

THE FREEDOM OF INFORMATION ACT

By Attorney Michael H. Wald

The Freedom of Information Act of 1966 (FOIA) is a key to access to much of the information held by the federal agencies. Under this law any identifiable records of the administrative agencies in the executive branch of the federal government must be released upon request, unless they fall into one or more of nine exemption categories. The information can provide facts that are personally useful to an individual or the information may be sought to determine whether or not the government is protecting the public interest. This information is important to democracy because of our right to know and counters the governmental tendency to withhold facts that should be public information.

Many states have their own similar open record laws which apply to records held by state and local governments.

FOIA does not apply to information held by the federal legislative and judicial branches. Vital sections of the government, such as Congress, the Library of Congress, and Government Printing Office, are exempt from the act. Nine exemptions from disclosure of information are available to the government:

(1) Classified documents concerning the national defense and foreign policy -- government secrets and confidential material. If the document you request is classified, however, the agency is required to review it and determine whether it should remain classified. This exception should be helpful in obtaining historical records and documents which were classified only to prevent domestic repercussions. Some pages of a document may be classified and others may not. Portions of a document may be available for public use.

(2) Internal personnel rules and practices. Covered under this exemption are internal rules and practices that do not affect interests outside the agency such as employee parking, cafeteria regulations, and manuals that relate only to internal management and organization of particular agencies.

(3) Information exempt under other laws. This includes items such as income tax returns, patent applications, and completed census bureau forms.

(4) Confidential business information. This exemption covers trade secrets and confidential commercial or financial data. These documents are unavailable because they may harm the submitter if made public.

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than another agency in litigation with the agency. Factual portions of documents should be disclosed but advice and recommendation on legal and policy matters may be withheld. Preliminary drafts and unfinished reports can be withheld, but once finished, should be disclosed.

(6) Personnel and medical files disclosure of which would constitute invasion of privacy.

(7) Investigatory files. These files are records of investigations that would interfere with enforcement, deprive someone of a fair trial, constitute an invasion of privacy, expose a confidential source, expose investigative techniques, or endanger life or safety.

(8) Information about financial institutions, such as the Federal Reserve Board records of investigations of federal banks.

(9) Information about wells.

The law provides that you can get some response from the agency within 10 working days. This does not mean you will receive the requested information that quickly. The act is designated to

make litigation simple. You can sue in the United States District Court if your request is denied. The Court will order the government to give the documents to you if they cannot prove that they fall within one of the nine exemptions. The Court may require the government to pay your attorney's fees if you win.

To make a request for information, you must determine what you want. You must be able to reasonably describe the records you require. A reasonable description of the document allows a government employee to locate the records you requested. You do not have to explain the reasons for your demand, and government employees do not have rights to ask. The act allows agencies to charge for the services, but the fee cannot be greater than the actual cost of searching for and copying documents. Search fees range from \$5 per hour, and the average copying cost is 10 cents per page. You can set a dollar limit on cost in your request.

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