



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

## Practice Pointer: How To File Department of State (DOS) Freedom of Information Act (FOIA) Requests<sup>1</sup>

The U.S. Department of State (“DOS”) maintains several types of records<sup>2</sup> on the following matters: (1) the formulation and execution of U.S. foreign policy; (2) the administration and operations of DOS and U.S. missions abroad; (3) current and former employees of DOS; (4) applications from U.S. citizens for U.S. passports; (5) visa requests from noncitizens to enter the U.S.;<sup>3</sup> and (6) consular assistance given to U.S. citizens abroad.

**WHERE AND HOW TO SUBMIT:** This depends on the type of record you are requesting.

Requested Records	Contact	Method
VISA RECORDS: <sup>4</sup> <ul style="list-style-type: none"><li>• Visa Denials</li><li>• Nonimmigrant visa records</li><li>• Immigrant visa records</li><li>• Correspondence to/from an overseas post</li></ul>	Office of Information Programs and Services A/GIS/IPS 2201 C Street N.W., Suite B266 Washington, D.C. 20520-0000 Fax: (202) 485-1669	Physical Mail or Fax
VISA RECORDS: <sup>5</sup> <ul style="list-style-type: none"><li>• Correspondence to/from the NVC</li><li>• Copies of civil documents presented by petitioner</li></ul>	National Visa Center Attention: Written Correspondence 32 Rochester Avenue Portsmouth, NH 03801-2909	Physical Mail
PERSONAL RECORDS: <sup>6</sup> <ul style="list-style-type: none"><li>• Applications for U.S. Passports<sup>7</sup></li><li>• Investigations conducted by the Bureau of Diplomatic Security</li><li>• Consular assistance given to U.S. Citizens abroad</li><li>• Current and former DOS employees</li></ul>	Office of Information Programs and Services A/GIS/IPS/RL 2201 C Street N.W., Suite B266 Washington, D.C. 20520-0000 Facsimile: (202) 485-1669	Physical Mail or Fax
Anything that does not fall under one of the categories listed above <sup>8</sup>	Office of Information Programs and Services A/GIS/IPS/RL 2201 C Street N.W., Suite B266 Washington, D.C. 20520-0000 Re: Freedom of Information Act Request <a href="mailto:FOIARequest@state.gov">FOIARequest@state.gov</a> Fax: (202) 485-1669 Electronic Form Submission: <a href="https://foia.state.gov/Request/Submit.aspx">https://foia.state.gov/Request/Submit.aspx</a>	Fax, electronic submission, email, or physical mail.

### WHAT TO INCLUDE:

There is no specific form for filing a FOIA request with DOS. The request can be made on personal letterhead and must include “Freedom of Information Act/Privacy Act Request” on the envelope or the subject line. The request should contain the following information:

- Full name and any aliases of the Subject of Record
- Current mailing address of the Subject of Record
- Date of Birth (MM/DD/YYYY) of the Subject of Record
- Place of Birth (city, state/country) of the Subject of Record
- A description of the records you are seeking, including any of the following
  - IF REQUESTING NONIMMIGRANT VISA RECORDS:<sup>9</sup>
    - Timeframe of records
    - Origin of the records
    - Visa type
    - Foreign service post
  - IF REQUESTING IMMIGRANT VISA RECORDS:<sup>10</sup>
    - The full name (and any aliases) of both the Petitioner and Beneficiary
    - The Date of Birth of both the Petitioner and Beneficiary
    - The Place of Birth of both the Petitioner and Beneficiary
    - Timeframe of records
    - Origin of the records
    - The receipt number or case number of the immigrant visa petition
  - IF REQUESTING PERSONAL RECORDS:
    - Write down what information you are looking for with as much detail as possible to help us locate the information.
    - The offices or consulates originating or receiving the record
    - The particular event, policy, or circumstance that led to the creation of the record
    - Current address and telephone number
    - Citizenship status
    - Additional comments to help locate the record
- The monetary amount you consent to pay for your request
- **Certification of Identity and Authorization Allowing Release of Information:**
  - You must submit verification of identity for the Subject of Record, whether the Subject of Record is yourself or someone else.
  - If you are seeking non-public information about a person other than yourself, you must submit proof that the person has authorized DOS to release such information to you.
  - This can be done in many ways:
    - Form DS-4240<sup>11</sup>: filling out the entire form will act as both the Certification of Identity and Third-Party Authorization. If you are seeking records for yourself, you do not need to complete the “Third Party Authorization” section of the Form DS-4240.
    - A notarized signature; OR
      - If using a notary, your request should bear your signature and the signature and seal of the notary, and be dated within six months of the date of the request.
    - A declaration signed with an “under penalty of perjury” statement.

