

# Council of the Inspectors General on Integrity and Efficiency Freedom of Information Act Guide and Handbook

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## **Getting Started**

The Council of the Inspectors General on Integrity and Efficiency (CIGIE) posts a great deal of information on its website. So, before making a request, you might want to look there first. You may find that the information you are interested in is already posted.

You should also keep in mind that each federal agency handles or processes its own records in response to FOIA requests. There is no central office in the government that processes FOIA requests for all federal departments and agencies. Therefore, before sending a request to CIGIE you should determine whether CIGIE is likely to have the records you are seeking. CIGIE's records generally fall within one of two categories: (1) the types of records commonly generated by all federal agencies together with the records of the CIGIE Training Institute; and (2) the Integrity Committee Case Information system which contains records on matters submitted to and/or reviewed by CIGIE's Integrity Committee (IC). More information on the IC can be found here: <https://www.ignet.gov/content/integrity-0>.

Notably, CIGIE does not have access to records of federal Offices of Inspector General (OIGs). Requests for OIG records should not be submitted to CIGIE.

Additionally, you can read CIGIE's official FOIA regulations here: <https://www.ignet.gov/content/foia-regulations>.

## **Where should I send my request?**

CIGIE has a centralized system for processing FOIA requests, with one office receiving and coordinating the processing of all FOIA requests made to CIGIE. The Executive Director of CIGIE, or designee, is authorized to grant or deny any requests for records that are maintained by CIGIE. For purposes of any request for records maintained by the CIGIE IC, the designees are the IC Chairperson and IC Vice Chairperson.

A request for CIGIE records under FOIA must be made in writing. The request must be sent by:

- (1) Regular mail addressed to: FOIA Officer, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW, Suite 825, Washington, DC 20006;
- (2) By fax sent to the FOIA Officer at (202) 254-0162; or
- (3) By email to FOIASTAFF@cigie.gov.

## **What can I request?**

A FOIA request can be made for any agency record. You can also specify the format in which you wish to receive the records. You should be aware that the FOIA does not require agencies to do research for you, to analyze data, to answer written questions, or to create records in response to a request.

## **Is there a special form I have to use to make a FOIA request?**

There is not a specific form that must be used to make a request. The request simply must be in writing and must reasonably describe the records you seek.

In making your request you should be as specific as possible when describing the records you are seeking. It is not necessary for you to provide the name or title of a requested record, but the more specific you are about the records or types of records that you seek, the more likely it will be that CIGIE will be able to locate those records.

## **What are the requirements to get records on myself?**

If you are seeking records on yourself, you will be required to verify your identity. This verification is required in order to protect your privacy and to ensure that private information about you is not disclosed inappropriately to someone else. The request must state the requester's full name, current address, and date and place of birth. The requester must sign the request and the signature must either be notarized or state, "Under penalty of perjury, I hereby declare that I am the person named above and I understand that any falsification of this statement is punishable under the provisions of Title 18, United States Code (U.S.C.), Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years, or both; and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of Title 5, U.S.C., Section 552a(i)(3) as a misdemeanor and by a fine of not more than \$5,000."

## **What about requirements for obtaining records on someone else?**

If you request records relating to another person, and disclosure of the records could invade that person's privacy, they ordinarily will not be disclosed to you. For example, if you seek information that would show that someone else (including your spouse or another member of your immediate family) has ever been the subject of an IC investigation or was even mentioned in a IC file and you do not provide the subject's consent or proof of their death, in almost all cases CIGIE will respond by stating that it will "neither confirm nor deny" the existence of responsive law enforcement records. Law enforcement information about a living person is released without that person's consent only when no personal privacy interest would be invaded by disclosing the information, such as when the information is already public or required to be made public, or in cases where the individual's privacy interest is outweighed by a strong public interest in disclosure. You may receive greater access by submitting either a notarized

authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (e.g., a copy of a death certificate or an obituary). As an exercise of administrative discretion, CIGIE can require a requester to supply additional information, if necessary, to verify that a particular individual has consented to disclosure.

