Public Records Requests, Part 2: Understanding the Federal Freedom of Information Act

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Educational only, not legal advice. This article explains how a federal law works. It does not tell anyone what to request, how to word a request, or what to do in a particular situation. For advice about your own situation, talk to a licensed attorney.

The Freedom of Information Act, usually called FOIA, gives the public a legal right to ask the federal government for its records.[1] This is Part 2 of our series on public records. Part 1 covered Wisconsin's Open Records Law, which applies to state and local government in Wisconsin. This part covers the federal law, which applies to a different government with different rules.

This article follows the same path as Part 1: first which law applies, then what the law is and why it exists, then the law itself, and finally real court cases that show how it works.

First Question: Which Law Applies?

FOIA applies only to federal executive-branch agencies. That is the single most important thing to understand about it, and it is where most confusion starts.

The statute defines "agency" to include executive departments, military departments, government corporations, and independent regulatory agencies.[2] In everyday terms, that means offices such as:

- The FBI and the rest of the U.S. Department of Justice
- The Federal Bureau of Prisons
- The Social Security Administration
- The Department of Veterans Affairs
- The Department of Homeland Security and its parts, such as ICE and CBP
- The Environmental Protection Agency

FOIA does **not** apply to:

- **State or local government.** A Wisconsin sheriff's office, city police department, county clerk, school district, or the Wisconsin Department of Corrections is not a

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[1] Freedom of Information Act, 5 U.S.C. § 552 (2018).

[2] *Id.* § 552(f)(1); *see also* 5 U.S.C. § 551(1) (2018).

federal agency. Records held by those offices fall under Wisconsin's Open Records Law, covered in Part 1.[3]

- **The federal courts.** Federal court records are reached through the courts' own systems, not FOIA.
- **Congress.**
- **The President's closest advisers.** The Supreme Court has recognized that offices whose only job is to advise and assist the President are outside FOIA.[4]

A letter titled "FOIA Request" sent to a local police department is asking for records under the wrong law. The label alone does not decide which law governs. The type of government office that holds the record does.

What FOIA Is and Why It Exists

FOIA flips the starting point: federal records are presumed open to the public unless the law gives a specific reason to keep them closed. Before 1966, the government's general rule let agencies withhold records for "good cause," and the person asking had to show a reason to see them. FOIA replaced that system.[5]

President Lyndon B. Johnson signed FOIA on July 4, 1966.[6] Congress has strengthened it several times since, usually after the public saw what too much secrecy could cost.

Year	Change	Why it matters
2016	FOIA Improvement Act[7]	Agencies may withhold only if they reasonably foresee harm from release, and certain records requested three or more times must be posted online.
2007	OPEN Government Act[8]	Created the Office of Government Information Services (OGIS), the federal FOIA ombudsman.
1996	Electronic FOIA Amendments[9]	Brought electronic records and online reading rooms under FOIA.
1974	Post-Watergate	Passed over President Ford's veto; added firm

[3] Wis. Stat. §§ 19.31–.39 (2023–24).

[4] Kissinger v. Reps. Comm. for Freedom of the Press, 445 U.S. 136, 156 (1980).

[5] *See* Administrative Procedure Act, ch. 324, § 3, 60 Stat. 237, 238 (1946); EPA v. Mink, 410 U.S. 73, 79–80 (1973).

[6] Act of July 4, 1966, Pub. L. No. 89-487, 80 Stat. 250.

[7] FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538.

[8] OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524.

[9] Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, 110 Stat. 3048.

Year	Change	Why it matters
	amendments[10]	deadlines, attorney's fees, and court review of withheld records.
1966	Original enactment[11]	Gave "any person" the right to request federal agency records.

The Supreme Court has described FOIA's core purpose as letting citizens know "what their government is up to."[12] Keep that phrase in mind. It explains many of the court decisions discussed later in this article.

