

CHAPTER 7

FREEDOM OF INFORMATION*

A. Introduction

This Chapter describes laws that allow you to request copies of government documents and files. There are several reasons why these documents might be useful to you: you may want to review copies of your files and rap sheets to make sure they are accurate and complete; you may want to get copies of internal memoranda and manuals that lay out procedures prison officials must follow; and, if you are preparing to sue the government, you can use a Freedom of Information Request to gather support for your case.

All fifty states and the District of Columbia have passed some sort of state open records laws.¹ Many of these laws are modeled on the federal Freedom of Information Act, but this Act does not apply to state or municipal agencies, including state prison systems. Only *state* freedom of information laws grant access to state and local government records.

There are specific procedures that you must follow depending on the type of information you are requesting. Each agency has a different procedure for accessing information. It would be impossible in this Chapter to outline the procedures for every agency. Instead, this Chapter will give you an overview as to the law itself and what rights you have under the Freedom of Information Act (“FOIA”), the Privacy Act (“PA”), and the New York Freedom of Information Law (“FOIL”). Be sure to check the specific procedures for your particular request before filing an information request.

Part B of this Chapter outlines the laws that allow you to get documents from the federal government under FOIA. Part C discusses FOIL. Prisoners in other states should still read Part C to get an idea of the types of documents prisoners most often request and look carefully at the provisions of their state’s freedom of information statute. Part D contains an address for the Federal Citizen Information Center—if you need help figuring out which federal agency to contact, write or call the Federal Citizen Information Center for help. Appendix A contains a list of state freedom of information laws. Appendix B of this Chapter contains a form to use to request information from the Department of Justice (“DOJ”) and other federal agencies. Appendix C contains sample letters for filing a FOIA or PA request and/or appeal. Appendix D lists addresses of organizations and federal government agencies that can provide more help.

B. The Federal Freedom of Information Act

1. Overview & History

Your right to access the files of the United States government is established by two federal laws: the Freedom of Information Act² and the Privacy Act.³ These laws have been tremendously successful in enabling public access to government files. The Freedom of Information Act (“FOIA”) allows you to request all public documents, including records that relate to you. The Privacy Act (“PA”) deals only with personal files. It gives you the right not only to look at your own records, but to correct, change, or remove records that contain incorrect, irrelevant, or incomplete information about you. If your request is incorrectly denied or ignored, you can sue under both laws in federal court.

FOIA and the PA implement one of the basic principles of democracy—the public’s right to know what its government is doing. As written, FOIA gives access to all government records unless they fall into one of nine categories of materials that agencies are allowed, but not required, to withhold.⁴ In practice, however, there are often administrative roadblocks to getting records, and you will probably not get immediate access to everything you think you are entitled to.

* This Chapter was written by Benjamin Van Houten based in part on previous versions by Laura Burdick, Geraldine R. Eure, Susan Widule, and Saleemah Ahamed.

1. See Appendix A.
2. 5 U.S.C. § 552 (2012).
3. 5 U.S.C. § 552(a) (2012).
4. 5 U.S.C. § 552(b) (2012). These exemptions are discussed in Part B(3) of this Chapter.

2. What Agencies Are Covered & What Records Are Available

FOIA applies to documents held by agencies in the executive branch of the *federal* government. These agencies include:

- Military departments;
- Cabinet departments, including the Department of Justice (which controls both the Federal Bureau of Investigation (“FBI”) and federal prisons);
- Departments of the Executive Branch (such as the Department of Defense);
- Independent federal agencies (such as the Environmental Protection Agency (“EPA”));
- Government-controlled corporations (such as the United States Postal Service (“USPS”)).

FOIA does not apply to documents held by federal courts or by Congress.⁵ FOIA also does not apply to documents held by “the President’s immediate personal staff or units within the Executive Office whose sole function is to advise and assist the President.”⁶ FOIA does not apply to state or local governments, including state prison systems; these are usually covered by separate laws.⁷

FOIA allows you to look at almost all records under a federal agency’s control.⁸ The Supreme Court has defined an “agency record” as a document that is (1) either created or obtained by the agency, and (2) under control of the agency at the time of the FOIA request.⁹ Agency records may include many different types of information, such as papers, reports, letters, films, computer tapes, photographs, and sound recordings in the possession, custody, or control of an agency. In 1996, Congress made clear that electronically stored information meets the definition of a “record” under FOIA.¹⁰ In addition, the agency must provide you records in any form or format you request, as long as the document is “readily reproducible” by it in that form or format, and the agency must make reasonable efforts to meet your request.¹¹

FOIA does not allow you to demand answers to questions. The information must already be contained in an existing agency record. An agency is not obligated to create a new record, collect information it does not have, or research or analyze data to meet your request. Your requests for records must “reasonably describe”

5. 5 U.S.C. §§ 551(1)(A)–(B) (2012).

6. *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 156, 100 S. Ct. 960, 971, 63 L.Ed.2d 267, 285 (1980), (*quoting* H.R. Rep. No. 93-1380, at 15 (1974) (Conf. Rep.) (finding that telephone notes taken by Secretary of State Kissinger in his capacity as presidential advisor did not constitute “agency records” under FOIA)); *see also* *Judicial Watch, Inc. v. U.S. Secret Service*, 726 F.3d 208, 228–29 (D.C. Cir. 2013) (holding that logs of visitors to the Office of the President are not agency records covered by FOIA); *Sweetland v. Walters*, 60 F.3d 852, 854 (D.C. Cir. 1995) (holding that the Executive Residence is not an agency under FOIA as it does not exercise independent authority); *Meyer v. Bush*, 981 F.2d 1288, 1293 (D.C. Cir. 1993) (holding that the determination of whether an entity is an “agency” depends on how close operationally the group is to the President, the nature of its delegation from the President, and whether it has a self-contained structure).

7. State government records can be obtained using state freedom of information laws. The New York Freedom of Information Law is discussed in Part C of this Chapter. *See* Appendix A of this Chapter for a list of the freedom of information laws of all 50 states and the District of Columbia.

8. 5 U.S.C. § 552(a)(3)(A) (2012).

9. *U.S. Dept. of Justice v. Tax Analysts*, 492 U.S. 136, 144–45, 109 S. Ct. 2841, 2848, 106 L.Ed.2d 112, 125 (1989) (holding that court opinions in agency files are “agency records”); *see also* *Judicial Watch, Inc. v. U.S. Secret Service*, 726 F.3d 208, 217 (D.C. Cir. 2013) (citing *U.S. Dept. of Justice v. Tax Analysts*, 492 U.S. 136, 144–45, 109 S. Ct. 2841 (1989)).

10. 5 U.S.C. § 552(f) (2012) reads: “For purposes of this section, the term ... ‘record’ and any other term used in this section in reference to information includes ... any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.” This language includes computer disks, CD-ROMs, microfiche, microfilm, and all other digital or electronic media.

11. *See* *Ancient Coin Collectors Guild v. U.S. Dept. of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) (holding that an agency “fulfills its obligations under FOIA ‘if it can demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents’ ”); *Miller v. U.S. Dept. of State*, 779 F.2d 1378, 1383 (8th Cir. 1985) (noting that a department must only make reasonable, but not exhaustive, efforts to respond to a FOIA request); *Maynard v. CIA*, 986 F.2d 547, 559 (1st Cir. 1993) (holding that when the diligence of an agency’s attempt to respond to a FOIA request is at issue, the agency should issue an affidavit which should describe how the search was conducted and how the agency’s filing system would make further search difficult). The new statute rejects *Dismukes v. Dept. of the Interior*, where the court held that an agency “has no obligation under the FOIA to accommodate the plaintiff’s preference.” *Dismukes v. Dept. of the Interior*, 603 F. Supp. 760, 763 (D.D.C. 1984).

the material you want.¹² This does not mean you need to know a specific document or file number, but your request should be specific enough that a government agency employee familiar with the subject area of your request can locate the records with a reasonable amount of effort. Also, a records request under FOIA and the PA must be in writing and must include proper identification as listed.

The PA grants you the power to look at any record within an agency's files that applies to you.¹³ Under the PA, as long as you are either a U.S. citizen or an alien lawfully admitted for permanent residence ("LPR"), you may apply to look at any records about yourself that are kept in the executive branch of the federal government.¹⁴ In other words, a U.S. citizen or LPR can look at any records that are filed according to his or her name, social security number, or some other personal identifier. Detailed information about how to access agency records can be found in Part B(4) of this Chapter, "How to Make Your Request."

3. Exemptions to Record Availability Under FOIA and the PA

FOIA exempts nine categories of materials; in other words, the government does not need to disclose material fitting into any one of these nine categories. However, an agency may not withhold an entire file or document just because part of it is exempt. The agency can only withhold those parts of the record falling within the exemption.¹⁵ In addition, FOIA exemptions are not mandatory. Agency officials can choose to waive the exemptions and release the materials even if they fall within one of the nine categories, unless another statute specifically limits or prohibits disclosure of that kind of information.

The seven most common of the nine FOIA exemptions are¹⁶:

Exemption 1: Records that are "properly classified" in the interests of national defense or foreign policy;

Exemption 2: Documents "related solely to the internal personnel rules and practices of an agency." In practice, this is a very limited exemption because, if a person outside the agency can show a legitimate interest in the records, the material cannot be of "solely" agency interest;¹⁷

Exemption 3: Matters "specifically exempted from disclosure" by other federal statutes. In order for this claim of exemption to stand up in court, the agency must point to a statute that either (a) requires that the category of information be withheld, or (b) establishes particular criteria for withholding information. The agency must also show that the material it is withholding falls under the statute.¹⁸ This exemption is complicated by the fact that there is no complete list of statutes that meet these criteria, and some statutes have their own provisions governing disclosure, disclosure procedures, and exemptions. However, you should always make your request for records under FOIA;

Exemption 4: "Trade secrets and commercial or financial information" given to the government with the expectation that they would be kept secret;

12. 5 U.S.C. § 552(a)(3)(A) (2012).

13. For exemptions, see 5 U.S.C. §§ 552a(j)–(k) (2012).

14. 5 U.S.C. § 552a(a)(2) (2012). This is different from FOIA, which gives access rights to "any person" regardless of citizenship status. 5 U.S.C. § 552(a)(3) (2012).

15. 5 U.S.C. § 552(b) (2012).

16. 5 U.S.C. §§ 552(b)(1)–(7) (2012). The other two rarely used exceptions to FOIA concern government regulation of financial institutions and geological/geophysical information. Please refer to the statute, 5 U.S.C. §§ 552(b)(8)–(9) (2012), for more information.