### **What happens after I submit my request to CIGIE?**

When CIGIE receives your FOIA request, it ordinarily will send you a letter acknowledging the request and assigning it a tracking number. You should always feel free to contact CIGIE if you have any question about your request. CIGIE's FOIA Public Liaison is available to explain the FOIA process to you, provide information about the status of your request, and to otherwise assist you in understanding how your request is being handled.

### **How long will it take before I get a response?**

The time it takes to respond to each request varies depending on the complexity of the request itself and the backlog of requests already pending at CIGIE. In some circumstances, CIGIE will be able to respond to the request within the standard time limit established by the FOIA, which is twenty working days, or approximately one month. In other instances, there might be a longer period of time needed before the request can be handled. Many requests require a line-by-line review of hundreds or even thousands of pages of documents. Although CIGIE makes every effort to respond to FOIA requests as quickly as possible, in some cases it simply cannot do so within the twenty-day time period specified in the FOIA. Generally, if you make a request for a small volume of material, CIGIE will be able to process the request more quickly as a "simple" request.

### **Can my request be processed faster?**

Under certain conditions you may be entitled to have your request processed on an expedited basis. At CIGIE, there are four specific situations where a request will be expedited, which means that it is handled as soon as practicable:

- Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information;
- The loss of substantial due process rights; or
- A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

If you believe that your request might qualify for expedited processing under one of these four standards, you must specifically ask CIGIE for expedited handling of your request. When you do, you should provide a certified statement explaining why you believe your request qualifies under one of the four standards.

### **Are there any fees?**

There is no initial fee required to submit a FOIA request, but the FOIA does provide for the charging of certain types of fees in some instances.

For a typical requester, CIGIE can charge for the time it takes to search for records and for duplication of those records. For a typical requester, there is no charge for the first two hours of search time or for the first 100 pages of duplication.

You may always include in your request letter a specific statement limiting the amount that you are willing to pay in fees. You will not be charged for any fees amounting to \$25 or less. If CIGIE estimates that the total fees for processing your request will exceed \$25, it will notify you in writing of the estimate and offer you an opportunity to narrow your request in order to reduce the fees, unless you have already indicated a willingness to pay fees as high as those anticipated. CIGIE will not continue to work on your request until you commit in writing to pay the actual or estimated total fee, designate an amount you are willing to pay, or indicate that you only seek what can be provided for free (if you are a noncommercial use requester). If you agree to pay fees for a records search, be aware that you may be required to pay such fees even if the search does not locate any responsive records or, if records are located, even if they are determined to be entirely exempt from disclosure.

### **Can I ask that any fees be waived?**

You may request a waiver of fees. Under the FOIA fee waivers are limited to situations in which a requester can show that the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. Requests for fee waivers from individuals who are seeking records pertaining to themselves usually do not meet this standard. In addition, a requester's inability to pay fees is not a legal basis for granting a fee waiver.

### **What can I expect in response to my request?**

Once CIGIE has processed your request and any fee issues have been resolved, CIGIE will send you a written response and will usually include all documents that can be disclosed to you. The response letter will advise you of whether any information is being withheld pursuant to one or more of the nine exemptions to the FOIA. The letter might also include a notification that Congress provided special protection for three narrow categories of law enforcement records that are excluded from the FOIA and so are not part of the agency's response. If pages of information have been withheld in full, CIGIE ordinarily will specify the number of pages being withheld or make a reasonable effort to estimate the volume of the withheld information. Where a page of a record is being withheld in part, the withheld portions of the page will ordinarily be specifically marked with the applicable exemptions.

