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NMA Guide to the Freedom of Information Act and State/Municipal Public Records Requests

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Using the public records request (PRR) process to obtain accurate information about how governmental agencies operate is one of the most powerful tools in the arsenal of an advocate. NMA members have used the Freedom of Information Act (FOIA) and PRRs to find out such things as how a particular posted speed limit was established, what justification was used to locate a red-light camera at a specific intersection, and the operational details behind a specific traffic enforcement program.

Constructive reform of government requires a thorough understanding of an issue. Used effectively, the records request helps provide transparency of policy and related activity that are essential ingredients to an open society and functioning democracy.

This Guide is designed to help you understand and utilize the process established by law to provide the public with the ability to review, understand, and if necessary, challenge the inner workings of federal, state, and local government agencies. It is not intended nor should it be construed as giving specific legal advice. The Guide consists of the following sections:

[**A Basic Overview of the Records Request Process**](#)

[**FOIA vs. PRR**](#)

[**Use of Records Requests**](#)

[**Requesting Federal Records**](#)

[**Requesting State or Local Agency Records**](#)

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The [**Practical Tips**](#) section and the examples in [**Appendix 1**](#) in particular may help you craft a records request designed to obtain the information in an accurate and efficient manner.

A Basic Overview of the Records Request Process

The process need not be daunting. You don't have to be (or hire) an attorney to issue a records request. The language of the request should be straight-forward in describing the documents desired. The basic steps of executing a successful records request are:

- Refer to the [Appendix 1](#) for ideas of how to structure your request and for suggested language. State public records statutes are listed in [Appendix 2](#) for handy reference.
- Decide what specific information you are seeking and write a clear, concise description.
- Contact the agency that holds the records you seek and determine specifically who to direct the request to – typically the person responsible for the public records request program within the agency or someone designated as the custodian of records – along with other PRR requirements by the agency.
- The PRR can usually be submitted by mail, email, fax, or in person. Always get the name of the specific individual who received your request along with confirmation of time and date of receipt. Certified or registered mail is recommended, complete with return receipt.
- If there is no acknowledgment of your request from the agency within five business days after confirmed receipt, call the agency and ask to speak to the person the responsible for its public records or Freedom of Information Act program. You should determine at this time whether there are any issues that are holding up the processing of the request, and if none, when you can expect a response.
- If the agency requires cost reimbursement for processing your request (see [Cost of Obtaining Public Records](#)), determine whether the cost is necessary before proceeding. In many cases, you can review the records in person at the agency at little to no cost before having copies made or may be able to clarify your original request such that extra charges are not incurred.

FOIA vs. PRR

The [Freedom of Information Act](#) (Title 5 of the United States Code § 552) is a statute that pertains to the public's right to view federal records. Public records laws carry the same obligation to the public but apply to records maintained or held by a state agency, board, or other governmental entity.

See [Appendix 2](#) for a listing of the pertinent laws of each state. Local (non-state) government agencies must follow the state law but may also include some additional requirements. Before issuing a records request per FOIA, or to a state or local agency, it is strongly recommended that the regulations governing records requests to that agency be reviewed and complied with.

Use of Records Requests

There are several reasons one might use the public records laws to obtain government documents and lend transparency to the machinations of a particular agency:

1. To obtain agency records for historical or academic research;
2. To obtain evidence that can be used to challenge agency rulemaking;
3. To obtain evidence that can be used in civil or criminal discovery;
4. To verify agency performance of statutory responsibilities;

Use of Records Requests (continued)

5. To review records involving policy issues and decisions;
6. To expose governmental wrongdoing.

Requesting Federal Records

Identify the agency that has the records you seek; a FOIA request must be addressed to that specific agency. If the identity of the agency holding the records is unclear, you can make the FOIA request to multiple agencies.

The FOIA request must be in clear and concise language. The request should be addressed to the agency's FOIA officer or to the head of the agency. The outer envelope holding the written request should be marked "Freedom of Information Act Request" in the lower left corner.