The Law Itself

Who can ask

FOIA gives the right to request records to "any person."[13] That includes U.S. citizens, non-citizens, businesses, organizations, and people who are incarcerated. A requester does not have to explain why they want the records. The one narrow exception: intelligence agencies may not release records under FOIA to foreign governments or their representatives.[14]

What a request must do

The statute requires two things of a request. It must "reasonably describe" the records sought, and it must follow the agency's published rules on time, place, fees, and procedure.[15] Each agency publishes its own FOIA rules and contact points, and most accept requests online.

FOIA reaches records an agency already has. It does not require an agency to create new records, write explanations, or answer questions.[16]

Deadlines

- **20 working days.** An agency must decide whether it will comply within 20 days, not counting weekends and federal holidays.[17]

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[10] Act of Nov. 21, 1974, Pub. L. No. 93-502, 88 Stat. 1561.

[11] Act of July 4, 1966, Pub. L. No. 89-487, 80 Stat. 250.

[12] U.S. Dep't of Just. v. Reps. Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989).

[13] 5 U.S.C. § 552(a)(3)(A).

[14] *Id.* § 552(a)(3)(E).

[15] 5 U.S.C. § 552(a)(3)(A).

[16] *See Kissinger*, 445 U.S. at 152; NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 161–62 (1975).

[17] 5 U.S.C. § 552(a)(6)(A)(i).

- **Up to 10 more working days** in "unusual circumstances," such as when records are stored elsewhere or the request covers a large volume. The agency must notify the requester in writing.[18]
- **Expedited processing** is available when a requester shows a "compelling need," such as an imminent threat to someone's life or physical safety.[19]

A "decision" is not the same as delivery. In practice, large agencies often carry backlogs, and records can arrive long after the decision deadline.

Fees

FOIA sorts requesters into three fee groups:[20]

Requester type	What can be charged
Commercial use	Search, review, and copying
Educational or noncommercial scientific institutions, and news media	Copying only
Everyone else	Search and copying

Non-commercial requesters receive the first two hours of search time and the first 100 pages free.[21] Fees may be reduced or waived when release is in the public interest because it is likely to contribute significantly to public understanding of how the government operates.[22] And if an agency misses its deadline, it generally may not charge search fees.[23]

The nine exemptions

Records may be withheld only if they fall within one of nine exemptions.[24]

No.	What it covers, in plain English
1	Properly classified national security information
2	Internal personnel rules and practices of an agency
3	Information another federal statute specifically makes confidential
4	Trade secrets and confidential commercial or financial information

[18] *Id.* § 552(a)(6)(B)(i).

[19] *Id.* § 552(a)(6)(E).

[20] *Id.* § 552(a)(4)(A)(ii).

[21] *Id.* § 552(a)(4)(A)(iv).

[22] *Id.* § 552(a)(4)(A)(iii).

[23] *Id.* § 552(a)(4)(A)(viii).

[24] *Id.* § 552(b)(1)–(9).

No.	What it covers, in plain English
5	Internal agency memos protected by legal privileges, such as the deliberative process, attorney-client, and attorney work-product privileges
6	Personnel, medical, and similar files where release would be a "clearly unwarranted" invasion of personal privacy
7	Law enforcement records, but only if release could cause one of six listed harms, such as interfering with an investigation, invading personal privacy, revealing a confidential source, or endangering someone's life or safety
8	Reports about the regulation of banks and financial institutions
9	Geological and geophysical information about wells

Three rules limit how the exemptions work:

- **Withhold only what is exempt.** If part of a record is exempt, the agency must release the rest. The redacted copy is supposed to show where material was removed and which exemption was used.[25]
- **Foreseeable harm.** Since 2016, an agency may withhold only if it reasonably foresees that release would harm an interest an exemption protects, or if another law forbids release.[26]
- **Deliberative records expire.** The deliberative process privilege under Exemption 5 does not apply to records created 25 or more years before the request.[27]

FOIA also contains three narrow "exclusions" for certain sensitive law-enforcement and intelligence records. For those, an agency may respond as if the records do not exist under FOIA.[28]

If the answer is no

1. **Administrative appeal.** A requester has at least 90 days from a denial to appeal within the agency. The agency must decide the appeal within 20 working days.[29]
2. **Mediation.** The Office of Government Information Services, part of the National Archives, offers free mediation between requesters and agencies. It is an option, not a required step.[30]
3. **Federal court.** A requester may sue in federal district court. The court decides the matter fresh ("de novo"), may review withheld records privately, and places the

[25] *Id.* § 552(b) (flush language following para. (9)).