17. *See* *Miner v. Dept. of Navy*, 131 S. Ct. 1259, 1271, 179 L.Ed.2d 268 (2011) (holding that Exemption 2 "encompasses only records relating to issues of employee relations and human resources"); *Dept. of Air Force v. Rose*, 425 U.S. 352, 369–70, 96 S. Ct. 1592, 1603, 48 L.Ed.2d 11, 26 (1976) (holding that Exemption 2 does not apply to matters of "genuine and significant public interest" and observing that Congress' purpose in enacting Exemption 2 was "to relieve agencies of the burden of assembling and maintaining for public inspection matter in which the public could not reasonably be expected to have an interest").

18. *See* *McDonnell v. United States*, 4 F.3d 1227, 1249 (3d Cir. 1993) (noting that burden of showing a document falls within scope of statute rests on the government); *see generally*, *ACLU of New Jersey v. F.B.I.*, 733 F.3d 526, 531 (3d Cir. 2013) (noting that the agency bears the burden of justifying a withholding of information under a FOIA exemption); *Church of Scientology of California v. U.S. Dept. of Army*, 611 F.2d 738, 742 (9th Cir. 1979) (observing that the burden of showing a document is exempt from disclosure falls on the agency resisting disclosure).

Exemption 5: “Inter-agency or intra-agency memorandum or letters.” This exemption protects communications that are meant to be distributed only within the government and that contain advice, opinions, and recommendations that officials offer to each other. This exemption may not be used to withhold facts, agency decisions, or policies;

Exemption 6: “Personnel and medical files and similar files” which could not be released to someone other than the subject of the file without resulting in an “unwarranted invasion of personal privacy.” The files must contain information about someone so intimate that the person could claim an invasion of privacy. Such information includes marital status, legitimacy of children, welfare payments, family fights and reputation,¹⁹ medical details and conditions,²⁰ “rap sheets,”²¹ and the incarceration of United States citizens in foreign prisons.²²

Exemption 7: All “records or information compiled for law enforcement purposes.” In addition to federal law enforcement, this exemption may also apply to records compiled to enforce state law.

Exemption 7 covers many records.²³ For example, law enforcement manuals satisfy the requirements of Exemption 7 and may not be subject to disclosure. Other materials will fall under Exemption 7 if they:

- (a) Might “interfere with [law] enforcement proceedings.” This includes federal and state court proceedings. If release of records could, for example, reveal the government’s evidence or strategy in a criminal case, then that release can be properly excluded;²⁴
- (b) “Would deprive a person a right to a fair trial”;
- (c) Might “constitute an unwarranted invasion of personal privacy.” The majority of courts have held the identities of law enforcement personnel are exempt unless you can show proven, significant misconduct on the part of the investigators.²⁵ In other words, the names of law enforcement personnel will usually not be revealed;

19. *See Rural Hous. Alliance v. U.S. Dept. of Agric.*, 498 F.2d 73, 76–77 (D.C. Cir. 1974) (holding that an investigation report containing detailed personal and medical information of persons allegedly discriminated against by the Department of Agriculture were “within the class of similar files” and its disclosure depended on whether it would result in a “clearly unwarranted invasion of personal privacy”); *but see Long v. Office of Pers. Mgmt.*, 692 F.3d 185, 194 (2d Cir. 2012) (holding that “[w]here public interest favoring disclosure is no more than minimal, a lesser privacy interest suffices to outweigh it”).

20. *See Yonemoto v. Dept. of Veterans Affairs*, 686 F.3d 681, 696 (9th Cir. 2011) (holding that excluding the type of medical illness causing an employee to be absent from work was proper under Exemption 6); *McDonnell v. United States*, 4 F.3d 1227, 1254 (3d Cir. 1993) (noting that a “living individual” may have a “strong privacy interest in withholding his medical records” that outweighs a public request); *Rural Hous. Alliance v. U.S. Dept. of Agric.*, 498 F.2d 73, 77 (D.C. Cir. 1974) (holding that Exemption 6 of FOIA covered a USDA report that included, among other things, individual’s medical condition and history); *Brown v. FBI*, 658 F.2d 71, 74–75 (2d Cir. 1981) (upholding denial of plaintiff’s request for FBI files that included an individual’s possible involvement with illegal drugs as information that falls within Exemption 6).

21. *See U.S. Dept. of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 780, 109 S. Ct. 1468, 1485, 103 L.Ed.2d 774, 800 (1989) (holding that a third-party request for an individual’s rap sheet when the request does not seek “official information” about a government agency is an “unwarranted” invasion of privacy).

22. *See Harbolt v. Dept. of State*, 616 F.2d 772, 774 (5th Cir. 1980) (holding disclosure of names and addresses of U.S. citizens imprisoned in foreign countries on narcotics offenses would be an unwarranted invasion of their privacy).

23. 5 U.S.C. § 552(b)(7) (2012); *see U.S. Dept. of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 756 n.9, 109 S. Ct. 1468, 1473 n.9, 103 L.Ed.2d 774, 785 n.9 (1989) (explaining that the shift from “the would constitute” standard to “the could reasonably be expected to constitute” standard “represents a considered congressional effort ‘to ease considerably a federal law enforcement agency’s burden in invoking [Exemption 7]’”).

24. *See Lynch v. Dept. of the Treasury*, 2000 U.S. App. LEXIS 1392, at *9–13 (9th Cir. 2000) (stating that even though the agency that was party to the trial had closed its investigation, an ongoing interagency task force was sufficient reason for the Department of the Treasury to deny access to the information); *Manna v. U.S. Dept. of Justice*, 51 F.3d 1158, 1164–65 (3d Cir. 1995) (affirming a district court’s finding that government records were properly denied under Exemptions (b)(7)(A) and (D) because disclosure of such information would interfere with future prosecutions and deny sources confidentiality that they were assured).

25. *See, e.g., Long v. Office of Pers. Mgmt.*, 692 F.3d 185, 194 (2d Cir. 2012) (holding that “[w]here public interest favoring disclosure is no more than minimal, a lesser privacy interest suffices to outweigh it,” such as when the identities of federal employees may invade personal privacy); *Sutton v. IRS*, 2007 U.S. Dist. LEXIS 299, at *18, 99 A.F.T.R.2d (RIA) 387 (N.D. Ill. 2007) (holding that the court should balance the public’s interest in disclosure against the interest in non-disclosure of personal information); *Massey v. FBI*, 3 F.3d 620, 624 (2d Cir. 1993) (holding that government employees

(d) Might “disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis.”

Confidential sources may include persons with a close relationship to you or the victim, or persons who have a reasonable fear of retribution.²⁶ If the information is confidential, given to the agency by one source only, and collected in the course of a criminal investigation, agencies are permitted to withhold all of the information provided by that source;

(e) Would disclose investigative techniques, procedures, or guidelines for law enforcement investigations or prosecution that would create a risk of people circumventing the law. This exemption is limited to techniques, procedures, or guidelines not generally known to the public, or not generally known by the public to be useful, and applies even when the government only expects that disclosure would create a risk of people evading the law;²⁷

(f) Might “endanger the life or physical safety of any individual.” This is a frequently claimed exemption, because while it is similar to (7)(c), it does not require the court to consider the public interest in its decision.²⁸

While FOIA requesters are generally sent copies of the information they have requested, there may be instances when the agency may only allow you to see the documents. In *Tax Analysts v. United States Department of Justice*, one court noted that an agency does not need to respond to a FOIA request for copies of documents when the agency has provided an alternative way of accessing the same information.²⁹ For example, if an agency makes the requested information available in a public reading room, this is enough to satisfy that agency’s obligation under FOIA.³⁰ Therefore, if an agency declines to send you copies of the requested information, it must provide you with an alternative form of access.³¹

The Privacy Act (PA) also has exemptions to disclosure. These exemptions are much broader than the FOIA exemptions. The nine PA exemptions are:³²

have a privacy interest in concealing their identities but that that interest must be balanced against the public interest in disclosure); *Anderson v. US Dept. of Justice*, 1999 U.S. Dist. LEXIS 4731, at *8–9 (D.D.C. Mar. 31, 1999) (finding that the names of government witnesses clearly constitute information compiled for law enforcement purposes.)

26. *See Hale v. U.S. Dept. of Justice*, 226 F.3d 1200 (10th Cir. 2000); *see also Hodge v. F.B.I.*, 703 F.3d 575, 581 (D.C. Circuit 2013) (holding that names of witnesses were properly withheld where they had been assured that they would remain confidential).

27. *Blackwell v. F.B.I.*, 646 F.3d 37, 42 (D.C. Cir. 2011) (holding that documents containing information regarding FBI procedures used during forensic examinations were properly excluded from FOIA request); *Mayer Brown LLP v. IRS*, 562 F.3d 1190 (D.C. Cir. 2009) (affirming that the IRS did not have to disclose documents if revealing them could reasonably be expected to risk helping or training a person to break the law, especially because tax crimes involve a cost-benefit analysis).

29. *See, e.g., Hodge v. F.B.I.*, 703 F.3d 575, 581 (D.C. Cir. 2013) (holding that names of witnesses were properly withheld where they had been assured that they would remain confidential); *Anderson v. US Dept. of Justice*, U.S. Dist. LEXIS 4731 (D.D.C. Mar. 31, 1999) (finding the prisoner could not obtain witness names from a police lineup because they were protected by FOIA and privacy act exemptions covering information compiled for law enforcement purposes and protecting witness safety and privacy); *Ferreira v. Drug Enforcement Admin.*, 874 F. Supp. 15, 17 (D.C. Cir. 1995) (holding that the DEA properly withheld the names and identities of agents when the disclosure could reasonably be expected to endanger their life or physical safety).

29. *Tax Analysts v. U.S. Dept. of Justice*, 845 F.2d 1060, 1067; 269 U.S. App. D.C. 315 (D.C. Cir. 1988) (holding an agency may not avoid producing its records in response to a FOIA request by directing the requester to a public source *outside* the agency that has the same information—the agency itself must provide access), *aff’d*, 492 U.S. 136, 109 S. Ct. 2841, 106 L.Ed.2d 112 (1989).

30. *Tax Analysts v. U.S. Dept. of Justice*, 845 F.2d 1060, 1067 (D.C. Cir. 1988) (holding an agency may not avoid producing its records in response to a FOIA request by directing the requester to a public source outside the agency that has the same information), *aff’d*, 492 U.S. 136, 109 S. Ct. 2841, 106 L.Ed.2d 112 (1989); *see also Oglesby v. U.S. Dept. of the Army*, 920 F.2d 57, 70 (D.C. Cir. 1990) (finding an agency is not required to mail information in response to a FOIA request when that information has been made available to the public in another format); *Grunfeld & Harrick v. U.S. Customs Serv.*, 709 F.2d 41, 42–43 (11th Cir. 1983) (holding an agency was not required to mail documents in response to a FOIA request when the documents were available for viewing and copying at the custom house in Puerto Rico).