Each request must contain three basic elements:

1. A statement that the request is being made under the Freedom of Information Act
2. Specific identification of the records being sought
3. Contact information of the requester including name and address. Though not mandatory, the addition of phone number and email address information might facilitate a quicker response.

Note that it is not a requirement to state the purpose of a records request.

Requesting State or Local Agency Records

Each state has public records laws (see [Appendix 2](#)) that allow the public to obtain documents and other public records from state or local governmental agencies. While many state laws are modeled after the FOIA and use similar language, not all are interpreted the same by state courts. Always review the state public records statutes and those of the specific agency before submitting a PRR.

Obtainable Records

In general, every record made or received by a government agency or employee is presumed to be a public record unless specifically exempted in part or in whole. (See [FOIA Exempted Documents](#), [PRR Exempted Documents](#)) If a records custodian claims an exemption, the burden falls on the custodian to show how the exemption applies and why the record should be withheld.

While federal and state public records laws do not grant an absolute right to obtain government documents, they do establish the right to request such documents and to receive a response.

FOIA Exempted Documents

Exemptions fall under nine different categories as detailed per 5 U.S.C. § 552(b)(1) to (9):

1. National defense or foreign policy information classified pursuant an Executive Order;
2. Documents "related solely to the internal personnel rules and practices of an agency;"
3. Documents "specifically exempted from disclosure by statute" other than FOIA, but only if the other statute's disclosure prohibition is absolute;

FOIA Exempted Documents (continued)

4. Documents which would reveal "[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential;"
5. Documents which are "inter-agency or intra-agency memorandum or letters" which would be privileged in civil litigation;
6. Documents which are "personnel and medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;"
7. Documents which are "records or information compiled for law enforcement purposes," but only if one or more of six specified types of harm would result: a) interfering with enforcement proceedings, b) depriving a person of a right to a fair trial or impartial adjudication, c) constituting an unwarranted invasion of personal privacy, d) revealing the identity of confidential sources, e) disclosing techniques and procedures for enforcement or prosecution actions that could result in a circumvention of the law, and f) revealing information that could endanger the life or physical safety of any individual;
8. Documents which are related to specified reports prepared by, on behalf of, or for the use of agencies which regulate financial institutions;
9. Documents which would reveal oil well locations and production data.

These exemptions could pertain to all or portions of a document.

PRR Exempted Documents

State public records laws should be reviewed for specific exemptions. Typical among them are:

1. Statutory (includes records that are specifically exempt from disclosure by statute and records deemed exempt under statute by necessary implication);
2. Personnel rules and practices;
3. Privacy (personnel and medical records or information or other data, the disclosure of which may constitute an unwarranted invasion of personal privacy);
4. Deliberative process (inter or intra-agency communications relating to policy positions, not including factual studies or reports related to the development of such positions);
5. Personal (notebooks and other materials prepared by an employee of the state or local agency that are personal to him/her and are not maintained in the files of the governmental unit);
6. Investigatory (materials compiled out of the public view by law enforcement or other investigatory officials where disclosure could prejudice the possibility of effective law enforcement and not in the public interest);
7. Trade secrets (or commercial/financial information provided with promise of confidentiality and used to help develop governmental policy as long as information was not used as a condition of receiving a governmental contract or other benefit.

Such exemptions could pertain to all or portions of a document.

Cost of Obtaining Public Records

It is good practice to ask for a cost estimate to execute a records request before instructing the agency to proceed with gathering and disseminating the desired information.

A. FOIA Requests

Fees may be imposed to cover the cost of duplicating documents, the cost of searching for documents, and the cost to review whether any part of the requested documents are exempt from disclosure. Charges for review of documents are not to include resolving issues of law or policy.

Fees can be minimized by focusing the request as specifically as possible, examining documents in person before determining which pages are to be copied or by asking for electronic transmittal, and by avoiding whenever possible a request that requires an agency to generate documents that don't exist such as a report compiled from data that it does maintain.

