

Freedom of Information Act (FOIA)

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

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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 requester filing lawsuit**
- **Requesters may file request as precursor for lawsuit**
- **Several Amendments over years**



FOIA Mandates

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



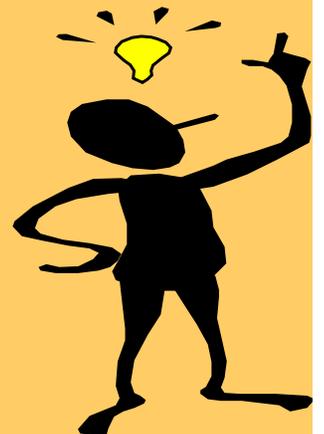
What Is A FOIA?

- **Defined by Commerce regulations in 15 CFR Part 4.4**
 - **A written request for records not customarily made available as part of the department's information services**
- **Agency records in (4.3) means all documents regardless of format, medium, physical characteristics, and includes, paper, electronic, audio, photographs, and video tapes**
- **All components must comply**



Timelines For FOIA Requests

- **According to section 4.6, 20 working days from date of receipt**
- **May obtain an extra 10 days if requester agrees in writing**
- **FOIA requests are “First In First Out” basis**



FOIA Exemptions

- **All responsive records will be released unless covered by one or more exemptions**
- **Nine FOIA Exemptions.**
- **Fisheries cites about 6 different exemptions**
- **Fisheries generally does not cite 3 different exemptions or three law enforcement exclusions**



FOIA Exemptions

(Frequently Cited)

- **(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**
 - 7 other subcategories



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?

- Analyze the request
- Determine who has the responsive records
 - **Watch out for non responsive record searches**
- Find the “choke point(s)” where all records end up
- Prepare the fee estimate and, if applicable, send it the requester
- If requester does not pay, request closed!
- If requester pays fee, compile, copy, and index records
- Obtain legal review
- Send responsive records to requester



Examples of Problems

- **E-mails or memoranda that doubt agency decision**
- **Derogatory remarks**
- **Everything can potentially be released**



Questions

- **Any questions?**
- **Thanks!**