31. *Tax Analysts v. U.S. Dept. of Justice*, 845 F.2d 1060, 1067 (D.C. Cir. 1988) (holding an agency may not avoid producing its records in response to a FOIA request by directing the requester to a public source outside the agency that has the same information).

32. 5 U.S.C. §§ 552a(j)–(k) (2012). *See, e.g., Bassiouni v. FBI*, 436 F.3d 712 (7th Cir. 2006) (where the FBI refused to amend a person’s file, which contained 25 to 30-year-old memoranda pertaining to his activities concerning the Middle East, the district court properly granted the FBI summary judgment on the person’s action under the Privacy Act because

- (1) Material maintained by the Central Intelligence Agency (“CIA”);³³
- (2) Material maintained by a law enforcement agency. This includes police, corrections, and prosecutors’ offices;³⁴
- (3) Material that is “properly” secret in the interests of national defense or foreign policy;³⁵
- (4) Material compiled for criminal investigative law enforcement purposes by agencies whose principal function is not law enforcement;³⁶
- (5) Material contained in Secret Service record systems, relating to protection of the President and others whom the Secret Service protects;³⁷
- (6) Material required by statute to be maintained and used solely as statistical records;³⁸
- (7) Material that identifies individuals who were promised that their identity would be kept secret when they provided information to the government as part of a background check for a job application;³⁹
- (8) Material related to testing or examination used only to determine individual qualifications for appointment or promotion in the federal service;⁴⁰ or
- (9) Material that would identify individuals who were promised that their identity would be kept secret when they provided information used in promotion decisions for members of the armed forces.⁴¹

You should always request information under both FOIA and the PA. Agencies may not withhold information when it is exempt under one statute but not exempt under the other.⁴² In other words, “[i]f a FOIA exemption covers the documents, but a Privacy Act exemption does not, the documents must be released under the Privacy Act; if a Privacy Act exemption but not a FOIA exemption applies, the documents must be released under FOIA.”⁴³

Do not let the exemptions stop you from making requests, as the records may be available under an agency or court interpretation. In addition, agencies are not required to withhold information just because a particular exemption *could* be applied. Agency officials can choose to waive the exemptions and release the materials you requested. If information is withheld, you can challenge that decision by writing an administrative appeal letter or filing a lawsuit.

4. How to Make Your Request for Information from the Department of Justice

As noted above, every agency has a very specific procedure that you must follow in order for your FOIA or PA request to be granted. This Subsection will only describe the procedures that you must follow if you are seeking to request information from the DOJ. To get information from other agencies, or if you do not know which agency holds the information you want, you can consult any government directory or the “United States Government Manual.”

To order a \$33 copy of the “United States Government Manual,” send requests to:

Superintendent of Documents
P.O. Box 371954
Pittsburgh, PA 15250-7954,

Your mail order must include a check, money order, GPO Deposit Account, VISA, Master Card, or Discover payment. Cash is not accepted.

the memos were pertinent to the FBI's law enforcement activity.)

33. 5 U.S.C. § 552a(j)(1) (2012).

34. 5 U.S.C. § 552a(j)(2) (2012) To be exempt, the record by an agency under this section must consist of information compiled to identify individual criminal offenders and alleged offenders; information compiled for criminal investigation, including reports of informants and investigators; or reports identifiable to an individual that were compiled at any stage of the process of enforcement of the criminal laws.

35. 5 U.S.C. § 552a(k)(1) (2012).

37. 5 U.S.C. § 552a(k)(2) (2012).

38. 5 U.S.C. § 552a(k)(3) (2012).

39. 5 U.S.C. § 552a(k)(4) (2012).

40. 5 U.S.C. § 552a(k)(5) (2012).

41. 5 U.S.C. § 552a(k)(6) (2012).

42. 5 U.S.C. § 552a(k)(7) (2012).

42. 5 U.S.C. §§ 552a(t)(1)–(2) (2012).

43. *Martin v. Office of Special Counsel*, 819 F.2d 1181, 1184–89 260 U.S. App. D.C. 382 (D.C. Cir. 1987) (denying disclosure of information requested by Appellee as such disclosure was exempted by both the PA and the FOIA).

You can also call (202) 512-1800 or access <http://www.usgovernmentmanual.gov/> on the Internet to buy or download the manual.

In general, if you request information from the DOJ, you should try to send your request to the specific division that has the records you want.⁴⁴ If you are uncertain about which division to write, you can send your request to the DOJ's FOIA/PA Mail Referral Unit, and someone in that division will forward your letter to the division they think most likely to have the information you want. All requests should be in writing.

Send requests to:

FOIA/PA Mail Referral Unit, Justice Management Division
Attn: FOIA Request
Department of Justice
Room 115
LOC Building
Washington, DC 20530-0001
(301) 583-7354
Fax (301) 341-0772

The rest of this section addresses how to make a request for information from two divisions of the DOJ: the Federal Bureau of Prisons (“BOP”) and the FBI. It discusses the fees that you will be charged for making such requests, the types of responses you may receive from either the FBI or the BOP, and the appeals process, which may be useful if your request is denied.

(a) Requesting Information from the Federal Bureau of Prisons

The BOP maintains records on current and former prisoners of the federal penal and correctional institutions as well as records relating to the administration of the agency. Part (i) of this Subsection describes how to request information from your institution and Part (ii) describes how to request information from the BOP under FOIA and the PA.

(i) Requesting Information from Your Institution⁴⁵

If you would like access to your Inmate Central File, the BOP encourages you to request this information from your institution. Many records within the Inmate Central File can be disclosed without your filing a FOIA request. These include records relating to your sentence, detainer, participation in programs, classification data, parole information, mail, visits, property, conduct, work, release processing, and general correspondence. You can also request access to some medical records from your institution.

The Warden of your institution should have designated a staff member to receive requests for access to these records. In order to request access to your Inmate Central File or medical records, you should submit a request to this person, who must promptly schedule a time for you to review your file.

Staff members must tell you if there are documents in your Inmate Central File or medical records withheld from you. If you would like access to these withheld documents, you will need to make a FOIA and PA request.

(ii) Requesting information from the BOP under the FOIA and the PA

To file a request for information from the BOP under FOIA, including any information withheld from your review of your Inmate Central File or your medical records, or any other records, your request should:⁴⁶

- (1) Be in writing;

44. See <http://www.justice.gov/agencies/> for more information about each division. (last visited Nov. 4, 2016).

Also see <https://www.justice.gov/oip/find-foia-contact-doj/list> (listing each division of the DOJ with links to how to FOIA contacts at those divisions) (last visited Nov. 4, 2016).

45. All of the information regarding making requests from your institution can be found in Bureau of Prisons, U.S. Dept. of Justice, Program Statement 1351.05 (September 19, 2002, revised 2016), *available at* https://www.bop.gov/policy/progstat/1351_005_CN-2.pdf (last visited March 4, 2017).

46. Bureau of Prisons, U.S. Dept. of Justice, Program Statement 1351.05 (Sept. 19, 2002, 2016), *available at* https://www.bop.gov/policy/progstat/1351_005_CN-2.pdf (last visited March 4, 2017); U.S. Dept. of Justice, Freedom of Information Act Reference Guide (May, 2016) <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide> (last visited Nov. 4, 2016) (click “How to make a FOIA request”).

- (2) Be clearly marked "Freedom of Information Act/Privacy Act Request" on the front of the letter *and* the envelope;
- (3) Clearly describe the records you seek, including the approximate dates covered by the records; you do not need to know the name of the records, but being as specific as possible helps the DOJ to locate your records.
- (4) Include your full name, current address, date of birth, place of birth, and social security number (if you have one); and
- (5) Include your federal register number and institution where last housed.

You must also verify your identity in one of the following ways:

- (1) Complete and sign Form DOJ-361 (See Appendix B);
- (2) Have the signature on the request witnessed by a notary; or
- (3) Include the following statement before the signature on the requested letter: "I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]."

The DOJ has stated that "if you request information about yourself and do not follow one of the procedures [described above], your request cannot be processed."⁴⁷ If you are seeking personal information, make sure that you provide the necessary identification information.

If you are requesting information about someone other than yourself, the information will not be given to you unless:

- (1) You provide a statement by the other person specifically authorizing the release of information; the statement must be signed by that person and either witnessed by a notary or include a declaration made under penalty of perjury; or
- (2) You provide evidence that the subject of the request is deceased, such as a death certificate, or some comparable proof of death such as a newspaper obituary.

Having completed these steps, you may mail your request to⁴⁸:

Eugene Baime, Supervisory Attorney
 FOIA/Privacy Act Requests
 Federal Bureau of Prisons
 Department of Justice
 Room 841, HOLC Building
 Washington, D.C. 20534

If you have access to the internet, you may also submit a request online through the BOP website. The website can be accessed at <http://www.bop.gov/foia/submit.jsp>. The FOIA Requester Service Center can be reached by telephone at (202) 616-7750, and the FOIA Public Liaison can be reached at (202) 514-6655.

(b) Requesting Information from the FBI

The FBI collects evidence in legal cases in which the United States is, or may be, an interested party and investigates violations of certain federal statutes.⁴⁹ Requests for information under FOIA and/or under the PA from the FBI should be addressed to:

Record/Information Dissemination Section
 Federal Bureau of Investigation
 Department of Justice
 170 Marcel Drive
 Winchester, VA 22602-4843

47. U.S. Dept. of Justice, Freedom of Information Act Reference Guide, Revised May 2016, <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide> (last visited Nov. 4, 2016).

48. U.S. Dept. of Justice, Freedom of Information Act Reference Guide, Attachment B, Revised July 2016 <http://www.justice.gov/oip/attachmentb.htm> (last visited Nov. 4, 2016).

49. See 28 U.S.C. § 531-540(C) (2012) (describing various crimes that the FBI is authorized to investigate, for example, crimes involving government officers and employees and killing of state or local law enforcement officers).

To request any information from the FBI, under either FOIA or the PA, your request must:

- (1) Be in writing;
- (2) Provide your full name;
- (3) Provide your date and place of birth; and
- (4) Either be notarized by a notary public, or include the following statement before the signature on the letter: “I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].”

Call FOIA Requester Service Center at (540) 868-4591 to access recorded information on how to submit a new FOIA/PA request to the FBI. Call (540) 868-4593 about the status of an existing FOIA/PA request to the FBI.

