



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

## Practice Pointer: How to File U.S. Citizenship and Immigration Services (USCIS) and Department of Homeland Security (DHS) Freedom of Information Act (FOIA) Requests<sup>1</sup>

### I. USCIS FOIA Requests for Immigration Records

**WHERE TO SUBMIT:** FOIA Requests can be submitted electronically or by fax or mail:

Method	Contact
USCIS's Freedom of Information Act Immigration Records System (FIRST)	<a href="https://www.first.uscis.gov">https://www.first.uscis.gov</a>  NOTE: For <b>A-file records</b> , USCIS prefers FIRST online FOIA requests rather than paper requests. They also usually result in a faster processing of the FOIA request
Email	<a href="mailto:uscis.foia@uscis.dhs.gov">uscis.foia@uscis.dhs.gov</a>
Physical Mail	National Records Center (NRC) FOIA/PA Office P.O Box 648010 Lee's Summit, MO 64064-8010
Facsimile	816-350-5785

### 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)
  - 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 G-639, Freedom of Information Act/Privacy Act Request<sup>2</sup>
3. Form G-28, Notice of Entry of Appearance as Attorney<sup>3</sup>
4. Identity document for subject of record (biographical page of passport, driver's license, etc.). If subject of record is deceased, then upload a death certificate

### HOW TO SUBMIT:

1. Online FIRST Submission:

- Access the USCIS FIRST portal<sup>4</sup> and enter USCIS account information. If you do not have an account, you must create one.
- Create a new request on behalf of someone else.
- Fill out the online submission form.
  - It is the same basic format as the Form G-639 requesting detail on the records sought.
  - Be as detailed as possible if searching for specific records, including all A-numbers issued,<sup>5</sup> receipt numbers, dates, alternate names for the subject of record, etc.
  - After filling out the form, the system will require documents verifying the identity of the applicant and authority to release the records to an attorney.
    - Upload a signed G-28;
    - Upload a signed Form G-639; and
    - Upload identity document for subject of record (biographical page of passport, driver's license, etc.). If subject of record is deceased, then upload a death certificate.
- Submit the FOIA request.
- After acceptance, the request will be automatically added to attorney's online account where progress can be tracked, and documents will be delivered electronically.

## **2. All Other Methods of Submission:**

- Assemble G-639 including detail as to all records sought for subject of record as mentioned above.
- Include copies of identity documents or death certificate.
- Mail to address above or email to USCIS FOIA email account.
- Wait for confirmation by mail that request was received. Paper receipt will urge the filer to create a FIRST account to get faster access to the records but if no FIRST account is linked, the finished request will be provided in a CD to the address of the requestor.

**CHECKING STATUS OF REQUEST:** After you receive the Acknowledgement Letter from USCIS that contains your Control Number, you can track the status of your FOIA request by entering your Control Number into USCIS's FIRST Online System.

**APPEALING A RESPONSE:**<sup>6</sup> Appeals must be submitted **within 60 days of the date of the letter containing notice of the adverse determination**.

- An appeal must be in writing and must be directed to:
  - USCIS FOIA/PA Appeals Office  
FREEDOM OF INFORMATION ACT APPEAL  
P.O. Box 648010  
Lee's Summit, MO 64064-8010
- The appeal letter should clearly identify the adverse determination being appealed and include the assigned request number, if known.

- For the quickest possible handling, the letter and the envelope should both be marked: “Freedom of Information Act Appeal.”

## **II. DHS FOIA Requests**

DHS has several component agencies, including USCIS, Immigration and Customs Enforcement (ICE), and Customs and Border Patrol (CBP). If request for records can be better served by a component agency of DHS, the request will be forwarded to the appropriate office for fulfillment. The DHS Privacy Office will not consolidate the records from all DHS constituent agencies and process the record itself. Keep in mind that requesting information from multiple constituent DHS agencies may be easier to accomplish with multiple requests to each agency rather than relying on DHS to forward to the appropriate agency.