- This statement should be signed and be dated within six months of the date of the request.
- 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.”

### **PROCESSING TIMES:**

- DOS 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>12</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>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>

### **FEEES FOR SUBMITTING REQUEST:**

- Except for commercial requesters, there is no charge for the first 100 pages of reproduction and 2 hours of search time.<sup>16</sup>
- After the first 100 pages, a fee of \$.05 per page is charged.
- Requests are deemed to constitute an agreement to pay any applicable fees that may be charged up to \$25 without notice.<sup>17</sup>
- You must agree to pay or DOS will not release the records.<sup>18</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 confirm receipt of a previously filed request, appeal, or for status inquiries, please contact the FOIA Requester Service Center via<sup>19</sup>

- Telephone at (202) 261-8484
- Email at [FOIAStatus@state.gov](mailto:FOIAStatus@state.gov)

**APPEALING A RESPONSE:**<sup>20</sup> Appeals of denial of access must be made in writing. The appeal must be sent via physical mail or fax to the following address:

- Appeals Officer  
Appeals Review Panel  
Office of Information Programs and Services (IPS)  
U.S. Department of State  
A/GIS/IPS/PP/LA, Room 5420 (HST)  
2201 C Street, NW  
Washington, D.C. 20520.  
Fax: (202) 261-8571

- The appeal must be **postmarked within 60 calendar days** of DOS's denial letter.

---

<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> *Information Access Guide*, U.S. DEP'T OF STATE, <https://foia.state.gov/Request/Guide.aspx> (last visited Dec. 22, 2020).

<sup>3</sup> You should submit the FOIA request to the U.S. Citizenship and Immigration Services if you are seeking any of the following: Immigration records for permanent resident aliens; Alien Files; Copy of visa approval notice; Authorization of permission to work in the U.S.; or records relating to the Adjudication of: immigrant visa petitions, naturalization petitions, or Asylum and refugee applications. *Information Access Guide*, § V.7. Further, you should contact the appropriate U.S. Embassy or Consulate if you are inquiring into visa cases still in progress overseas. *Id.*

<sup>4</sup> *How to Request Visa Records*, U.S. DEP'T OF STATE, <https://foia.state.gov/Request/Visa.aspx> (last visited Dec. 22, 2020); *Visa Records Contact Information*, U.S. DEP'T OF STATE, (last visited Dec. 22, 2020); *Information Access Guide*, <https://foia.state.gov/Request/Visa.aspx> (last visited Dec. 22, 2020).

<sup>5</sup> *Id.*

<sup>6</sup> *How to Make a Request for Personal Record*, U.S. DEP'T OF STATE, <https://foia.state.gov/Request/PersonalRecords.aspx> (last visited Dec. 22, 2020);

<sup>7</sup> You can request most passport records directly from the Office of Passport Services without submitting a FOIA. For further instructions, see *Get Copies of Passport Records*, <https://foia.state.gov/Request/Guide.aspx#RequestingPersonalRecordsundertheFOIAUSPassportRecords> (last visited Dec. 22, 2020); *Information Access Guide*, § V.5.

<sup>8</sup> *Information Access Guide*, § IV.

<sup>9</sup> *Checklist for Requests for Personal Information (Non-Immigrant Visas)*, U.S. Dep't of State, <https://foia.state.gov/Request/Checklist-VisaNI.aspx> (last visited Sept. 14, 2020).

<sup>10</sup> *Checklist for Requests for Personal Information (Immigrant Visas)*, U.S. Dep't of State, <https://foia.state.gov/Request/Checklist-VisaI.aspx> (last visited Sept. 14, 2020).

<sup>11</sup> The Form DS-4240 is available here: <https://foia.state.gov/docs/DS-4240.pdf>.

<sup>12</sup> 5 U.S.C. § 552(a)(6)(A)(i); 22 C.F.R. 171.11(g).

<sup>13</sup> 5 U.S.C. § 552(a)(6)(B); 22 C.F.R. 171.11(g).

<sup>14</sup> 5 U.S.C. § 552(a)(6)(E); 22 C.F.R. § 171.11(f).

<sup>15</sup> 5 U.S.C. § 552(a)(6)(E)(vi); 22 C.F.R. § 171.11(f).

---

<sup>16</sup> *Information Access Guide*, § VII.

<sup>17</sup> *Id.*

<sup>18</sup> 22 C.F.R. § 171.11(d). 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. *Information Access Guide*, § VII.3.

<sup>19</sup> *Information Access Guide*, § IV.3.

<sup>20</sup> 22 C.F.R. § 171.13; *Information Access Guide*, § VIII.