If you are requesting information about someone else and that person is alive, your request must include a waiver signed by that person and verified by a notary public. You must also include the person’s full name as well as his or her date and place of birth. If you are requesting information about someone who is deceased, you must provide that person’s name and proof of death, either in the form of an obituary, death certificate, or published record that indicates the person is actually dead.⁵⁰

(c) Fees

Within a reasonable amount of time after your request, staff should provide you with copies of the disclosable documents from your Inmate Central File and/or medical records. Copies cost ten cents per page. In addition, you will be charged a fee for the search time required to process your request. The cost of search time is \$2.25 per fifteen minutes for clerical staff, \$4.50 per fifteen minutes for professional staff, and \$7.50 per fifteen minutes for managerial staff. You will not be charged for the first 100 pages of duplication or the first two hours of search time, and you will only be charged for fees that total above \$8.00.⁵¹

When you file either a FOIA or PA request with the DOJ, the Department assumes that you are willing to pay fees up to \$25. Most of the time, no fees are ever charged.⁵² However, if you cannot, or do not want, to pay \$25, you should state how much you can pay in your request letter. If the DOJ estimates that your fees will be more than \$25, they will let you make a cheaper request or ask you to agree to pay the estimated amount before they process your request. According to the DOJ website, “[y]ou ordinarily will not be required to actually pay the fees until the records have been processed and are ready to be sent to you.”⁵³

The DOJ charges for copies (ten cents per page)—the cost of computer print-outs and tapes, and labor. The cost of labor is \$4.00 per fifteen minutes for clerical staff, \$7.00 per fifteen minutes for professional staff, and \$10.25 per fifteen minutes for managerial staff. The DOJ will not charge you for the first two hours of search time or the first 100 pages of copies. If the total fee is less than \$14, the DOJ will not charge any fee.⁵⁴

You can also request a fee waiver. To get a fee waiver, you must show you are requesting the information to benefit the public, not your own interests. Because you are requesting records about yourself, you will probably not meet this standard.⁵⁵ Inability to pay is not a basis for a fee waiver.⁵⁶ If you are entirely without a way to pay, you can attempt to request a fee waiver for that reason, but the DOJ usually denies such requests.

50. Telephone Interview with staff member of the Federal Bureau of Investigations (Nov. 13, 2006).

51. See Bureau of Prisons, U.S. Dept. of Justice, Program Statement 1351.05 (Apr. 2, 2015), *available at* http://www.bop.gov/policy/progstat/1351_005.pdf (last visited Nov. 4, 2016).

52. U.S. Dept. of Justice, Freedom of Information Act Reference Guide (May, 2016) <https://www.justice.gov/oip/departments-justice-freedom-information-act-reference-guide> (last visited Nov. 4, 2016).

53. U.S. Dept. of Justice, Freedom of Information Act Reference Guide, Revised May 2016 <https://www.justice.gov/oip/departments-justice-freedom-information-act-reference-guide> (last visited Nov. 4, 2016).

54. U.S. Dept. of Justice, Freedom of Information Act Fees and Fee Waivers, <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fees-feewaivers.pdf> (last visited Nov. 4, 2016).

55. U.S. Dept. of Justice, Freedom of Information Act Reference Guide (May, 2016) <https://www.justice.gov/oip/departments-justice-freedom-information-act-reference-guide> how (last visited Nov. 4, 2016) (stating that requests for fee waivers from individuals who are seeking records pertaining to themselves usually do not meet this standard).

56. U.S. Dept. of Justice, Freedom of Information Act Reference Guide (May, 2016) <https://www.justice.gov/oip/departments-justice-freedom-information-act-reference-guide> (last visited Nov. 4, 2016).

(d) Initial Response to Requests

Once a division of the DOJ has processed your request and any fee issues have been resolved, the division will send you a response. This response may either be (1) the information you requested, (2) some of the information you requested and a letter explaining why part of your request was denied, or (3) a letter explaining why your entire request was denied. If information is being withheld, the letter will tell you whether the information is being withheld because of one of the exemptions to the PA or FOIA. Also, note that in some cases you may receive the documents a short time after you receive this response.

The BOP should respond to your request within twenty business days, not counting Saturdays, Sundays, and legal holidays. The twenty-day period begins when the BOP's FOIA office receives your request. The BOP may extend the initial response time an additional ten business days when one of the following applies:

- (1) Records must be collected from field offices;
- (2) A "voluminous" (large) quantity of records must be located, compiled, and reviewed in response to the request; or
- (3) The request requires that the BOP consult with another agency that has a substantial interest in the information, or among two or more other DOJ Divisions.

When the BOP needs more time to process your request, they will inform you in writing and give you the opportunity to modify your request.⁵⁷

5. What to Do if Your Request is Denied

If your initial request is denied, you should first file an administrative appeal with the agency from which you are requesting information. If your administrative appeal is also denied, you can file a lawsuit.

(a) Filing an Appeal

You should file an appeal if you are not satisfied with the response you have received to your FOIA request. Your appeal should be:

- (1) In writing;
- (2) Marked "Freedom of Information Act Appeal"—both on the front of the envelope and on the appeal itself;
- (3) Received within sixty days of the date on the DOJ's initial letter; and
- (4) Addressed to:

Office of Information Policy
 United States Department of Justice
 Attn: Freedom of Information Act Appeal
 Suite 11050
 1425 New York Avenue, N.W.
 Washington, DC 20530-0001

Your appeal should include the name of the Component (office within the agency) that denied your request, the initial request number the Component assigned to the request, and the date of the BOP's action. If no request number has been assigned, you should try to enclose a copy of the BOP's determination letter with your appeal. You should also explain your reasons for disagreeing with the BOP's denial of your request. Do not attach specific documents unless they are directly related to a point you are making in the appeal.⁵⁸ Once your appeal has been received, it will be reviewed by an attorney in the Office of Information Policy ("OIP"). At that point, the OIP will either (1) affirm the BOP's decision, (2) affirm part of the BOP's decision and release other information requested, or (3) reverse or modify the original decision and send the request to the BOP to reprocess the request.⁵⁹

57. U.S. Dept. of Justice, Freedom of Information Act Reference Guide (May, 2016), <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide> (last visited Nov. 4, 2016).

58. U.S. Dept. of Justice, Freedom of Information Act Reference Guide (May, 2016) <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide> (last visited Nov. 4, 2016).

59. 28 C.F.R. § 16.9 (2012); U.S. Dept. of Justice, Freedom of Information Act Reference Guide (May, 2016) <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide> (last visited Nov. 4, 2016).

(b) Filing a Lawsuit

If the appeal does not get you the information you requested, you can file a lawsuit to force the agency to release the documents. You have up to six years after the date on which your administrative appeal was denied to file a lawsuit,⁶⁰ but you should try to file as soon as possible to demonstrate to the court that you need the information.

Filing a FOIA complaint should be relatively cheap and simple.⁶¹ Sometimes, as soon as the complaint is filed, the government will release the documents without further litigation. If you are denied documents that you think are clearly covered by FOIA, you may wish to draft and file your own short-form complaint. In addition, you should consider filing a “Motion for a *Vaughn* Index” using the sample *Vaughn* motion reproduced in Appendix C-5 at the end of this Chapter.⁶² This is a routine motion under which the government agency will be required to give you an itemized index describing the documents it is withholding and the justification it claims for withholding each.

After you file your complaint, the burden is on the government to come forward and justify why it is withholding the information.

60. 28 U.S.C. § 2401(a) (2012).

61. Various resources are available to help jailhouse lawyers filing FOIA lawsuits. The names of several organizations that will advise, though usually not represent, FOIA litigants can be found in Appendix D of this Chapter.

62. This procedure was adopted in *Vaughn v. Rosen*, 484 F.2d 820, 157 U.S. App. D.C. 340 (D.C. Cir. 1973).

C. New York's Freedom of Information Law

1. Right of Access to Information

(a) Generally

The New York Freedom of Information Law⁶³ (“FOIL”) grants New York state prisoners access to some of their prison records, and to statements and memoranda that lay out the Department of Corrections and Community Supervision's policies. This law was patterned after the FOIA (the federal Freedom of Information Act) and was “designed to make available to the public all documents generated by, and in the possession of, the government unless a compelling reason requires their confidentiality.”⁶⁴

FOIL provides that governmental agencies shall make rules and regulations enabling the public to access agency records.⁶⁵ The law also provides for certain exceptions to the general rule of public access, which closely follow the exceptions to the federal FOIA.⁶⁶ The FOIL exemptions are⁶⁷

- (1) Records that do not have to be disclosed under other state or federal statutes. For example, personnel records of corrections officers and police officers that are “used to evaluate performance toward continued employment or promotion” are protected from disclosure under N.Y. Civil Rights Law Section 50-a;⁶⁸
- (2) Records that, if disclosed, would unlawfully invade personal privacy under the provisions of subsection 89(2) of FOIL. Under Section 89, employment, medical or credit history, or personal information reported in confidence to an agency that is not relevant to the agency's ordinary work does not have to be disclosed under FOIL;⁶⁹
- (3) Records that, if disclosed, would interfere with agreements over contract awards that have been made or are about to be made, or negotiations over working conditions;
- (4) “Trade secrets,” or confidential information, submitted to an agency by a commercial business, or derived from information obtained from a commercial business, which would substantially hurt the position of the business if disclosed;
- (5) Records made or gathered for law enforcement purposes and which, if disclosed, would interfere with law enforcement investigations or judicial proceedings. For example, evidence seized from a crime scene may be excluded from disclosure because the evidence may identify a confidential source or reveal “non-routine” techniques or procedures relating to a criminal investigation. Disclosure is also restricted where it would deny a person of the right to a fair trial;⁷⁰
- (6) Records that, if disclosed, would endanger the life or safety of any person, including another prisoner, prison official, or a member of the general public. For this reason, records that would jeopardize prison security, such as a list of correctional records and the location of such records, may be excluded from disclosure;⁷¹

63. N.Y. Pub. Off. Law §§ 84–90 (McKinney 2013).

64. Ralph J. Marino, *The New York Freedom of Information Law*, 43 Fordham L. Rev. 83, 83 (1974). Senator Marino was the Senate sponsor of the law; *see also* N.Y. Pub. Off. Law § 84 (McKinney 2013).