**WHERE TO SUBMIT:** FOIA requests can be submitted electronically, by fax, or by mail:

<b>Method</b>	<b>Contact</b>
Online	<a href="https://www.dhs.gov/freedom-information-act-foia">https://www.dhs.gov/freedom-information-act-foia</a>
Physical Mail	Dena Kozanas Chief Privacy Officer/Chief FOIA Officer Privacy Office, Mail Stop 0655 Department of Homeland Security 2707 Martin Luther King Jr. Ave SE Washington, DC 20528-065

## **HOW TO SUBMIT:**

### **1. Online:**

- Fill out the online submission form.<sup>7</sup>
  - It is the same basic format as the G-639 requesting detail on the records sought.
  - Be as detailed as possible if searching for specific records, including all A-numbers issued,<sup>8</sup> receipt numbers, dates, alternate names for the subject of record, etc.
  - Submit the request.
- After the request is submitted and the appropriate DHS agency receives it, the correct FOIA office will contact the attorney to provide proof of power of attorney to obtain records sought before continuing with request. For this reason, a catch-all DHS FOIA should be a last resort because the processing time will be longer.

### **2. Physical Mail:**

- Assemble request letter providing as much detail as possible for all records sought for subject of record.
- Include copies of identity documents or death certificate.
- Include a signed G-28.
- Include a signed Form G-639 or any other acceptable statement authorizing release of information to a third-party such as DOJ Form 361, DHS Form 590, or a power of attorney authorizing release.
- Mail to address above.
- Wait for confirmation by mail that request was received, identifying which component agency will proceed with the request.

**CHECKING STATUS OF REQUEST:** After you receive the Acknowledgement Letter from DHS with the request number, you can track the status of your FOIA request by entering your request number here: <https://www.dhs.gov/foia-status>.

**APPEALING A RESPONSE:**<sup>9</sup> Appeals must be submitted **within 90 days of the date of the letter containing notice of the adverse determination**.

- An appeal must be in writing and must be directed to:
  - Privacy Office,  
Attn: FOIA Appeals,  
U.S. Department of Homeland Security  
245 Murray Lane, SW  
Mail Stop 0655  
Washington, D.C. 20528-0655
- The appeal letter should clearly identify the adverse determination being appealed and include the assigned request number, if known.
- For the quickest possible handling, the letter and the envelope should both be marked: “FOIA Appeal.”

### **III. General Information Applicable to DHS and USCIS**

**PROCESSING TIMES:**<sup>10</sup>

- The agency must “determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt” of a FOIA request “whether to comply with such request.”
- 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.

**SUBMITTING EXPEDITED REQUESTS:**<sup>11</sup>

- To have a FOIA request expedited, the request must demonstrate at least one of the following:
  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.

## **FEES FOR SUBMITTING REQUEST:<sup>12</sup>**

- Except for commercial requesters, there is no charge for the first 100 pages of reproduction and 2 hours of search time.
- 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, USCIS will notify the requestor prior to completion of the request.
- You must agree to pay or USCIS will not release the records. 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.

---

<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 Form is available here: <https://www.uscis.gov/g-639>.

<sup>3</sup> The form is available here: <https://www.uscis.gov/g-28>. Alternatively, may use any other acceptable statement authorizing release of information to a third-party such as **DOJ Form 361**, **DHS Form 590**, or a **power of attorney authorizing release**.

<sup>4</sup> The USCIS FIRST Portal can be accessed here: [www.first.uscis.gov](http://www.first.uscis.gov)

<sup>5</sup> This is particularly important because clients may have multiple A-numbers! It is common for individuals with OPT or other nonimmigrant statuses that allow for employment to have an A-number that begins with "1" and be issued a completely different A-number when applying for adjustment of status or another immigrant benefit, usually beginning with the number "2" or "0." Make sure to inquire about all A-numbers and include them all to obtain all records in USCIS' possession.

<sup>6</sup> See 6 CFR § 5.8.

<sup>7</sup> CBP and USCIS records have to be filled out directly with their respective agencies. The DHS portal does not allow submission to CBP or USCIS anymore.

<sup>8</sup> This is particularly important because clients may have multiple A-numbers. It is common for individuals with OPT or other nonimmigrant statuses that allow for employment to have an A-number that begins with "1" and be issued a completely different A-number when applying for adjustment of status or another immigrant benefit, usually beginning with the number "2" or "0." Make sure to inquire about all A-numbers and include them all to obtain all records in DHS's possession.

<sup>9</sup> See 6 C.F.R. § 5.8; *FOIA Appeals*, DHS, <https://www.dhs.gov/foia-appeals-mediation> (last visited Sept. 25, 2020).

<sup>10</sup> 5 U.S.C. § 552(a)(6).

<sup>11</sup> See 6 CFR § 5.5(e).

<sup>12</sup> See *id.* § 5.11.