[26] *Id.* § 552(a)(8)(A).

[27] *Id.* § 552(b)(5).

[28] *Id.* § 552(c).

[29] *Id.* § 552(a)(6)(A)(i)(III)(aa), (a)(6)(A)(ii).

[30] *Id.* § 552(h)(3).

burden on the agency to justify withholding.[31] If the agency misses its deadline, the requester is treated as having used up the administrative steps and may go straight to court.[32] A requester who substantially prevails may be awarded attorney's fees and costs.[33]

Real Cases: How Courts Have Applied FOIA

The rap sheet case: *U.S. Department of Justice v. Reporters Committee for Freedom of the Press* (1989)

A journalist asked the FBI for the criminal history "rap sheet" of a man alleged to have ties to organized crime. Each arrest and conviction on the sheet was already a public record somewhere. The Supreme Court still ruled unanimously that the FBI could withhold the compiled rap sheet under Exemption 7(C).[34]

The Court reasoned that scattered public records carry a "practical obscurity." Gathering them into one federal file creates a privacy interest the separate pieces do not have. The Court also said FOIA exists to show what the *government* is up to, not to collect information about private citizens.[35]

This case has two sides for people with records. It protects a person's compiled federal history from strangers. It also means FOIA is not a tool for looking up someone else's federal rap sheet. Compare this with Wisconsin's CCAP, which posts individual circuit court case records online.

The family privacy case: *National Archives & Records Administration v. Favish* (2004)

A requester sought death-scene photographs of Vincent Foster, a White House lawyer who died in 1993. The Supreme Court held that Foster's surviving family had their own privacy interest in the photographs.[36]

The Court added a rule for requesters who claim government wrongdoing: they must offer evidence that would make a reasonable person believe misconduct may have happened. Bare suspicion is not enough to outweigh the family's privacy.[37]

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[31] *Id.* § 552(a)(4)(B).

[32] *Id.* § 552(a)(6)(C)(i).

[33] *Id.* § 552(a)(4)(E).

[34] *Reps. Comm.*, 489 U.S. at 780.

[35] *Id.* at 762–64, 773.

[36] Nat'l Archives & Recs. Admin. v. Favish, 541 U.S. 157, 170 (2004).

[37] *Id.* at 174.

The narrow-reading case: *Milner v. Department of the Navy* (2011)

The Navy used Exemption 2, for "internal personnel rules and practices," to withhold maps showing how far explosions could reach at a Washington State naval base. The Supreme Court ruled 8-1 that Exemption 2 means what its words say: personnel matters such as employee relations, not every internal agency document.[38]

The Court pointed out that other exemptions might still protect sensitive material. The lesson is that courts read exemptions narrowly and by their text, because FOIA's starting point is disclosure.

Two terms worth knowing

- **Vaughn index.** In FOIA lawsuits, agencies are often required to produce an itemized list describing each withheld document and the exemption claimed. The name comes from *Vaughn v. Rosen*.[39]
- **Glomar response.** Sometimes an agency will "neither confirm nor deny" that records exist, because even admitting they exist would reveal protected information. The name comes from the *Hughes Glomar Explorer*, a ship the CIA used in a secret operation, and the case *Phillippi v. CIA*.[40]

A Related Law: The Privacy Act of 1974

FOIA is about the public's access to government records. A separate federal law, the Privacy Act, gives individuals a right to see federal agency records *about themselves*, and to ask that inaccurate records be corrected.[41]

Two differences are worth knowing:

- The Privacy Act's access rights belong to U.S. citizens and lawful permanent residents. FOIA belongs to "any person."[42]
- Because each law has its own exemptions, a record withheld under one may sometimes be available under the other. Agencies commonly process a person's request for their own records under both laws.