FOIA fees are to be waived or reduced if the information requested is likely to “contribute significantly to public understanding of the operations or activities of the government” and will not benefit the commercial interests of the requester. It is incumbent upon the requester to show that disclosure of the specified information will further the public interest. The fee waiver request should be a fundamental part of the overall FOIA request.

B. PRR Requests for Non-Federal Records

Generally, state and local agencies are permitted to charge fees for the same activities as outlined above for FOIA requests. The requester should become familiar with the public records laws of the state in question and with the public disclosure rules of the particular agency being queried.

Some jurisdictions have established fee schedules. It is advisable to ask for a copy as a way to ensure the costs to process a records request are in keeping with those standards. Some states allow fee waivers. See Examples #2 and #3 in [Appendix 1](#) for sample waiver language. If the requested information is for educational purposes, state that. Some states will waive or lower processing fees on that basis.

Statutory Response Time

A federal agency typically has up to 20 working days to respond after receiving a FOIA request, a period that can be extended by another 10 working days under unusual circumstances. Statutory response times to records requests made to state agencies vary by state, but generally fall under “reasonable time” standards.

Denied Requests

It is always best to try to sort things out directly with the records custodian at the agency in question. Occasionally refusals to provide records can be overcome by pursuing administrative remedies with the agency. But sometimes the agency refuses to release the information you seek, regardless of your efforts. In the case of FOIAs, you can take the case to court. Consult the public records laws of a given state ([Appendix 2](#)) for information about how to appeal a non-federal agency's decision to withhold documents.

Denied Requests (continued)

It is sometimes advisable to state in a records request that if a portion of the request is denied, then you wish to obtain all non-privileged information and all disclosable portions of documents that contain some privileged data. See Examples #2 and #3 in [Appendix 1](#) for sample language of such a request.

The following is with regard to federal records requests under FOIA. You can contest withheld information, the type or amount of processing fees that were charged by the agency, a rejection based on what the agency claims to be an inadequate description of the records on your part, or a claim that the requested records don't exist or weren't located. In fact, you can appeal if you feel the agency didn't conduct a thorough search for the specific information you requested. Be sure to review the individual agency's FOIA standards to determine how much time after an initial denial you have to file an appeal.

The denial of a FOIA request or an agency's failure to respond within the statutory 20-day deadline can be cause for pursuing an administrative appeal. Your appeal, submitted to the agency and typically reviewed by senior executives and/or attorneys not directly involved with the original FOIA process, should detail all the facts pertinent to your original request. If you fail to list an important fact at the administrative appeal level, your options to raise it if the case continues on to litigation may be limited.

The FOIA process was set up for ordinary citizens to participate in the transparency of government. As such, you do not need to be a lawyer or have legal research skills to issue a FOIA or to pursue an administrative appeal if your records request has been obstructed. As such, citing which of the agency's records rules have been violated can be an effective strategy to convince the administrative review panel to release the requested materials.

Practical Tips

Some helpful hints when initiating a records request:

- Some states may offer online FOIA educational courses, allowing public records requesters to learn proper techniques and submission styles. For instance, a Google search for "Illinois FOIA online training" led to this listing and link: **Public Training – Illinois Attorney General** (<http://foia.ilattorneygeneral.net/Training.aspx>).
- If there is time, try making a simple request, an information-gathering phone call, or even a personal visit to the agency office before invoking records laws. A phone call can be forgotten or a letter shuffled under a heap of paper, but it is impossible to ignore a person standing across the desk or counter.
- Do some research before sending a request. Even if you have familiarized yourself with the applicable federal or state records laws, the specific agencies may have additional guidelines. Try to figure out who is the correct "custodian of record" and whether there is a specific form to fill out to make the request.
- Keep requests and all communications regarding those requests polite and professional. The person receiving your request is likely not a policy maker. He/she will tend to be more helpful the more you treat him/her with respect.

