

Using the “Freedom of Information Act” for Housing Advocacy

By Ed Gramlich, Senior Advisor,
National Low Income Housing Coalition

Everyone has the right to request federal agency records or information under the “Freedom of Information Act” (FOIA). Federal agencies, subject to certain exceptions, must provide the information when it is requested in writing. In order to use FOIA, advocates do not need to have legal training or use special forms. All that is necessary is a letter.

SUMMARY

FOIA allows individuals and groups to access the records and documents of federal agencies such as HUD and U.S. Department of Agriculture (USDA) Office of Rural Development (RD). Requests must be made in writing. Each agency has its own practices and regulations. HUD’s FOIA regulations are at 24 CFR Part 15. USDA’s regulations are at 7 CFR Part 1 Subpart A.

HUD’s FOIA webpages are at https://www.hud.gov/program_offices/administration/foia

and RD’s FOIA webpages are at <https://www.rd.usda.gov/contact-us/freedom-information-act-foia>. The Department of Justice FOIA webpages are at <https://www.foia.gov>. Check out the “Learn about FOIA” option on the top, left-hand side of the menu bar to learn more.

FOIA does not provide access to the records and documents of parts of the White House, Congress, the courts, state and local governments or agencies, private entities, or individuals.

Records include not only print documents, such as letters, reports, and papers, but also photos, videos, sound recordings, maps, email, and electronic records. Agencies are not required to research or analyze data for a requester, nor are they required to create a record or document in response to a request. They are only obligated to look for and provide existing records. Agencies

must, however, make reasonable efforts to search for records in electronic form. The term search is defined as reviewing, including by automated means, agency records (e.g., performing relatively simple computer searches).

A formal FOIA request might not be necessary. By law and presidential order, federal agencies are required to make a substantial amount of information available to the public. Before considering a FOIA request, advocates should explore the HUD or RD websites and be fairly confident that the information sought is not already available online.

If advocates cannot find the information they seek on an agency’s website, it might be readily available from agency staff in the field, regional, or headquarters’ offices. Rather than invoking the formal FOIA process, it is often quicker and easier to start with an informal approach. Simply phone or email the agency office and ask for information. Formal, written FOIA requests generally trigger a slower, formal, bureaucratic process.

- Some HUD contact information can be found under the “Contact Us” tab on the HUD website, www.hud.gov. Other HUD staff might be found on a specific program area’s website, such as Public and Indian Housing (PIH) under “About PIH” or even going deeper, for example, in the Housing Choice Voucher Program’s staff directory, <https://bit.ly/2SexKJY>.
- RD state offices can be located at <https://www.rd.usda.gov/contact-us/state-offices>, and state and local offices can be located at <https://www.rd.usda.gov/browse-state>. If you are not sure where to submit a FOIA request, send it to the RD FOIA/Privacy Act Officer in Washington, DC, at <https://www.rd.usda.gov/contact-us/freedom-information-act-foia>.
- USDA Service Centers (which might have an RD area office) can be found at <https://bit.ly/2hYd36R>.

MAKING A FOIA REQUEST

If an informal request does not produce the desired information, a formal request may be necessary. A formal FOIA request can be simple and short, but it must be in writing. In your letter, state that you are making a request under FOIA. Describe what you are looking for in as much detail as possible, including dates, names, document numbers, titles, types of beneficiaries you are concerned about, etc. Specify the format, paper or electronic, in which you would like to receive the requested information.

Request a waiver of any fees for copying or searching, explaining your organization's mission and its nonprofit status in order to demonstrate that you do not have a commercial interest in the information. Explain how this information will:

- Be of interest to more than a small number of people, and how your organization can distribute the information to many people.
- Lead to a level of public understanding of a HUD or RD activity that is far greater than currently exists.

Provide contact information for the individual or organization requesting the information, including mailing address, phone number, and email address. Ask the agency to provide detailed justifications for any information that it refuses to release. Include a statement that the law requires the agency to respond within 20 working days indicating whether the request will be processed.

Formal requests must be in writing, but they can be made through email, by fax, or through postal mail.

HUD FOIA requests:

- To make a FOIA request of HUD headquarters electronically, go to https://www.hud.gov/program_offices/administration/foia/requests.

To make a FOIA request through the mail write to:

U.S. Department of Housing and Urban Development

Freedom of Information Act Office
451 Seventh Street, SW, Room 10139
Washington, DC 20410-3000

- If the response is not adequate, contact the FOIA Public Liaison for HUD headquarters at https://www.hud.gov/program_offices/administration/foia/servicecenters.
- To make a FOIA request of documents from a HUD regional office, advocates should locate the appropriate person and address from the HUD FOIA Requester Service Centers webpage at https://www.hud.gov/program_offices/administration/foia/servicecenters.
- The Department of Justice also has list of HUD regional FOIA contacts as well as FOIA liaisons at <https://www.foia.gov/#agency-search>.
- If the response from the FOIA Requester Service Center is not adequate, contact the FOIA Public Liaison for the appropriate geographic region.