Some federal records have their own process entirely. For example, a person's own FBI criminal history (an "Identity History Summary") is requested through a separate FBI procedure set out in federal regulations, not through FOIA.[43]

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[38] Milner v. Dep't of the Navy, 562 U.S. 562, 570, 581 (2011).

[39] Vaughn v. Rosen, 484 F.2d 820, 826–28 (D.C. Cir. 1973).

[40] Phillippi v. CIA, 546 F.2d 1009, 1011–13 (D.C. Cir. 1976).

[41] Privacy Act of 1974, 5 U.S.C. § 552a(d) (2018).

[42] *Id.* § 552a(a)(2); 5 U.S.C. § 552(a)(3)(A).

[43] 28 C.F.R. §§ 16.30–.34 (2025).

Federal vs. Wisconsin at a Glance

Both laws start from the same idea, that government records belong to the public, but they work differently in nearly every detail.

Topic	Federal FOIA	Wisconsin Open Records Law
Who it covers	Federal executive-branch agencies	State and local "authorities," including counties, cities, school districts, and elected officials[44]
Who can ask	"Any person"	Any requester, but people who are incarcerated or committed may request only records containing information about themselves[45]
Must the requester give a reason?	No	No[46]
Deadline	20 working days, plus up to 10 in unusual circumstances	No fixed number of days; "as soon as practicable and without delay"[47]
Fees	Three requester groups; free first two hours and 100 pages for non-commercial requesters	Actual, necessary, and direct costs; location (search) fees only when they total $50 or more[48]
Standard for withholding	Nine listed exemptions plus a foreseeable-harm requirement	Statutory and common-law exceptions, plus a case-by-case public-interest balancing test[49]
Where to challenge	Agency appeal, optional OGIS mediation, then federal court	Mandamus action in state court, or a request that the district attorney or Attorney General act[50]
Free help	Office of Government	Wisconsin DOJ Office of Open Government[51]

[44] Wis. Stat. § 19.32(1) (2023–24).

[45] *Id.* § 19.32(3).

[46] *Id.* § 19.35(1)(i).

[47] *Id.* § 19.35(4)(a).

[48] *Id.* § 19.35(3)(a), (c).

[49] *Id.* § 19.35(1)(a); Hathaway v. Joint Sch. Dist. No. 1, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984).

[50] Wis. Stat. § 19.37(1).

Topic	Federal FOIA	Wisconsin Open Records Law
with the law	Information Services	

Closing Thoughts

FOIA turned 60 in 2026, and the debate over how well it works continues. In 2026 a federal advisory committee at the National Archives recommended that Congress consider a specialized court for FOIA cases.[52] Whatever changes come, the basics in this article are the foundation: know which government holds the record, know which law applies, and know that disclosure is the starting point.

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Where to learn more

- FOIA.gov (https://www.foia.gov), the federal government's central FOIA website, run by the U.S. Department of Justice
- Office of Government Information Services (https://www.archives.gov/ogis), the federal FOIA ombudsman at the National Archives
- Wisconsin DOJ Office of Open Government (https://www.doj.state.wi.us/office-open-government), for Wisconsin's Open Records Law
- Part 1 of this series: *Public Records Requests in Wisconsin: Understanding Wisconsin's Open Records Law*

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[51] *Id.* § 19.39.

[52] Nat'l Archives & Recs. Admin., Freedom of Information Act Advisory Committee, *Final Report and Recommendations (2024–2026 Term)* (July 2026), https://www.archives.gov/files/ogis/documents/foia-advisory-committee-report-recommendations-2024-2026-final-16-july-2026.pdf.