65. N.Y. Pub. Off. Law § 87(1)(b) (McKinney 2013).

66. N.Y. Pub. Off. Law § 87(2) (McKinney 2013).

67. N.Y. Pub. Off. Law § 87(2)(a) (McKinney 2013).

68. N.Y. Civ. Rights Law § 50-a(1) (McKinney 2013).

69. N.Y. Pub. Off. Law § 89(2)(b)(i), (v) (McKinney 2013).

70. N.Y. Pub. Off. Law § 96(2)(d) (McKinney 2014).

71. *See Fournier v. Fish*, 83 A.D.2d 979, 979, 442 N.Y.S.2d 823, 824 (3d Dept. 1981) (holding that correctional facility had properly excluded from its subject matter lists of records kept by the Department of Correctional Services and records kept by the correctional facility, specifically information relating to the exact location in prison facility of documents requested, on basis that disclosure would jeopardize prison security); *Lonski v. Kelly*, 149 A.D.2d 977, 977–78, 540 N.Y.S.2d 114, 114 (4th Dept. 1989) (finding that a videotape showing a prisoner's transfer to a special housing unit could not be released because it revealed the geographical layout of the unit and disclosed identities of prisoners and offices, and therefore could “endanger the life or safety” of the people involved); *Buffalo Broad. Co. v. N.Y. State Dep't of Corr. Servs.*, 155 A.D.2d 106, 112–13, 552 N.Y.S.2d 712, 715 (3d Dept. 1990) (holding that state correctional facilities could properly be required to disclose videotapes, but could, subject to judicial approval, delete parts to prevent interference with criminal prosecutions and personal privacy concerns, and to protect the safety of inmates and corrections staff).

- (7) Inter-agency or intra-agency materials such as agency proposals, recommendations, deliberations, opinions, evaluations, or other agency materials that do not constitute factual information, instructions to staff that affect the public, final agency policy determinations, or external audits;⁷²
- (8) Examination questions or answers that are requested before the final administration of such questions;
- (9) Records that, if disclosed, would place the security of an agency's information technology assets, including its computer systems at risk; and
- (10) Records that are photographs, microphotographs, videotape or other recorded images prepared as allowed by Sections 1111a-e and 1180b-c of the vehicle and traffic law.⁷³

The law also requires that certain records be kept. For example, each agency must keep a reasonably detailed list, by subject matter, of all records in its possession.⁷⁴ This requirement ensures that you will be able to find out what kinds of records exist so that you may decide if you need a copy of them.

(b) Freedom of Information and the Department of Corrections and Community Supervision

The Department of Corrections and Community Supervision ("DOCCS") has issued regulations to comply with FOIL.⁷⁵ These regulations set forth the DOCCS rules about what types of records you may obtain, as well as the procedures you can use to get those records. Where the DOCCS regulations conflict with FOIL, FOIL applies. In other words, DOCCS regulations cannot keep you from obtaining information that FOIL permits you to obtain.

Procedures for obtaining each type of record available under the DOCCS regulations are described in more detail in Part C(3) of this Chapter.

2. General Procedure to Obtain Access to Records

Requests to obtain access to records must be in writing and must reasonably describe the record that you want. Whenever possible, the request should include the title, file number, and date of the record, as well as any other details that may help to locate and identify it. In *Konigsberg v. Coughlin*, the New York State Supreme Court held that a prisoner's request for "any and all files or records kept on me" was a reasonable description. In that case, however, the prisoner records coordinator collected around 2,300 pages of records.⁷⁶ Because you may be charged for the records you receive, it is in your best interest to be as specific as possible when describing the records you want. Always include your name, address, New York identification number, and inmate number in your request. Keep a copy of your request letter. If you are requesting records regarding a specific incident, include the exact date and location (address if possible) of the incident.⁷⁷ A sample FOIL request letter that you can use is included in Appendix C-3.

Within five business days after receiving a request for a DOCCS record, the state must determine if the record is in state custody.⁷⁸ The custodian/records access officer should send you acknowledgment of receipt of your request and notification of the approximate date when your request will be granted or denied.⁷⁹ If the record is not found after a diligent (careful) search, the custodian must indicate that the record cannot be

72. See, e.g., *Russo v. Nassau County Cmty. Coll.*, 81 N.Y.2d 690, 699, 623 N.E.2d 15, 19, 603 N.Y.S.2d 294, 298 (2d Dept. 1993) (finding "inter-agency or intra-agency materials" to mean communications exchanged for discussion purposes, but not communications constituting final policy decisions); see also *Miracle Mile Assocs. v. Yudelson*, 68 A.D.2d 176, 182-183, 417 N.Y.S.2d 142, 147 (4th Dept. 1979) (holding that developer seeking city documents was improperly denied access to materials that did not contain any advice or opinion which was part of an agency's deliberative process, but rather were materials stating or reflecting an agency's final determination).

73. N.Y. Pub. Off. Law § 84(2) (McKinney 2013).

74. N.Y. Pub. Off. Law § 87(3)(c) (McKinney 2013).

75. N.Y. Comp. Codes R. & Regs. tit. 7, §§ 5 *et seq.* The N.Y. Comp. Codes R. & Regs. contains rules and regulations issued pursuant to laws passed by the Legislature. Title 7 covers the regulations issued by the Department of Correctional Services. See also N.Y. State Dep't of Corr. Servs. Directive # 2010, Nov. 18, 2003 (issuing the regulations found in Title 7). The New York State Division of Parole has issued similar regulations covering its parole records. These regulations can be found at N.Y. Comp. Codes R. & Regs. tit. 9, §§ 8000.5, 8008 (2014); see also Part C(3)(d) of this Chapter for a discussion of how to obtain parole records.

76. *Konigsberg v. Coughlin*, 68 N.Y.2d 245, 247, 501 N.E.2d 1, 2, 508 N.Y.S.2d 393, 394 (1986).

77. See *Johnson Newspaper Corp. v. Stainkamp*, 94 A.D.2d 825, 286, 463 N.Y.S.2d 122, 123 (3d Dept. 1983) (holding that the request must be "sufficiently detailed" to allow the governmental agency to locate the requested records).

78. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.35(a).

79. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.35(b).

found, is in the custody of another specified agency, or does not exist.⁸⁰ If the agency you have written has the record, the custodian must either: (1) deny your request for access under the exemption(s) specified under FOIL Section 87(2); (2) produce the record for inspection at the agency office, and make and certify copies upon payment; (3) advise you that the record is in custody and make arrangements for copying and payment of fees at a later date; (4) mail you copies upon payment; or (5) provide you with the information in the record instead of making a copy if you so agree.⁸¹ As a practical matter, it may take much longer than five business days before you receive a response to your request.

If the agency cannot locate the records you requested, then the agency must provide proof that it conducted a “diligent search” for the records.⁸² You may ask the custodian for a written certification of that proof. If any part of the records arrives deleted, or if your entire request is denied, the agency must provide you with a reason in writing and tell you that you have a right to appeal.⁸³

While there are no fees for the agency’s searching for the records or for making the records available for inspection, DOCCS does charge fees for the photocopying of records. The current fee for photocopies of DOCCS records is twenty-five cents (\$.25) per page not exceeding nine inches by fourteen inches in size.⁸⁴ DOCCS may, at its discretion, provide the records along with a bill for the fees due, require assurance of payment before the copies are delivered, or require payment before delivering the copies to you. Any fees you owe for photocopying may be waived at the discretion of the custodian of the records. You should consider asking in your request that you be notified before your request is filled if there will be fees (or to limit the request to within a specific dollar amount in fees). The sample FOIL request letter in Appendix C-3 contains wording like this which you can use to prevent being billed for unexpected fees.

If you are denied access to a record, you can appeal the denial to Counsel of DOCCS.⁸⁵ The FOIL provides that you must appeal all denials within thirty days.⁸⁶ This appeal must be in writing and must contain your name and address, the date of your request, the specific record requested, the place of request if not DOCCS, the date of the denial, and, if known, the person denying your request. A sample FOIL appeal letter that you can use is included in Appendix C-4. Send the appeal to:

Counsel, New York State Department of Corrections and Community Supervision
1220 Washington Avenue, Building No. 2
State Campus
Albany, NY 12226
(518) 457-4951

The Counsel for DOCCS has ten business days to review the issue after receiving your appeal. He must allow access to the record or explain in writing the reason for the denial. Again, as a practical matter, it may take much longer to receive a response. If you do not receive a response from Counsel, you may go directly to court for review of the denial.

You may bring a legal proceeding for review of such denial⁸⁷ under Article 78 of the New York Civil Practice Law and Rules.⁸⁸ *JLM* Chapter 22 discusses how to file an Article 78 petition. You must, however, exhaust all administrative remedies before turning to the courts for relief. If your request for agency records

80. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.35(c).

81. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.35(d).

82. *See Key v. Hynes*, 205 A.D.2d 779, 781, 613 N.Y.S.2d 926, 928 (2d Dept. 1994) (holding that the allegations made on information and belief that prosecutor’s office did not have the report that prisoner had requested was insufficient, since entirely conclusory statements do not constitute evidentiary proof), *overruled by Rattley v. New York City Police Dep’t*, 96 N.Y.2d 873, 875, 756 N.E.2d 56, 58, 730 N.Y.S. 2d 768, 770 (2d Cir. 2001) (holding that Public Officers Law § 89(3) does not specify the manner in which an agency must certify that documents cannot be located, and therefore that the Police Department’s statement that it had conducted a diligent search for the documents it could not locate met the certification requirement).

83. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.35(e).

84. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.36. As noted in the section on medical records, the fee for medical records is fifty cents per page.

85. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.45.

86. N.Y. Pub. Off. Law § 89(4)(a) (McKinney 2013).

87. N.Y. Pub. Off. Law § 89(4)(b) (McKinney 2013).

88. N.Y. C.P.L.R. 7801 *et seq.* (McKinney 2013).

is denied, follow the appeal procedure of that agency. For example, if your request for DOCCS records is denied, you must appeal to DOCCS Counsel before bringing your Article 78 petition to challenge the denial.⁸⁹

3. Procedures to Obtain Copies of Indices, Medical Records, Administrative Records, Parole Records, Criminal History Records & Inmate Records

(a) The Index

DOCCS must keep an index, which is a reasonably detailed, current list, organized by subject matter, of all records in its possession. The master index may enable you to determine the title or name of the record containing the information you want. Because all indices contain subject-matter references, the index may be helpful if you want a copy of an administrative memorandum but are unable to identify the particular record you want. To obtain a copy of the master index, write to:

Deputy Commissioner for Administration
New York State Department of Corrections and Community Supervision
1220 Washington Avenue, Building No. 2
State Campus
Albany, NY 12226-2050

Each prison is required to keep a master index of its documents. To obtain a copy of your prison's master index, you should write to the prison Superintendent or Director, or the prison "inmate records coordinator," if one has been designated. Note that no prison is required to keep an index of records on individual prisoners. If you want to obtain indices of records of an agency other than the DOCCS (for example, you may want a city or county corrections department's index), you should call or write that agency's Freedom of Information Officer (sometimes called a "Records Access Officer") to request a copy.

