

Freedom of Information Act (FOIA)

**Every thing you wanted to know
but are afraid to ask!**



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Why Should I Care About FOIA?

- **The documents you create as a Council Member or Council Staff member are subject to the FOIA process.**
- **These are agency records, including paper or electronic documents you create as you conduct Council business.**
- **There are some limitations and exceptions to what is “FOIAble.”**
- **FOIA’ed records usually become public.**

What Is A FOIA and A Record?

- **Defined by Commerce regulations, 15 CFR, Part 4, Subpart A**
 - **“A request for records ... not customarily made available as part of the department’s information services**
- **Agency records (Sec. 4.3) ...”records regardless of format, medium or physical characteristics, and include electronic records and information audiotapes, and video-tapes, and photographs.”**
- **All agency components must comply**

FOIA Background

- **Passed in 1966, Title 5, U.S.C., Section 552**
- **Provides that any “person” has the right to request access to federal agency records or information.**
- **Different from litigation, federal agency provides records without a requester filing a lawsuit.**
- **Requesters may file request as precursor for lawsuit.**
- **It has had several amendments since 1966.**



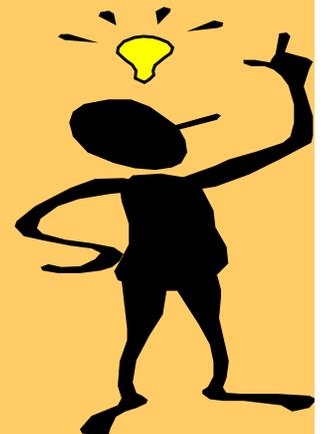
FOIA Mandates

- **All federal agencies are required to disclose records upon receiving a written request for them, except for those parts of records that are protected from disclosure by nine exemptions and three exclusions of the FOIA.**
- **Councils fall under the agency category.**
- **This right of access is enforceable in court.**
- **The federal FOIA does not provide access to records held by state or local government agencies, or by private businesses or individuals.**



Timelines For FOIA Requests

- **According to section 4.6, “... an initial response shall be made within 20 working days excluding weekends and legal holidays**
- **May obtain an extra 10 days**
 - **Unusual circumstances**
 - **Obtaining records from, or referring records to, other components**
 - **Voluminous records located**



FOIA Exemptions

- **All responsive records will be released unless covered by one or more exemptions**
- **Nine FOIA Exemptions**
- **Fisheries generally employs these exemptions ...**

Frequently Cited FOIA Exemptions

- **(b)(2) Internal Personnel Rules and Practices**
- **(b)(3) Information Specifically Exempted by Other Statutes**
- **(b)(4) Trade Secrets, Commercial or Financial Information**
- **(b)(5) Privileged Interagency or Intra-Agency Memoranda or Letters**
- **(b)(6) Personal Information Affecting and Individual's Privacy**
- **(b)(7) Investigatory Records Compiled for Law Enforcement Purposes**

FOIA Exemptions

(Rarely Cited)

- **(b)(1) Classified secret matters or national defense or foreign policy**
- **(b)(8) Records of financial institutions**
- **(b)(9) Geographical and geophysical information concerning wells**
- **Three law enforcement exclusions**



Without Adversely Affecting Operations How Do You Approach FOIA Requests?

- **Work with the FOIA Coordinator in your region to;**
 - **Analyze the request**
 - **Determine who has the responsive records**
 - **Prepare the fee estimate**
 - **If requester is not granted a fee waiver and does not pay, the request will be closed. Requester has appeal rights**
 - **If requester pays fee or has a fee waiver, compile, copy, and index records**
 - **Obtain legal review and General Council Clearance**
 - **Send responsive records to requester**



What Must I Do When Asked to Produce Records for a FOIA?

- **Read the request carefully to understand it – ask your Coordinator questions**
- **Respond with only requested records**
- **Note if you have concerns about releasing documents but provide all responsive documents**
- **Also involve your Executive Director, who is responsible for providing Council records to the Region in response to a FOIA**

Examples of Problems

- **Derogatory remarks**
- **Everything can potentially be released**
- **Embarrassment does not preclude records from release.**



Questions

- **Any questions?**
- **Thanks!**
- **Contacts:**
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Your local FOIA Coordinator

