htm)

**FOIA Post**

<http://www.justice.gov/oip/foiapost/mainpage.htm>



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[www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm)  
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# LINKS & REFERENCE MATERIALS

## **Statutes found to qualify under FOIA Exemption 3**

<http://www.justice.gov/oip/exemption3-april-2010.pdf>

## **DOL FOIA Regulations**

<http://www.dol.gov/federalregister/PdfDisplay.aspx?DocId=11855>

## **DLMS 5 - Chapter 300, Disclosure of Records under the Freedom of Information Act**

<http://labornet.dol.gov/workplaceresources/policies/DLMS/DLMS05/dlms5-0300.htm>

## **DOL FOIA Reference Guide**

<http://www.dol.gov/dol/foia/guide6.htm>

## **SIMS-FOIA Web Portal**

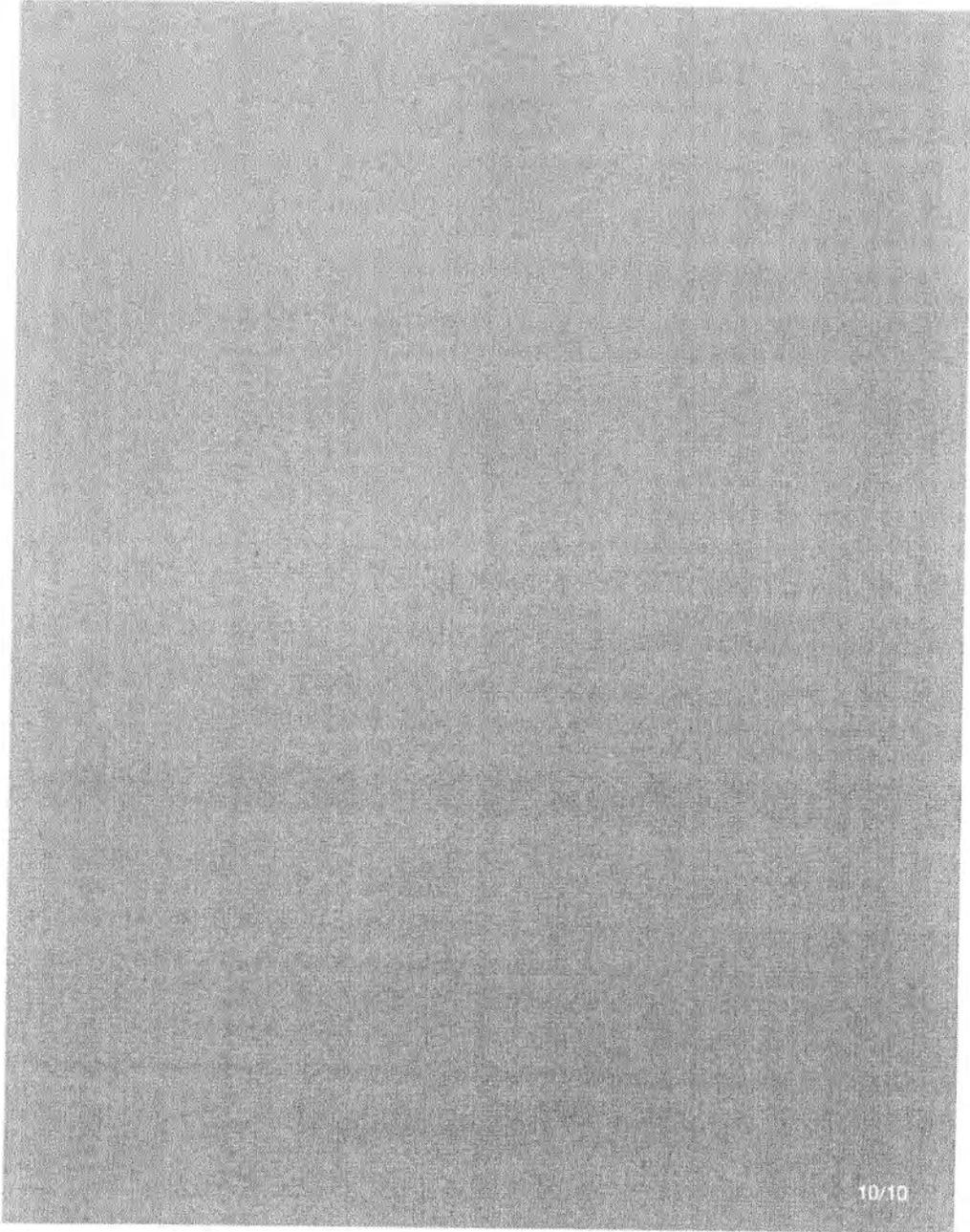
<https://foia.dol.gov/>

This reference guide was developed by the U.S. Department of Labor, Office of Information Services (OIS).

For additional information, regarding Department of Labor FOIA procedures and/or operations, please contact the Office of Information Services at (202) 693-5509 or visit our FOIA website at: [www.dol.gov/dol/foia/main.htm](http://www.dol.gov/dol/foia/main.htm).



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10/10



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