The current fee for a copy of the index is twenty-five cents (\$.25) per page for photocopies not larger than nine inches by fourteen inches in size.⁹⁰

If you cannot pay to copy the index, you should say in your request that you are a prisoner and unable to pay the fee. Any custodian of records has the authority to excuse you from paying the fee or some portion of it. It has been the practice to allow prisoners to obtain copies of the master index free of charge. Once the fee is paid or waived, a copy of the index will be sent to you.

D. Medical/Health Records

You may wish to get a copy of your medical records (DOCCS uses the term "health records"). DOCCS has established a separate policy for prisoners to access their health records. This means that FOIL is not the way to acquire copies of these records. Instead, health records are handled by a different set of procedures that are described within this Subsection.⁹¹ For more information about how to request your health records, you should consult the DOCCS Division of Health Services' Health Services Policy Manual Section 4.10 or ask your institution's Nurse Administrator.

Health records are defined as any departmental records created or received by a health care provider, including information on an individual's past, present, or future physical health, mental health. This includes information received from other providers about prior examinations or treatment of a patient. Health records do not include substance or alcohol abuse records, or mental health records.

Generally, a New York State prisoner can obtain a copy of his medical records by submitting a request to the Nurse Administrator, designated as the "record access officer" for health records. If you are at a Regional Medical Unit, make the request to the Health Information Management Technician.⁹² All requests must be

89. *See Sommer v. Jones*, 96 A.D.2d 624, 624, 464 N.Y.S.2d 879, 880 (3d Dept. 1983) (holding that the administrative remedies provided under sections 5.20, 5.50, 5.51, and 5.52 of the New York Codes, Rules and Regulations must be exhausted before the prisoner can ask a court to review the case).

90. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.36.

91. FOIL is the proper way to request health services policies and documentation, but not to get copies of your health records. *See* N.Y.S. Dep't of Corr. Serv. Div. of Health Serv., Health Service Policy Manual § 4.10 (2003).

92. N.Y.S. Dep't of Corr. Servs. Div. of Health Serv., Health Service Policy Manual § 4.10 (2003).

in writing, signed and dated. Health record copies cost fifty cents per page; in addition, you may be charged for the labor it takes to find and copy the health record, at a cost of \$3.25 for every fifteen minutes of labor.

Even if access to part of your health record is denied, the rest of the record must be provided. You will receive a written explanation for the denial, as well as notice about how to appeal the denial. According to the manual, where confidentiality and safety concerns prevent the release of your health record, the decision not to release this information is not reviewable.⁹³ However, other concerns that lead a health care provider to deny you information are reviewable. To appeal the denial, you should notify the Facility Health Services Director in writing. The Director will review the appeal and rule on it within thirty days.⁹⁴ Once a decision has been made, you will be notified in writing. If a decision is made to deny the appeal, you may make a complaint to the HIPAA Privacy Officer. If you have a complaint about your attempts to get access to, release of, or disclosure of your health records, you should contact the Nurse Administrator or file a grievance through the Inmate Grievance Program. Chapter 15 of the *JLM* has information about prisoner grievance procedures.

E. Administrative Records

Administrative records are the memoranda and directives that describe DOCCS policies. They may also include manuals and rulebooks for DOCCS employees, as well as Inmate Grievance Committee decisions. To obtain a copy of the DOCCS administrative records, send a written request describing the record or records sought, to:⁹⁵

Records Access Officer
New York State Department of Corrections and Community Supervision
1220 Washington Avenue
Albany, NY 12226-2050

F. Parole Records

The New York State Division of Parole keeps records on every prisoner eligible for parole or parole release. If you are eligible for parole, your case record, maintained by your “street” parole officer, will contain a comprehensive set of the records the Division of Parole maintains about you.⁹⁶ Parole regulations provide that the Division of Parole will only grant you access to those records prior to (1) a scheduled appearance before the Board; (2) a scheduled appearance before an authorized hearing officer; or (3) the filing of an administrative appeal of a final decision of the Board.⁹⁷ Also, you will only be allowed to see the portions of the record that will be considered by the Board or hearing officer during your appearance or hearing.⁹⁸

To make a request for those parts of your case record that you are allowed to see, write to the senior parole officer at your prison, or the area parole office that serves the area where your institution is located.⁹⁹ Your letter should include (1) your name and identification number; (2) whether you have a release interview, revocation hearing, or appeal pending; (3) the prison or jail in which you are confined; (4) and your signature.¹⁰⁰ Explain in the letter that in order to prepare for your upcoming hearing or appeal, you want to review all of the information in your file that will be considered by the Board of Parole. Your request must be received at least ten days before the scheduled date of a final revocation hearing or the final date to perfect an administrative appeal, and at most one day after receiving notice of the scheduled date of any other hearing.¹⁰¹ The fee for copies of parole records is twenty-five cents (\$.25) per page.¹⁰²

For more information on parole records and procedures, refer to Chapter 36 of the *JLM* on Parole.

93. N.Y.S. Dep't of Corr. Servs. Div. of Health Serv., Health Service Policy Manual § 4.10 (2003).

94. N.Y.S. Dep't of Corr. Servs. Div. of Health Serv., Health Service Policy Manual § 4.10 (2003).

95. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.11.

96. N.Y. Comp. Codes R. & Regs. tit. 9, §§ 8000.5(a)–(b). Your case record may contain the following information about you: a complete statement of the crime(s), the circumstances of each crime, all pre-sentence memoranda, the nature of the sentence, the sentencing court, the name of the judge and district attorney, probation reports, and reports as to your social, physical, mental, and psychiatric condition and history.

97. N.Y. Comp. Codes R. & Regs. tit. 9, §§ 8000.5(c)(5)–(6).

98. Access is further restricted by content. N.Y. Comp. Codes R. & Regs. tit. 9, § 8000.5(c)(2)(i).

99. N.Y. Comp. Codes R. & Regs. tit. 9, § 8000.5(c)(3).

100. N.Y. Comp. Codes R. & Regs. tit. 9, § 8000.5(c)(8).

101. N.Y. Comp. Codes R. & Regs. tit. 9, § 8000.5(c)(3)(ii).

102. N.Y. Comp. Codes R. & Regs. tit. 9, § 8000.5(c)(7).

G. Criminal History Records¹⁰³

A prisoner's criminal history record is filed with the Division of Criminal Justice Services ("DCJS"). The procedure for obtaining these records varies slightly from other records.¹⁰⁴ A written request for your criminal history data should include your name, any other name you have used or may be known by, your birth date, your DIN (Department of Corrections "Department Identification Number"), and, if you have it, your NYSID ("New York State Identification Number"). In addition, it is helpful to include your race, sex, and Social Security number. You must also state in your request how long you will be incarcerated. There may be forms available in your prison library that you can use instead of writing your own written request. Send your request to:

Record Review Unit
New York State Division of Criminal Justice Services
4 Tower Place
Albany, NY 12203-3764
(518) 485-7675

DCJS will only send you a copy of your record free of charge if you will be incarcerated for longer than forty-five days. If you are not currently incarcerated or if you will be incarcerated for less than forty-five days, you can receive a copy of your record by sending DCJS a form called Request for Record Review. You can obtain this form by writing to DCJS at the above address. The Record Review Packet includes directions to help you complete and submit a fingerprint card to DCJS. There is no fee for the application packet itself, but a fee of fifty dollars (\$50) must be included when you complete the materials and return them to DCJS to obtain a copy of your record.

If, after reviewing your criminal history data, you find it is inaccurate or incomplete, you may challenge the errors.¹⁰⁵ To correct your file you must submit a "Statement of Challenge" to the DCJS, in which you must identify the specific information that you believe is incorrect and include any documentation or proof.¹⁰⁶ Also, be sure to list any other agencies that may have the erroneous data.¹⁰⁷ A blank Statement of Challenge form should be included with the copy of your criminal history record that you have received.

DCJS will review your file within a reasonable time period after receiving your Statement of Challenge form and any supporting documentation.¹⁰⁸ DCJS will check the errors you pointed out in your form against the records kept by the Director of the Bureau of Identification and Criminal History Operations ("BICHO"). If it finds that you are right about the errors, DCJS will make the necessary corrections to your file and will notify you in writing of those corrections.¹⁰⁹ DCJS also will forward the corrections to agencies listed on the Statement of Challenge form.¹¹⁰ If it does not agree with your challenge after checking the BICHO records, DCJS will notify you in writing. You may appeal a negative finding by BICHO by notifying the Commissioner of DCJS in writing within a reasonable time period after receiving notification from DCJS. Within a reasonable time after receiving your request, the Commissioner will notify you of the result of your appeal and order any appropriate corrections to be made.¹¹¹

103. N.Y. Comp. Codes R. & Regs. tit. 9, § 6050.1 (providing prisoners the right to review their own criminal history records and to challenge the accuracy or completeness of the record).

104. The information in this paragraph is drawn from the Legal Action Center's "How to Get and Clean Up Your New York State Rap Sheet," available online at http://lac.org/doc_library/lac/publications/NYS_Rap_Sheet_Final.pdf (7th ed. 2007) (last visited Nov. 30, 2014). The Legal Action Center also publishes versions of this guide for California, Illinois, Pennsylvania, and Virginia. These can be found at <http://lac.org/index.php/lac/132> (last visited Nov. 30, 2014). Contact information for the Legal Action Center can be found in Appendix D-1.

105. N.Y. Comp. Codes R. & Regs. tit. 9, §§ 6050.2(a)-(b).

106. N.Y. Comp. Codes R. & Regs. tit. 9, § 6050.2(a).

107. N.Y. Comp. Codes R. & Regs. tit. 9, § 6050.2(c).

108. N.Y. Comp. Codes R. & Regs. tit. 9, § 6050.2(b).

109. N.Y. Comp. Codes R. & Regs. tit. 9, § 6050.2(b).

110. N.Y. Comp. Codes R. & Regs. tit. 9, § 6050.2(c).

111. N.Y. Comp. Codes R. & Regs. tit. 9, § 6050.3.

H. Inmate Records

New York State prisoners can also gain limited access to their inmate records. An inmate record includes the documents in a prisoner's central office folder (or institutional folder); it does not include medical records.¹¹² The regulations give you access to your "personal history" and "correctional supervision history data."¹¹³ Your personal history records contain information like your age, date of birth, birthplace, city of prior residence, occupation, physical description, correctional facilities in which you have been incarcerated, commitment information, and departmental actions about your sentence, and release or re-imprisonment.¹¹⁴

Your correctional supervision history data record contains records of disciplinary charges and dispositions, good behavior allowance reports, warrants and cancellations of warrants, legal papers, court orders, transportation orders, records of institutional transfers and changes in program assignments, reports of injury to prisoners, and property records, including the personal property list and postage account card.¹¹⁵

If you would like access to these records, you should request them in writing from your assigned counselor, who serves as the "records access officer."¹¹⁶ If you disagree with a decision not to release a part of your record, you may appeal to Counsel of the Department of Corrections and Community Supervision. If the appeal is denied, you may then challenge it in court with an Article 78 petition. *JLM* Chapter 22 tells you how to file an Article 78 petition.