Practical Tips (continued)

- Very Important: Make requests as narrow and specific as possible without excluding the information being sought. An agency is not required to produce documents or records that don't exist and it is not required to itemize for the requester what information it does possess. It may be necessary to make two requests, the first to determine what information is available and the second to home in on the desired content.
- Send requests by certified mail with signature confirmation. It is fine to use emails and phone calls to check on the status of request, but it is best to have the signature of the recipient on record.
- Whenever you talk over the phone with agency personnel, write down detailed notes of who you talked to, when the discussion took place, and what the discussion was about.
- Keep copies of all correspondence related to your records request.
- Do follow-up requests before the response deadline, and then again immediately after the deadline. If the agency is being unresponsive, be sure to let them know that you have a signature receipt that verifies when the clock started.
- Confine your request to a reasonable number of documents. An agency may refuse a request if it feels the scope is too broad and burdensome. In that case, consider issuing a series of requests, focusing each one on a specific set of information or data.
- If an agency responds to a request with a demand for an excessive processing fee, ask for the basis of the cost estimate and then determine if your request can be narrowed further to avoid excess charges. Requesting records to be produced in an electronic format may help defray copying costs.
- If your request is being obstructed and an administrative appeal bears no results, consider finding a reporter who is interested in the same information. The press doesn't like when government is acting secretively, and media involvement will make it harder for your request to be ignored.
- If you plan on using the requested records during a court case, first consult the rules of evidence for your state. Have the custodian of records or head of the agency's Freedom of Information Act program mark the appropriate documents provided to you as certified.
- Even if you aren't absolutely sure that the request has been done properly, or that it isn't in perfect compliance with the law, you are encouraged to still go forward with your request. The worse that can happen is that the request is denied and you can try again. On the other hand, a good public servant will overlook technical flaws and honor the intent of the freedom of information laws.
- The fact that many agencies outsource activities to contractors can complicate the records request process. Federal law does recognize that "agency records" remain public records even though the physical record keeping has been outsourced, but the contractor's own proprietary records are generally not subject to a records request.

Appendix 1 – Public Records Request Examples

Example #1 – PRR by email for speed study/yellow light data on approaches to photo-enforced intersections

To: City of _____
OPEN RECORDS REQUEST

Submitted via Email to: <recordscustodian>@city.gov

Date and Time: _____
Requester Name/Address: _____
Requester Phone Number: _____
Requester Email: _____

Pursuant to the <State> Open Records law, I request the following:

I request that you provide the latest 85th percentile speed check data for the approaches at each of the photo-enforced traffic lights in <City>. Also please provide timing information for yellow light change intervals of those same traffic signals lights over the most recent twelve months.

Requester Signature: <provided electronically>

Example #2 – PRR by letter for information about city’s speed camera program

Date: _____

To: <City> Police Department
Attention: <records custodian>
<street address of police department>
cc: <police chief>

<STATE> PUBLIC INFORMATION ACT REQUEST

Pursuant to <state-specific statutory citation, see [Appendix 2](#)>, I am requesting copies of the following records in the custody of <City> or contractors keeping them on your behalf:

1. The annual calibration certificates for ALL speed monitoring systems used by <City> during any portion of 2011, 2012, and 2013.
2. The daily setup/deployment logs for all speed cameras used in <City> on the following dates:
_____, _____, _____, _____
3. The technical specifications of the speed cameras used in <City>.

I request that fees be waived for this request since the release of these records is in the public interest, as they are highly relevant to matters in the public discourse. The requested items pertain to matters of public policy which affects thousands of motorists. I am not seeking the records for any commercial or for-profit interest.

If providing scanned electronic copies of these documents is possible, then I would prefer that they be provided in that form and sent to my email address noted below.

If any privilege is claimed under the law to deny any portion of this request, then I ask that all non-privileged portions of the requested records be provided.

I look forward to your response at the earliest possible time, and within 30 days in any event. Thank you for your time and attention.

Sincerely,

<signature>
<name>, <address>, <email address>, <phone number>

Example #3 – PRR by letter for information about speed study data on a state highway

Date: _____

To: <State> Department of Transportation

Attention: <Agency's FOIA officer or records custodian>
<street address of DOT>

This is a Freedom of Information Act Request

Under Federal and State FOIA laws, and your agency's implementing regulation, I respectfully request a copy of the following information.

