Office of the Secretary of Labor

§ 70.19

Requests for records.

(a) How to make a request. Requests under this subpart for a record of the Department of Labor must be written and received by mail, delivery service/courier, facsimile or e-mail.

(b) To whom to direct requests. A request should be sent to the appropriate official/office for the component that maintains the records at its proper address. The request as well as the envelope itself should be clearly marked “Freedom of Information Act Request.” If the request is made by e-mail, it must be sent to foiarequest@dol.gov. Requests submitted to any other e-mail address will not be accepted as a request made under this Part.


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A of this part lists the disclosure officers of each component by title and address. This initial list has been included for information purposes only, and the disclosure officers may be changed through appropriate designation. Regional, district and field office addresses have been included in Appendix A to this part to assist requesters in identifying the disclosure officer who is most likely to have custody of the records sought.

(2) Requesters who cannot determine the proper disclosure officer to whom the request should be addressed may direct the request to the Office of the Solicitor, Division of Management and Administrative Legal Services, 200 Constitution Avenue, NW., Room N–2428, Washington, DC 20210 or by e-mail to foiarequest@dol.gov. Note, pursuant to §70.25(a), the time for the component to respond to a request begins to run when the request is received by the proper disclosure officer.

(c) Description of information requested. Each request must reasonably describe the record or records sought. The descriptions must be sufficiently detailed to permit the identification and location of the requested records with a reasonable amount of effort. So far as practicable, the request should specify the subject of the record, the date or approximate date when made, the place where made, the person or office that created it, and any other pertinent identifying details.

(d) Deficient descriptions. If the description is insufficient, so that a knowledgeable employee who is familiar with the subject area of the request cannot locate the record with a reasonable amount of effort, the component processing the request should notify the requester and describe what additional information is needed to process the request. Every reasonable effort will be made to assist a requester in the identification and location of the record or records sought. Any amended request must be confirmed in writing and meet the requirements for a request under this Part.

(e) Agreement to pay fees. The filing of a request under this subpart will be deemed to constitute an agreement by the requester to pay all applicable fees charged under this part, up to $25.
§ 70.22 Appeals from denial of requests.

(a) When a request for access to records has been denied in whole or in part; where a requester disputes a determination that records cannot be located or have been destroyed; where a requester disputes a determination by a disclosure officer concerning the assessment or waiver of fees; or when a component fails to respond to a request within the time limits set forth in the FOIA, the requester may appeal to the Solicitor of Labor. The appeal must be filed within 90 days of the date of the action being appealed.

(b) The appeal will state in writing the grounds for appeal, and it may include any supporting statements or arguments, but such statements are not required. In order to facilitate processing of the appeal, the appeal should include the appellant’s mailing address and daytime telephone number, as well as copies of the initial request and the disclosure officer’s response. The envelope and the letter of appeal should be clearly marked: “Freedom of Information Act Appeal.” Any amendment to the appeal must be in writing and received prior to a decision on the appeal.

(c) The appeal should be addressed to the Solicitor of Labor, Division of Management and Administrative Legal

(d) Classified records. Any request for classified records which are in the custody of the Department of Labor will be referred to the classifying agency under paragraphs (b) and (c) of this section.

§ 70.21 Form and content of responses.

(a) Form of notice granting a request.

(1) After a disclosure officer has made a determination to grant a request in whole or in part, the disclosure officer will notify the requester in writing. The notice will describe the manner in which the record will be disclosed. The disclosure officer will provide the record in the form or format requested if the record is readily reproducible in that form or format, provided the requester has agreed to pay and/or has paid any fees required by Subpart C of this part. The disclosure officer will determine on a case-by-case basis what constitutes a readily reproducible format. Each component should make reasonable efforts to maintain its records in commonly reproducible forms or formats.

(2) Alternatively, a disclosure officer may make a copy of the releasable portions of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection will not unreasonably disrupt the operations of the component.

(b) Form of notice denying a request. A disclosure officer denying a request in whole or in part must notify the requester in writing. The notice must be signed by the disclosure officer and will include:

(1) The name and title or position of the disclosure officer.

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions relied upon in denying the request. Deletions should be indicated at the place in the record where the deletion is made.

(3) An estimate of the volume of records of information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

(4) A statement that the denial may be appealed under §70.22 and a description of the requirements of that section.

(c) Record cannot be located or has been destroyed. If a requested record cannot be located from the information supplied, or it is known or believed to have been destroyed or otherwise disposed of, the disclosure officer will so notify the requester in writing and this determination may be appealed as described in §70.22.

(d) Date for determining responsive records. When responding to a request, a component will ordinarily include only those records existing as of the date the component begins its search for them. If any other date is used, the component will inform the requester of that date.
§ 70.23 Action on appeals.

The Solicitor of Labor, or designee, will review the appellant’s appeal and make a determination de novo whether the action of the disclosure officer was proper and in accordance with the applicable law.

§ 70.24 Form and content of action on appeals.

The disposition of an appeal will be issued by the Solicitor of Labor or designee in writing. A decision affirming, in whole or in part, the determination below will include a brief statement of the reason or reasons for the affirmation, including the FOIA exemption or exemptions relied upon, and its relation to each record withheld, and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or maintains his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia. If it is determined on appeal that a record should be disclosed, the record should be provided in accordance with the decision on appeal. If it is determined that records should be denied in whole or in part, the appeal determination will include an estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

§ 70.25 Time limits and order in which requests must be processed.

(a) Time limits. Components of the Department of Labor will comply with the time limits required by the FOIA for responding to and processing requests and appeals, unless there are exceptional circumstances within the meaning of 5 U.S.C. 552(a)(6)(C). A component will notify a requester whenever the component is unable to respond to or process the request or appeal within the time limits established by the FOIA.