It is often easier to get records than the regulations suggest. There is now a presumption that all records should be available for public inspection except those specifically excluded. Furthermore, the agency has the burden of proving that a record should be excluded.¹¹⁷ The courts have held that public disclosure laws are to be read broadly,¹¹⁸ and statutory exemptions from disclosure read narrowly, to allow maximum access.¹¹⁹

I. Correcting Errors in Your Personal History or Correctional Supervision Records

If you notice anything incomplete or inaccurate in your records, you should tell the custodian of the records. This is the person from whom you received the records (if they were inmate records, then it should be your counselor).¹²⁰ You may only correct incorrect information that appears in your personal history or correctional supervision history.¹²¹

Once you have expressed an objection concerning your record, the custodian must, within a reasonable time, investigate the accuracy and completeness of the information, unless there are reasonable grounds to believe that your objection is frivolous.¹²² If the custodian determines that the disputed information is incorrect or incomplete, she must make the changes in the record that are necessary. The custodian must also report the results of the investigation to you and tell you of any changes made to your record no later than forty-five days after being notified of your objection.¹²³

If you still dispute the accuracy or completeness of the information after investigation and a determination by the custodian, you may appeal the custodian's determination to the Inspector General of the Department of Corrections and Community Supervision.¹²⁴ This appeal must be in writing and sent to:

112. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.5(g).

113. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.5(g). For medical records, see Part (C)(3)(b) of this Chapter.

114. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.5(i).

115. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.5(a).

116. N.Y.S. Dep't of Corr. and Community Supervision, Directive No. 2010, FOIL/ Access to Departmental Records 3 (rev. 2016), *available at* <http://www.doccs.ny.gov/Directives/2010.pdf> (last visited Mar. 24, 2017).

117. N.Y. Pub. Off. Law § 89(4)(b) (McKinney 2013).

118. *See, e.g.,* *Burke v. Yudelson*, 81 Misc. 2d 870, 878, 368 N.Y.S.2d 779, 787 (Sup. Ct. Monroe County 1975), *aff'd*, 51 A.D.2d 673, 673, 378 N.Y.S.2d 165, 166 (4th Dept. 1976) (noting that disclosure laws should be liberally construed, and that the burden of proving that release is not allowed falls on the agency seeking to deny the disclosure request).

119. N.Y. Comp. Codes R. & Regs. tit. 21, § 1401.1(d) ("[C]onflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.").

120. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.50. On amending your record, *see* N.Y. Comp. Codes R. & Regs. tit. 7, §§ 6.8–6.11.

121. *See, e.g.,* *Rowland D. v. Scully*, 152 A.D.2d 570, 570, 543 N.Y.S.2d 497, 498 (2d Dept. 1989), *aff'd*, 76 N.Y.2d 725, 557 N.E.2d 112, 557 N.Y.S.2d 876 (holding that a prisoner was not entitled to examine forms in order to challenge their accuracy, unless the forms contained information relating to his correctional supervision or personal history).

122. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.51(a).

123. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.51(b).

124. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.52.

Inspector General
New York Department of Corrections and Community Supervision
1220 Washington Avenue, Building No. 2
Albany, NY 12226–2050

The Inspector General can affirm, modify, or reverse the custodian’s determination. He must notify you within thirty days of the decision in your case.¹²⁵ If the record is found to be incorrect and is then corrected, the Department must notify all those who were given the erroneous information and tell them about the corrected information.¹²⁶ You can request that you be given a list of all agencies, individuals, or organizations that were given the erroneous or incomplete information about you.¹²⁷ If the Inspector General decides against you, you may challenge his decision in court.

1. The Committee on Open Government

If you have problems obtaining information under New York’s FOIL, you may want to complain to the Committee on Open Government established by FOIL.¹²⁸ This committee is charged with monitoring the program that gives the public access to records. The committee tries to make sure that agencies have complied with the law, and can also furnish an advisory opinion to any person who wants one. The committee also has a staff that is responsible for answering any questions about the FOIL. Its address is:

Committee on Open Government
One Commerce Plaza, 99 Washington Avenue, Suite 650
Albany, NY 12231
(518) 474–2518

J. Federal Citizen Information Center

If you need help determining which federal agency to contact for your request, call the Federal Citizen Information Center for assistance.

Federal Citizen Information Center
Toll free number: (800) 333–4636
<http://www.info.gov>

K. Conclusion

If you would like access to information in government files, there are laws allowing you to ask for documents from federal and state agencies. If you want records from the federal government, you can file a FOIA request or a Privacy Act request. If you would like records from a New York state agency, you should file a request under New York’s Freedom of Information Law (“FOIL”). Appendix A contains citations to other states’ freedom of information laws. You should direct your request to the agency with the records you want. Appendix D lists the addresses of some government agencies. Remember: each agency has specific procedures, so it is important to check to see what information you need to provide in your request.

125. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.52.

126. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.54.

127. N.Y. Comp. Codes R. & Regs. tit. 7, § 5.53.

128. N.Y. Pub. Off. Law § 87(1)(a) (McKinney 2013).

APPENDIX A

STATE FREEDOM OF INFORMATION LAWS

Alabama	Ala. Code §§ 36-12-40 to 36-12-43 (LexisNexis 2001 & Supp. 2013).
Alaska	Alaska Stat. §§ 40.25.100 to 40.25.295 (LexisNexis 2013).
Arizona	Ariz. Rev. Stat. Ann. §§ 39-121 to 39-128 (LexisNexis 2013).
Arkansas	Ark. Code Ann. §§ 25-19-101 to 25-19-109 (2013).
California	Cal. Gov't Code §§ 6250 to 6270 (West 2013).
Colorado	Colo. Rev. Stat. Ann. §§ 24-72-201 to 24-72-206 (West 2013).
Connecticut	Conn. Gen. Stat. Ann. §§ 1-200 to 1-259 (West 2013).
Delaware	Del. Code Ann. tit. 29, §§ 10001 to 10007 (2013).
Dist. of Columbia	D.C. Code Ann. §§ 2-531 to 2-540 (2013).
Florida	Fla. Stat. Ann. §§ 119.01 to 119.15 (West 2013).
Georgia	Ga. Code Ann. §§ 50-18-70 to 50-18-77 (LexisNexis 2013).
Hawaii	Haw. Rev. Stat. Ann. §§ 92F-1 to 92F-43 (LexisNexis 2007 & Supp. 2013).
Idaho	Idaho Code Ann. §§ 9-337 to 9-351 (2013).
Illinois	5 Ill. Comp. Stat. Ann. §§ 140/1 to 140/11.5 (West 2013).
Indiana	Ind. Code Ann. §§ 5-14-3-1 to 5-14-3-10 (LexisNexis 2013).
Iowa	Iowa Code Ann. §§ 22.1 to 22.14 (West 2012).
Kansas	Kan. Stat. Ann. §§ 45-215 to 45-250 (2012).
Kentucky	Ky. Rev. Stat. Ann. §§ 61.870 to 61.884 (LexisNexis 2013).
Louisiana	La. Rev. Stat. Ann. §§ 44:1 to 44:41 (West 2012).
Maine	Me. Rev. Stat. Ann. tit. 1, §§ 401 to 414 (West 2013).
Maryland	Md. Code Ann., State Gov't §§ 10-611 to 10-630 (LexisNexis 2013).
Massachusetts	Mass. Ann. Laws ch. 4, § 7(26) (LexisNexis 2013) and ch. 66, § 10 (LexisNexis 2013).
Michigan	Mich. Comp. Laws Ann. §§ 15.231 to 15.246 (West 2013).
Minnesota	Minn. Stat. Ann. §§ 13.03 to 13.04 (West 2013) and 138.17 (West 2013).
Mississippi	Miss. Code Ann. §§ 25-61-1 to 25-61-19 (2013).
Missouri	Mo. Ann. Stat. §§ 109.180 to 109.195 (West 2013).
Montana	Mont. Code Ann. §§ 2-6-101 to 2-6-112 (2011).
Nebraska	Neb. Rev. Stat. §§ 84-712 to 84-712.09 (LexisNexis 2012).
Nevada	Nev. Rev. Stat. Ann. §§ 239.005 to 239.030 (LexisNexis 2011).
New Hampshire	N.H. Rev. Stat. Ann. §§ 91-A:1 to 91-A:9 (LexisNexis 2011).
New Jersey	N.J. Stat. Ann. §§ 47:1A-1 to 47:1A-13 (West 2013).
New Mexico	N.M. Stat. Ann. §§ 14-2-1 to 14-2-12 (2012).
New York	N.Y. Pub. Off. Law §§ 84 to 90 (McKinney 2013).
North Carolina	N.C. Gen. Stat. §§ 132-1 to 132-10 (2013).
North Dakota	N.D. Cent. Code §§ 44-04-18 to 44-04-19.3 (2013).
Ohio	Ohio Rev. Code Ann. §§ 149.43 to 149.45 (LexisNexis 2013).
Oklahoma	Okla. Stat. Ann. tit. 51, §§ 24A.1 to 24A.29 (West 2013).
Oregon	Or. Rev. Stat. §§ 192.410 to 192.505 (West 2012).
Pennsylvania	65 Pa. Cons. Stat. Ann. §§ 67.101 to 67.3104 (West 2013).
Rhode Island	R.I. Gen. Laws §§ 38-2-1 to 38-2-15 (West 2013).
South Carolina	S.C. Code Ann §§ 30-4-10 to 30-4-165 (2012).
South Dakota	S.D. Codified Laws §§ 1-27-1 to 1-27-48 (2013).
Tennessee	Tenn. Code Ann. §§ 10-7-503 to 10-7-509 (2012).
Texas	Tex. Gov't Code Ann. §§ 552.001 to 552.353 (West 2011).
Utah	Utah Code Ann. §§ 63G-2-101 to 63G-2-406 (LexisNexis 2012).
Vermont	Vt. Stat. Ann. tit. 1, §§ 315 to 320 (2012).
Virginia	Va. Code Ann. §§ 2.2-3700 to 2.2-3714 (2013).
Washington	Wash. Rev. Code Ann. §§ 42.56.001 to 42.56.904 (West 2012).
West Virginia	W. Va. Code Ann. §§ 29B-1-1 to 29B-1-7 (LexisNexis 2012).
Wisconsin	Wis. Stat. Ann. §§ 19.31 to 19.39 (West 2012).
Wyoming	Wyo. Stat. Ann. §§ 16-4-201 to 16-4-205 (West 2013).

