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## Practice Pointer: How to File Executive Office for Immigration Review (EOIR) Freedom of Information Act (FOIA) Requests<sup>1</sup>

Most of the information found in this practice advisory is disseminated from the U.S. Department of Justice's [FOIA Reference Guide](#)<sup>2</sup> and the [EOIR's website and FAQs](#).<sup>3</sup> Other relevant sources are cited throughout where applicable.

The Executive Office for Immigration Review ("EOIR") is a component of the U.S. Department of Justice ("DOJ"). FOIA requests submitted to EOIR will cover records contained with the **immigration courts** and the **Board of Immigration Appeals**. Note that EOIR is NOT part of the Department of Homeland Security ("DHS"). Thus, requests regarding applications filed with DHS should not be made with EOIR and DHS forms should not be used to request records from EOIR. Additionally, requests filed with a local immigration court are not considered properly filed with EOIR.

### GENERAL EOIR FOIA CONTACT INFORMATION:<sup>4</sup>

- Mailing Address: U.S. Department of Justice  
Executive Office for Immigration Review  
Office of General Counsel – FOIA Service Center  
5107 Leesburg Pike, Suite 2150  
Falls Church, VA 22041
- E-mail address: [EOIR.FOIARequests@usdoj.gov](mailto:EOIR.FOIARequests@usdoj.gov)
- FOIA Public Liaison: Crystal Souza
- Telephone: 703-605-1297

### WHERE TO SUBMIT: EOIR FOIA requests can be submitted via physical mail *or* e-mail<sup>5</sup>

- Physical Mail:
  - Office of the General Counsel  
Attn: FOIA Service Center  
Executive Office for Immigration Review  
5107 Leesburg Pike, Suite 2150  
Falls Church, VA 22041
- E-Mail: [EOIR.FOIARequests@usdoj.gov](mailto:EOIR.FOIARequests@usdoj.gov)

## WHAT TO INCLUDE:

1. Cover Letter: the cover letter should reasonably describe the records sought and include identifying information of the subject of record.
  - **Identifying information** includes the subject of record's:
    - full name,
    - any aliases,
    - date of birth,
    - A number (if known), and
    - immigration hearing locations (if known)<sup>6</sup>
  - If you are requesting the **complete immigration record** or **complete record of proceedings**, clearly state so and then also list examples of the types of documents.
2. Form DOJ-361, Certification of Identity:<sup>7</sup> You must submit verification of identity for the subject of record, whether the subject of record is yourself or another individual.<sup>8</sup>
  - Enter the subject of record's biographical information in the top section
  - The subject of record should sign and date in the appropriate lines near the bottom of the form labeled as such.
3. Proof of Authorization Allowing Release of Information: If you are seeking non-public information about a person other than yourself, you must submit proof that the person has authorized DOJ to release such information to you.<sup>9</sup> This can be done in many ways:
  - The **Form DOJ-361**: under the section labeled "OPTIONAL: Authorization to Release Information to Another Person," YOUR NAME/FIRM NAME should be listed above the line that says "Print or Type Name" in this section.
  - A **Declaration Under Penalty of Perjury**: you can submit a declaration signed by the subject of record that authorizes U.S. Government agencies to release information regarding the subject of record to you and is signed under penalty of perjury. The declaration must contain the following language: "I declare, certify, verify or state, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct."
  - A **Form EOIR-27 or EOIR-28**: if you've already entered an appearance in the immigration proceedings for the subject of record, you may also submit a copy of the EOIR-27 and/or EOIR-28 that you submitted.<sup>10</sup>

## PROCESSING TIMES:

- EOIR must "determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt" of a FOIA request "whether to comply with such request."<sup>11</sup>
- This period may be extended to 30 working days when there is a need to search and collect information from a field office, when there is a need to search and collect voluminous records, or when there is a need for consultation within the agency or among two or more agencies.<sup>12</sup>
- However, due to the COVID-19 pandemic, EOIR has stated that requestors "may experience a delay in receiving an initial acknowledgment as well as a substantive

response” to FOIA requests.<sup>13</sup>

### **SUBMITTING EXPEDITED REQUESTS:**

- To have a FOIA request expedited, the request must demonstrate a “compelling need”:<sup>14</sup>
  1. imminent threat to the life or physical safety of an individual;
  2. an urgency to inform the public concerning actual or alleged Federal Government activity if the request is made by a person primarily engaged in disseminating information;
  3. loss of substantial due process rights; *or*
  4. a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.
- If you are seeking to expedite the FOIA request, you must include a statement describing the reasons why your request should be expedited and certifying that the reasons stated are true and correct to the best of the person’s knowledge and belief.<sup>15</sup>