(b) Multitrack processing. (1) A component may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including through limits based on the number of pages involved. If a component does so, it will advise requesters in its slower track(s) of the limits of its faster track(s).

(2) A component using multitrack processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the component’s faster track(s). A component doing so will contact the requester either by telephone or by letter, whichever is more efficient in each case.

(c) Unusual circumstances. (1) Where the statutory time limits for processing a request cannot be met because of “unusual circumstances,” as defined in the FOIA, and the component determines to extend the time limits on that basis, the component will as soon as practicable notify the requester in writing of the unusual circumstances and of the date by which processing of the request can be expected to be completed. Where the extension is for more than ten working days, the component will provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period with the component for processing the request or a modified request.

(2) Where a component reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.
(d) Expedited processing. (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:
   (i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
   (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;
   (iii) The loss of substantial due process rights; or
   (iv) A matter of widespread and exceptional media interest in which there exists possible questions about the government’s integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be received by the proper component. Requests based on the categories in paragraphs (d)(1)(i), (ii), (iii), and (iv) of this section must be submitted to the component that maintains the records requested.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person’s knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category in paragraph (d)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public’s right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of its receipt of a request for expedited processing, the proper component will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 70.26 Business information.
   (a) In general. Confidential business information will be disclosed under the FOIA only in accordance with this section.
   (b) Designation of business information. A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.
   (c) Notice to submitters. A component will provide a submitter with prompt written notice of a FOIA request that seeks its business information whenever required under paragraph (d) of this section, except as provided in paragraph (g) of this section, in order to give the submitter an opportunity to object in writing to disclosure of any specified portion of that information. The notice will either describe the business information requested or include copies of the requested records or record portions containing the information. When notification to a voluminous number of submitters is required, notification may be made by posting or publishing notice reasonably likely to accomplish such notification.
   (d) When notice is required. Notice will be given to a submitter whenever:
      (1) The information requested under the FOIA has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or
      (2) A component has reason to believe that the information requested under the FOIA may be protected from disclosure under Exemption 4.
   (e) Opportunity to object to disclosure. A component will allow a submitter a
reasonable time to respond to the notice described in paragraph (c) of this section. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(f) Notice of intent to disclose. A component will consider a submitter’s timely objections and specific grounds for non-disclosure in deciding whether to disclose business information. Whenever a disclosure officer decides to disclose business information over the objection of a submitter, the component will give the submitter written notice, which will include:

(1) A statement of the reason(s) why each of the submitter’s disclosure objections was not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which will be a reasonable time subsequent to the notice.

(g) Exceptions to notice requirements. The notice requirements of paragraphs (c) and (f) of this section will not apply if:

(1) The disclosure officer determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR 1988 Comp., p. 225); or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous or such a designation would be unsupportable—except that, in such a case, the component will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(h) Notice of a FOIA lawsuit. Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the component will promptly notify the submitter.

(i) Corresponding notice to requesters. Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraphs (d) and (e) of this section, the component will also notify the requester(s). Whenever a component notifies a submitter of its intent to disclose requested information under paragraph (f) of this section, the component will also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the component will notify the requester(s).

(j) Notice requirements. The component will fulfill the notice requirements of this section by addressing the notice to the business submitter or its legal successor at the address indicated on the records, or the last known address. If the notice is returned, the component will make a reasonable effort to locate the business submitter or its legal successor. Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting and publishing the notice in a place reasonably calculated to accomplish notification.

§ 70.27 Preservation of records.

Each component will preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until disposition or destruction of such correspondence and records is authorized by Title 44 of the United States Code or the National Archives and Records Administration’s General Records Schedule 14. Under no circumstances will records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Act.
§ 70.38 Definitions.

The following definitions apply to this subpart:

(a) Request, in this subpart, includes any request, as defined by § 70.2(f), as well as any appeal filed in accordance with § 70.22.

(b) Direct costs means those expenditures which a component actually incurs in searching for and duplicating (and in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the Federal employee performing work (the basic rate of pay for the Federal employee plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are kept.

(c) Reproduction means the process of making a copy of a record necessary to respond to a request. Such copy can take the form of paper, microform, audio-visual materials or electronic records (e.g., magnetic tape or disk).

(d) Search means the process of looking for and retrieving records or information that is responsive to a FOIA request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Disclosure officers will ensure that searches are done in the most efficient and least expensive manner reasonably possible. A search does not include the review of material, as defined in paragraph (e) of this section, which is performed to determine whether material is exempt from disclosure.

(e) Review means the process of examining records, including audio-visual, electronic mail, etc., located in response to a request to determine whether any portion of the located record is exempt from disclosure, and accordingly may be withheld. It also includes the act of preparing materials for disclosure, i.e., doing all that is necessary to excise them and otherwise prepare them for release. Review time includes time spent contacting any submitter, and considering and responding to any objections to disclosure made by a submitter under § 70.26, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(f) Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade or profit interests, which can include furthering those interests through litigation. Components will determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester’s stated use, the component will provide the requester a reasonable opportunity to submit further clarification.

(g) Educational institution means an institution which:

1. Is a preschool, public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, and

2. Operates a program or programs of scholarly research. To qualify under this definition, the program of scholarly research in connection with which the information is sought must be carried out under the auspices of the academic institution itself as opposed to the individual scholarly pursuits of persons affiliated with an institution. For example, a request from a professor to assist him or her in writing of a book, independent of his or her institutional responsibilities, would not qualify under this definition, whereas a request predicated upon research funding granted to the institution would meet its requirements. A request from a student enrolled in an individual course of study at an educational institution would not qualify as a request from the institution.