APPENDIX B

SAMPLE DEPARTMENT OF JUSTICE CERTIFICATION OF IDENTITY FORM

U.S. Department of Justice Certification of Identity

Privacy Act Statement. In accordance with 28 CFR Section 166.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of US Department of Justice systems of records are not wrongfully disclosed by the Department. Failure to furnish this information will result in no action being taken on the request. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(I)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to Director, Facilities and Administrative Services Staff, Justice Management Division, US Department of Justice, Washington, DC 20530 and the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (1103?0016), Washington, DC 20503.

Full Name of Requester _____

Current Address _____

Date of Birth _____ Place of Birth _____

Social Security Number _____

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5000.

Signature _____ Date _____

Optional: Authorization to Release Information to Another Person (or organization)

(This portion is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person or organization.)

Further, pursuant to 5 U.S.C. Section 552a(b), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Print or Type Name (and Organization, if applicable)

1. Name of individual who is the subject of the record sought.
2. Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.
3. Signature of individual who is the subject of the record sought.

FORM DOJ-361,
USNCB Website
Version, Original
form approved
OMB No. 1103-
0016

APPENDIX C

SAMPLE LETTERS

C-1. Sample FOIA Request Letter (Federal)

Return Address

Date

Freedom of Information Officer
Name of Agency
Address

Dear Sir or Madam:

This request is made under the Freedom of Information Act (FOIA), 5 U.S.C. Section 552 [and the Privacy Act 5 U.S.C. Section 552a].

Please send me copies of the following documents: [describe the documents you want as clearly as possible including names, places, and period of time about which you are inquiring].

As you know, the Freedom of Information Act provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed. Therefore, I will expect you to send me all nonexempt portions of the records which I have requested, and ask that you justify any deletions with reference to specific exemptions of FOIA. The information requested is not to be used for commercial benefit, so I do not expect to be charged fees for your review of the material to see if it falls within one of FOIA's exemptions.

[Option I]

I promise to pay reasonable search and duplication costs in connection with this request. However, please notify me ahead of time if you estimate that total fees will exceed \$ _____ so I can approve the additional amount.

[Option II]

FOIA provides for the waiver or reduction of search and duplication fees where the "disclosure of the information 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." This request should be exempt from all fees because [here explain how you intend to distribute the information you receive, and how those to whom you distribute it will be better informed about the operations of the government]. If you deny this request, however, please notify me if fees will exceed \$ _____ so I can decide whether to pay the fees or appeal your denial of my request for a waiver.

Sincerely,
[Signature]

C-2. Sample FOIA Appeal Letter (Federal)

Return Address

Date

Administrator
Name of Agency
Address

To the Administrator:

This is an appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552. On [date] I made a FOIA request to your agency for [brief description of the materials sought]. On [date] your agency denied my request because [state the ground for denial cited by that agency] [or, if the agency has not to you within the legal limit of 20 days, say how long they have delayed your request.] Copies of the correspondence are attached.

Please be informed that I consider the requested material clearly releasable under FOIA and consider your agency's policy to be arbitrary and capricious.

[Here insert any arguments in favor of disclosure, if you wish.]

I expect that upon reconsideration, you will reverse the decision to deny my request. However, if you do deny this appeal, I intend to file a lawsuit to compel disclosure.

Sincerely,
[Signature]

C-3. Sample FOIL Request Letter (New York State)

Return Address

Date

Records Access Officer
Name of Agency
Address of Agency
City, NY ZIP code

Re: Freedom of Information Law Request

Records Access Officer:

Under the provisions of the New York Freedom of Information Law, Article 6 of the Public Officers Law, I hereby request records or portions thereof pertaining to _____ [identify the records in which you are interested as clearly as possible].

If there are any fees for copying the records requested, please inform me before filling the request [or: Please inform me if the fees associated with this request exceed \$____.]

As you know, the Freedom of Information Law requires that an agency respond to a request within five business days of receipt of a request. Therefore, I would appreciate a response as soon as possible and look forward to hearing from you shortly. If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.

Sincerely,
[Signature]

C-4. Sample FOIL Appeal Letter (New York State)

Return Address
Date

Records Access Officer
Name of Agency Official
Appeal Officer
Address of Agency
City, NY ZIP code

Re: Freedom of Information Law Appeal

Dear _____:

I hereby appeal the denial of access regarding my request, which was made on _____ [date] and sent to _____ [records access officer, name and address of agency].

The records that were denied include: _____ [list and describe the records that were denied].

As required by the Freedom of Information Law, the head or governing body of an agency, or whomever is designated to determine appeals, is required to respond within ten business days of the receipt of an appeal. If the records are denied on appeal, please explain the reasons for the denial fully in writing as required by law.

In addition, please be advised that the Freedom of Information Law directs that all appeals and the determinations that follow be sent to the Committee on Open Government, New York Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, NY 12231.

Sincerely,
[Signature]

C-5. Sample *Vaughn* Motion¹²⁹

[Use the proper court caption]

Motion Under *Vaughn v. Rosen* to Require
Detailed Indexing, Justification, and Itemization

Plaintiff [your name] moves this Court for an order requiring Defendants [name of agency and agency head] to provide within 30 days of the filing of the Complaint in this action, a detailed justification for allegations contained in the Defendant's Answer and previous administrative denial that the requested documents are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552, including an itemization and index of the documents claimed to be exempt, correlating specific statements in such justification with actual portions of the requested documents. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. den.*, 415 U.S. 977 (1974).

Respectfully Submitted,

[Name of plaintiff or plaintiff's attorney]
Address

Dated: [date] [city and state]

129. It is difficult to determine the proper federal court in which to file your *Vaughn* motion. To find out how to proceed, write or call the clerk of the federal district court that has jurisdiction over the agency from which you are trying to get information. Most federal agencies are headquartered in Washington, D.C. The address for the federal district court of D.C. is: Clerk's Office, United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C. 20001. The phone number is (202) 354-3000.

APPENDIX D

ADDRESSES

D-1. Additional Information & Assistance

American Civil Liberties Union (“ACLU”)

125 Broad St., 18th Floor

New York, NY 10004

Phone: (212) 549-2500

ACLU chapters can give you information about FOIA or “open records” laws, like FOIL, if you are seeking state or local government records.

Freedom of Information Clearinghouse

1600 20th Street N.W.

Washington, D.C. 20009

Phone: (202) 588-1000

http://www.citizen.org/litigation/free_info

The Clearinghouse gives legal and technical assistance to public interest groups, journalists, and individual citizens using the laws granting access to information that is held by the government.

Legal Action Center

225 Varick Street

New York, NY 10014

Phone: (212) 243-1313 or

Toll free 1-800-223-4044;

Fax: (212) 675-0286

E-Mail: lacinfo@lac.org

<http://www.lac.org>

The Legal Action Center publishes the very useful “How to Get and Clean Up Your State Rap Sheet,” with editions covering New York, California, Illinois, Pennsylvania, and Virginia.

ACLU National Prison Project

915 15th Street N.W.

7th Floor

Washington, D.C. 20005

Phone: (202) 393-4930

<http://www.aclu.org/prison/index.html>

The Prison Project will refer prisoners to local aid groups where requests for information from state authorities are addressed.

D-2. Federal Government Agencies

Remember, always mark the outside of the envelope, “Freedom of Information Act Request.”

Divisions of the Department of Justice

Civil Rights Division

Chief, FOIA/PA Branch

Civil Rights Division

United States Department of Justice

950 Pennsylvania Avenue N.W.

NALC Building, Room 311

Washington, D.C. 20530

Phone: (202) 514-4209

Fax: (202) 514-6195

Criminal Division

Chief, FOIA/PA Unit

Criminal Division

Department of Justice

Keeney Building, Suite 1127

950 Pennsylvania Ave, NW

Washington, D.C. 20530-0001

Phone: (202) 616-0307

Drug Enforcement Administration

Drug Enforcement Administration
Freedom of Information Operations Unit
Department of Justice
700 Army Navy Drive
West Building, 6th Floor
Arlington, VA 22202
Phone: (202) 307-7596

Federal Bureau of Investigation

Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
170 Marcel Drive
Winchester, VA 22602-4843
Phone: (540) 868-4593 (ask for Freedom of Information or FOI/PA)

United States Parole Commission

FOIA/PA Specialist
United States Parole Commission
Department of Justice
Suite 420, 5550 Friendship Boulevard
Chevy Chase, MD 20815
Phone: (301) 492-5959
Fax: (301) 492-5563

Immigration

Requests for the Board of Immigration Appeals (“BIA”), the Office of the Chief Immigration Judge, and the Office of the Chief Administrative Hearing Officer (OCAHO) should be addressed to:
U.S. Immigration and Customs Enforcement
800 North Capitol St. NW
5th floor, Suite 585
Washington, D.C. 20528
Phone: (202) 732-0300
Fax: (202) 732-0310

Office of the Attorney General

Requests should be addressed to:
Office of Information Policy
Department of Justice
1425 New York Avenue N.W.
Suite 11050,
Washington, D.C. 20530-0001
(202) 514-FOIA

Justice Management Division

Justice Management Division

FOIA Contact

Department of Justice

Room 1111 RFK

950 Pennsylvania Ave NW

Washington, D.C. 20530-0001

(301) 583-7354

The Justice Management Division can help you with questions regarding requests within the Justice Department, such as which division to write to, and how to write the request.

Bureau of Citizenship and Immigration Services (formerly INS)

U.S. Citizenship and Immigration Services

National Records Center

FOIA/PA Office

P.O. Box 648010

Lee's Summit, MO 64064-8010

Phone: (816) 350-5570

Fax: (816) 350-5785

U.S. Commission on Civil Rights

U.S. Commission on Civil Rights

FOIA Officer

624 Ninth Street, N.W.

Suite 621

Washington, D.C. 20425

Phone: (202) 376-7796

Fax: (202) 376-1163

Equal Employment Opportunity Commission

Equal Employment Opportunity Commission

Legal Counsel/FOIA

131 M St. NE, Suite 5NW02E

Washington, D.C. 20507

Phone: (202) 663-4500 (FOIA Service Center) or (202) 663-4634

Fax: (202) 663-4639

Department of Health and Human Services

Department of Health and Human Services

Director, FOIA/Privacy Division

Room 5416, Mary E. Switzer Bldg

330 C St, SW

Washington, D.C. 20201

Phone: (202) 690-7453

Fax: (202) 690-8320

Internal Revenue Service

Internal Revenue Service

FOIA Disclosure Manager

Office of Disclosure

1111 Constitution Avenue, N.W.

Washington, D.C. 20224

Phone: (202) 622-6200