

Using the “Freedom of Information Act” for Housing Advocacy

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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 this information when it is requested in writing. To exercise their rights under 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 the U.S. Department of Agriculture (USDA) Office of Rural Development (RD).

Requests must be made in writing and 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](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](https://www.rd.usda.gov/contact-us/freedom-information-act-foia). [The Department of Justice FOIA webpages are at https://www.foia.gov](https://www.foia.gov); check out the “Learn about FOIA” menu on the top left-hand side of the homepage 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. In this

case, “search” is defined as reviewing, including by automated means, agency records (e.g., performing relatively simple computer searches).

A formal FOIA request may not be necessary. By law and presidential Executive 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 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, easier, and more productive to start with an informal approach. Simply phone or email the agency program office and ask for information. Formal, written FOIA requests generally trigger a slower, formal, bureaucratic process. In recent years, HUD has been very slow in responding to FOIA requests.

- Some HUD contact information can be found under the “Contact Us” tab on the HUD website, www.hud.gov. Other HUD staff can be found on a specific program area’s website, such as Public and Indian Housing (PIH) under “About PIH” or 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](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](https://www.rd.usda.gov/browse-state). If unsure where to submit a FOIA request, send it to the [RD Records and Information Management Branch, RD.FOIA@usda.gov](mailto:RD.FOIA@usda.gov). USDA Service Centers (which might have an RD area office) can be found at <https://offices.sc.egov.usda.gov/locator/app?state=us&agency=rd>.

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 the request 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 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 will 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 electronically, use the HUD FOIA Requester Service Center <https://hudpal.foia-host.com/App/Home.aspx>.
- 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
- To make a FOIA request via fax, send it to 202.619.8365.
- 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 is not adequate, contact the FOIA Public Liaison for HUD headquarters or your HUD regional office at https://www.hud.gov/program_offices/administration/foia/servicecenters.

RD FOIA requests:

- To make a FOIA request for RD documents go to <https://efoia-pal.usda.gov>. The Mission Area is the Rural Housing Service (RHS), <https://www.rd.usda.gov/about-rd/agencies/rural-housing-service>. (The Rural Development link only connects to Single Family Development).
- For RD headquarters, write:

Lolita Barnes
National FOIA/PA Officer
1400 Independence Avenue, SW
South Building
Stop 0706
Washington, DC 20250-0706
Tel. 202-690-5394
Email: ssd.FOIA@wdc.usda.gov

The Reporters Committee for Freedom of the Press provides an interactive tool to generate a FOIA request to any agency; see <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 the agency intends to

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

When an agency determines whether 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 limit 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 have priority and more rapid processing.

Denial of Requests

Information can only be denied if it is exempt under law. The law lists nine exemptions,

including classified national defense information, trade secrets, personal information, and certain internal government communications. The letter denying a FOIA request must provide 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://www.hud.gov/program_offices/administration/foia/foiaappeals.

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 the Office of Government Information Services.

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 decide on 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 Act" webpage, <https://www.citizen.org/our-work/>

[transparency/freedom-information-act](https://www.transparencyfreedominformationact.org/).

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.

HUD FOIA Reference Guide, https://www.hud.gov/sites/documents/FOIA_REF_GUIDE.pdf.

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>, and <https://www.justice.gov/oip/foia-resources>.