### **FEES FOR SUBMITTING REQUEST:**

- Except for commercial requesters, there is no charge for the first 100 pages of reproduction and 2 hours of search time.
- After the first 100 pages, a fee of \$.05 per page is charged.
- Search fees are charged per quarter hour: \$4.75 (administrative), and \$10.00 (professional).
- Additionally, an agency may charge for the retrieval of records stored at a National Archives and Records Administration (NARA) operated records center, and the direct costs associated with scanning the responsive records.
- Requests are deemed to constitute an agreement to pay any applicable fees that may be charged up to \$25 without notice.
- Most requests do not require any fees; however, if fees exceed \$25.00, EOIR will notify the requestor prior to completion of the request.
- You must agree to pay or EOIR will not release the records.<sup>16</sup> Because of this, you should include language in the cover letter stating that you agree to pay the reasonable costs for locating and reproducing the requested documents.

### **CHECKING STATUS OF REQUEST:** To follow up on the status of a FOIA request,

- Call (703) 605-1297 and ask to speak to
  - (1) the FOIA Specialist assigned to your request or
  - (2) the FOIA Public Liaison.

**APPEALING A RESPONSE:** You may file an appeal with the Office of Information Policy (OIP) via physical mail or electronically<sup>17</sup>

- **Physical Mail:** send appeal to the following address
  - Office of Information Policy (OIP)  
United States Department of Justice  
6th Floor, 441 G Street, NW  
Washington, DC 20530
- **Electronic:** an appeal may be submitted electronically via DOJ’s “FOIA STAR” system here: <https://doj-foia.entellitrak.com/etk-doj-foia-prod/login.request.do>.
  - You must first create an account and become a registered user.
  - To create an account, go to the website, hover over “Account Management,” select “Register,” and provide the required information.
- Your appeal must be post marked or transmitted electronically **within 90 days of the date of EOIR’s FOIA response.**

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<sup>1</sup> A special thanks to John P. Pratt, Vice-Chair of AILA’s FOIA Committee for drafting this practice advisory.

<sup>2</sup> *The Department of Justice Freedom of Information Act Reference Guide*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/oip/departments-justice-freedom-information-act-reference-guide> (last visited Dec. 23, 2020).

<sup>3</sup> *How to Submit a Request*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/eoir/foia-submit%20a%20request> (last visited Dec. 23, 2020).

<sup>4</sup> *See Freedom of Information Act*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/eoir/freedom-information-act-foia> (last visited Dec. 23, 2020).

<sup>5</sup> You do not need to submit the request in both places. Due to the COVID-19 pandemic, EOIR has stated that it “will be able to acknowledge requests made electronically more quickly than by mail.” *See Freedom of Information Act*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/eoir/freedom-information-act-foia> (last visited Dec. 23, 2020).

<sup>6</sup> If the A number is not known or the case occurred before 1988, you should provide the date of the Order to Show Cause, the country of origin, and the location of the immigration hearing.

<sup>7</sup> The form is available here: <https://www.justice.gov/oip/page/file/1280011/download>.

<sup>8</sup> Instead of the Form DOJ-361, you may submit a notarized original signature. However, the Form DOJ-361 is likely much easier since it does not require a notary.

<sup>9</sup> Alternatively, you can include an explanation about how the public interest outweighs the privacy interest of the subject of record if you cannot obtain such authorization.

<sup>10</sup> Note that these are not necessary and if you were not the attorney of record in the subject of record’s immigration proceedings, you do not need to submit these forms in the FOIA request.

<sup>11</sup> 5 U.S.C. § 552(a)(6)(A)(i).

<sup>12</sup> *Id.* § 552(a)(6)(B).

<sup>13</sup> *See Freedom of Information Act*, U.S. Dep’t of Justice, <https://www.justice.gov/eoir/freedom-information-act-foia> (last visited Dec. 23, 2020).

<sup>14</sup> 5 U.S.C. § 552(a)(6)(E).

<sup>15</sup> *Id.* § 552(a)(6)(E)(vi).

<sup>16</sup> *See* 28 CFR § 16.10. Because of this, you should include language in the cover letter stating that you agree to pay the reasonable costs for locating and reproducing the requested documents.

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<sup>17</sup> See 28 CFR § 16.8(a); *Submit and Track a Request or Appeal*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/oip/submit-and-track-request-or-appeal> (last visited Dec. 23, 2020).