A copy of the most recent traffic speed studies for the following geographic vicinity:

One mile in each direction of the intersection of State Highway 52 and Slow Poke Road

In the interests of the environment, I am requesting electronic copies of above wherever possible. I am exercising my right to request a waiver of duplication charges because the material is ultimately going to be used for public non-commercial purposes.

I believe that all of the information I have requested is reasonable under the Freedom of Information Act. However, if you decide to withhold all or part of the information requested, please send me a detailed statement of the reasons for each denial with references to the specific exemptions of the FOIA you are claiming for each withheld document or portion of document. I expect you to release all reasonably segregable portions of otherwise exempt material.

I would additionally ask that the requested information, records and data be provided as they become available and not be withheld as other records in the request are being gathered. Because I am making this request for research and this information is of timely value, I would appreciate a response to my request within Five (5) Working Days. Please contact me via phone or e-mail should you have any questions.

Sincerely,

<signature>

<name>, <address>, <email address>, <phone number>

Appendix 2 – State Public Record Laws

Alabama Code 36-12.40-41 and 41.13.1 – 41.13.44

Alaska Statutes 40.25.110 – 40.25.125

Arizona Rev. Statutes 39.101 – 39.221

Arkansas Code 25-19-101

California Government Code 6250 to 6270

Colorado C.R.S. 24-72-201 to 206

Connecticut General Statutes §1-200 et seq.

Delaware Code Title 29, Chapter 100

District of Columbia Code § 2-531 et seq.

Florida Statutes Ann. 119.01 to .165

Georgia Code Ann. 50-18-70 to 76

Hawaii Rev. Statutes §91-1 et seq.

Idaho Code 9-337 et seq.

Illinois 5 ILCS 140 et seq.

Indiana Code Ann. 5-14-3-1 to 10

Iowa Code Ann. 22.1 et seq.

Kansas Statutes Ann. 45.215 to 223

Kentucky Statutes KRS 61.870 to 61.884

Louisiana Rev. Statutes 44:1 et seq.

Maine Rev. Statutes Title 1, Chapter 13, §402 et seq.

Maryland Code Ann. 10-611 to 10-628

Massachusetts General Laws Ann. Part 1, Title X, Chapter 66.10

Michigan Compiled Laws 15.231 to 15.246

Minnesota Statute Ann. 13.01 et seq.

Mississippi Code Ann. 25-61-1 et seq.

Missouri Code 610.023 et seq.

Montana Code Ann. 2-6-101 et seq.

Nebraska Rev. Statutes 84-712 et seq.

Nev. Rev. Stat. Ann. 239 et seq.

New Hampshire Rev. Statutes Ch. 01-A et seq.

New Jersey Rev. Statutes Ann. 47:1A-1 et seq.

New Mexico Statutes Ann. 14-2-1 et seq.

New York Public Officers Law Sec. 84 et seq.

North Carolina General Statutes 132-1 to 10

North Dakota Century Code 44-04-18 et seq.

Ohio Rev. Code Ann. 149.43

Oklahoma Statutes 51 O.S. 24A.1 et seq.

Oregon Rev. Statutes Ann. 192.410 et seq.

Pennsylvania 65 P.S. §§67.101 et seq.

Rhode Island General Laws 38-2-1 et seq.

South Carolina Code Ann. 30-4-10

South Dakota Codified Laws Ann. 1-27-1 et seq.

Tennessee Code Ann. 10-7-101 et seq.

Texas Government Code Chapter 552

Utah Code Ann. 63G-2-101 et seq.

Vermont Statutes Ann. 1 V.S.A. Sec. 315 et seq.

Virginia Code Sec. 2.2-3704 to 3706

Washington Rev. Code Ann. 42.56 et seq.

West Virginia Code Sec. 29B-1-1 et seq.

Wisconsin Statutes Ann. 19.31 et seq.

Wyoming Statutes Ann. 16-4-201 et seq.