RD FOIA requests:

- To make a FOIA request for RD documents at either the local level or at RD headquarters, advocates can write to the RD FOIA Coordinator for their state. Contact information for RD FOIA State Coordinators can be found at https://www.rd.usda.gov/files/USDA_RDFOIAStateContacts.pdf.
- If you are not sure where the information is located, send the FOIA request to the RD FOIA Officer at RD headquarters in Washington, DC, <http://www.rd.usda.gov/contact-us/freedom-information-act-foia>.

The Reporters Committee for Freedom of the Press provides an interactive tool to generate a FOIA request to any agency, <https://www.ifoia.org>.

Timeline

Once a request is made, HUD and RD will log the request and provide a tracking number. The agencies must grant or deny a FOIA request within 20 working days of receipt. This response simply shows whether or not the agency intends to provide the information.

There is no time limit on actually providing the information; however, USDA's regulations require RD to approximate the date that the information will be provided.

When an agency makes a determination whether or not to comply with a FOIA request, the "FOIA Improvement Act of 2016" requires the agency to immediately notify the requester of the determination and the reasons for it. The 2016 act also requires the agency to notify the requester that there is a right to seek assistance from the agency's FOIA public liaison.

If there are unusual circumstances, such as large numbers of records to review, staffing limitations, or the need to search for records in another physical location or from another agency, the agency must give written notice and can add an extra 10 days, as well as provide the requester with an opportunity to limit the scope of the request so that the request can be processed more quickly. The 2016 act adds that when unusual circumstances exist and an agency needs to extend the time limits by more than 10 additional working days, the written notice to the requester must notify the requester of the right to seek dispute resolution services from the Office of Governmental Information Services.

The 2016 act requires agencies to make records available for public inspection in an electronic format that, because of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records, or that have been requested three or more times.

Expedited Requests

If there is imminent threat to life or physical safety, or if there is an urgent need to inform the public, advocates can ask for expedited processing. HUD and RD will issue a notification within 10 working days indicating whether a request will get priority and more rapid processing.

Denial of Requests

Information can only be denied if it is exempt.

The law lists nine exemptions, such as classified national defense information, trade secrets, personal information, and certain internal government communications. The letter denying a FOIA request must give the reasons for denial and inform the requester of the right to appeal to the head of the agency.

The "internal government communications" exemption might be relevant to housing advocates. The intent of this exemption is to promote uninhibited discussion among federal employees engaged in policymaking. This exemption would apply to unfinished reports, preliminary drafts of materials, and other internal communications taking place as agency staff undertake a decision-making process.

Appeals

Decisions to deny a fee waiver, deny a request for expedited disclosure, or failure to release the requested information can be appealed. Appeals to HUD should be made within 30 days. A letter should be sent to the HUD official indicated in the denial letter and generally include a copy of the original request, a copy of the denial, and a statement of the facts and reasons the information should be provided. Specific information for appeals pertaining to fees or expedited processing are listed at <https://bit.ly/2SZBhiK>.

For adverse determinations, the 2016 act requires agencies to give the requester at least 90 days from the date of the adverse determination to file an appeal. In addition, the 2016 act requires agencies to notify the requester that there is a right to seek dispute resolution services from the FOIA Public Liaison or from OGIS.

To appeal an RD denial, advocates can send a letter to the RD official indicated in the denial letter within 45 days. If that appeal fails, advocates can appeal to the RD FOIA Officer. If still not satisfied, advocates should write to the Rural Housing Service Administrator. The agency has 20 working days to make a decision regarding an appeal.

SAMPLE FOIA LETTER

Date

Agency/Program FOIA Liaison

Name of Agency or Program

Address

RE: Freedom of Information Act Request

Dear [name]:

Under the Freedom of Information Act, I am requesting copies of [identify the records as specifically as possible].

I request a waiver of fees because my organization is a nonprofit with a mission to [state the organization's mission and activities, demonstrating that it does not have a commercial interest in the information]. In addition, disclosure of the information will contribute significantly to public understanding of the operations and activities of HUD/RD.

[Explain how the information is directly related to HUD/RD, how the information will contribute to public understanding of HUD/RD operations or activities, and how you or your organization—as well as a broader segment of the public—will gain a greater understanding of these agencies by having the requested information. Describe the role and expertise of your organization as it relates to the information and how the information will be disbursed to a broader audience].

As provided by law, a response is expected within 20 working days. If any or part of this request is denied, please describe which specific exemption it is based on and to whom an appeal may be made.

If you have any questions about this request, please phone me at _____.

Sincerely,

Your name

Address

FOR MORE INFORMATION

Public Citizen's Freedom of Information, <https://www.citizen.org/our-work/transparency/freedom-information-act>.

"How to File a FOIA Request: A Guide" at <https://www.citizen.org/our-work/litigation/litigation-how-file-foia-request>.

Reporters Committee for Freedom of the Press FOIA, <https://www.ifoia.org/>.

Federal Open Government Guide (Reporters Committee for Freedom of the Press), <https://www.rcfp.org/federal-open-government-guide>.

HUD FOIA webpage, https://www.hud.gov/program_offices/administration/foia.

USDA RD FOIA webpage, <https://www.rd.usda.gov/contact-us/freedom-information-act-foia>

General Services Administration, Your Right to Federal Records, https://www.gsa.gov/cdnstatic/Your_Right_to_Federal_Records.pdf.

Department of Justice FOIA websites, <http://www.justice.gov/oip> and <http://www.foia.gov>.