The FOIA authorizes agencies to withhold information when they reasonably foresee that disclosure would harm an interest protected by one of nine exemptions covering:

1. classified national defense and foreign relations information;
2. internal agency personnel rules and practices;
3. information that is prohibited from disclosure by another federal law;
4. trade secrets and other confidential or privileged commercial or financial information;
5. inter-agency or intra-agency communications that are protected by legal privileges;
6. information involving matters of personal privacy;
7. records or information compiled for law enforcement purposes, to the extent that the production of those records:
  - a. could reasonably be expected to interfere with enforcement proceedings,
  - b. would deprive a person of a right to a fair trial or an impartial adjudication,
  - c. could reasonably be expected to constitute an unwarranted invasion of personal privacy,

- d. could reasonably be expected to disclose the identity of and/or information provided by a confidential source,
  - e. would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or
  - f. could reasonably be expected to endanger the life or physical safety of any individual;
- 8. information relating to the supervision of financial institutions; and
  - 9. geological information on wells.

Additionally, Congress provided special protection in the FOIA for three narrow categories of law enforcement and national security records. The provisions protecting those records are known as "exclusions." The first exclusion protects the existence of an ongoing criminal law enforcement investigation when the subject of the investigation is unaware that it is pending, and disclosure could reasonably be expected to interfere with enforcement proceedings. The second exclusion is limited to criminal law enforcement agencies and protects the existence of informant records when the informant's status has not been officially confirmed. The third exclusion is limited to the FBI and protects the existence of foreign intelligence or counterintelligence, or international terrorism records when the existence of such records is classified. Records falling within an exclusion are not subject to the requirements of the FOIA. So, when CIGIE responds to your request it will limit its response to those records that are subject to the FOIA.

### **Can I appeal the response to my request?**

You may file an administrative appeal if you are not satisfied with CIGIE's initial response. You will be advised of your right to file an administrative appeal in the CIGIE's response if it contains an adverse determination. All appeals must be made in writing and addressed to the CIGIE Chairperson c/o Office of General Counsel, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW, Suite 825, Washington, DC 20006. The appeal must be in writing, and must be submitted either by:

- (1) Regular mail sent to the address listed in this subsection, above; or
- (2) By fax sent to the FOIA Officer at (202) 254-0162; or
- (3) By email to FOIAAPPEAL@cigie.gov.

The appeal must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the response.

There is no specific form or particular language needed to file an administrative appeal. You should include the initial request number that CIGIE assigned to your request and the date of CIGIE's action. There is no need to attach copies of released documents unless they pertain to some specific point you are raising in your administrative appeal. You should explain what specific action by CIGIE that you are appealing, but you need not explain the reason for your disagreement with CIGIE's action unless your explanation will assist the appeal decision-maker in reaching a decision.

CIGIE may take one of several actions on your administrative appeal. It may affirm the original action in full, in which case it will typically identify the reason why the original action was proper. Alternatively, it may affirm part of the original action, but otherwise "remand" the request in part for some further action. Finally, under some circumstances, it may remand the request its entirety for further action. When a case is remanded, you will have an opportunity to appeal again if you are dissatisfied in any respect with CIGIE's action on remand.

**If I'm still dissatisfied, are there other options?**

During the course of the request process, CIGIE's FOIA Public Liaison can assist you in a variety of ways, from working with you on the scope of your request and the searches that will be done, to arranging an alternative time frame for processing your request, to providing information on the status of your request, and increasing your understanding of the request process. Once you have received a response, you can file an administrative appeal.

In addition, there is now an office established within the National Archives and Records Administration called the Office of Government Information Services (OGIS), which offers mediation services to FOIA requesters as an alternative to litigation. Using OGIS's services does not preclude you from filing a FOIA lawsuit.

Finally, the FOIA provides requesters with the right to challenge an agency's action in federal court. A federal judge will conduct an independent review of the agency's action on your request. Before filing a lawsuit, you ordinarily will be required to have first filed an administrative appeal.

**What does the presumption of openness mean?**

FOIA provides that when processing requests, agencies should withhold information only if they reasonably foresee that disclosure would harm an interest protected by an exemption, or if disclosure is prohibited by law. Agencies should also consider whether partial disclosure of information is possible whenever they determine that full disclosure is not possible, and they should take reasonable steps to segregate and release nonexempt information.

**What if I still have questions?**

If you still have questions regarding the processing of FOIA requests at CIGIE, you can contact the CIGIE FOIA Public Liaison at 202-616-1210.