



# FOIA REQUESTS AT DHS

## *Recent Changes to G-639 and Online Filing*

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## I. Introduction

The Freedom of Information Act (FOIA) entitles every person access to certain information from the federal government.<sup>1</sup> Enacted on July 4, 1966, the Freedom of Information Act established a statutory right of public access to certain executive branch information from the federal government.

FOIA provides an indispensable tool to immigrants and immigration practitioners because a FOIA request can reveal critical information about procedural and legal history in an individual's case. Information uncovered through a FOIA request can help a person piece together their immigration history, assess the risk of applying for a current immigration benefit, and determine what relief might be possible if facing removal proceedings.

The Department of Homeland Security (DHS) is often the most important federal agency for immigration practitioners and their clients to target with a FOIA request because DHS has many components that deal exclusively with immigration. The most important components for immigration purposes are U.S. Citizenship and Immigration Services (USCIS); U.S. Customs and Border Protection (CBP); U.S. Immigration and Customs Enforcement (ICE); and the U.S. Office of Biometrics Identity Management (OBIM, formerly U.S. VISIT). Other DHS offices may have useful information as well, including the Office of Civil Rights and Civil Liberties, which collects complaints from the public about violations of civil rights at DHS offices.<sup>2</sup>

This practice advisory will review current practice in filing FOIA requests with DHS, including recent changes to FOIA filing with USCIS, ICE, CBP, and OBIM. Overall, DHS has been transitioning to online filing, but paper filing, including use of Form G-639, also remains an option. DHS revised the Form G-639 in November 2022. This advisory also describes the form revisions.

**Practice Tip:** Because each component within DHS is responsible for responding to requests for its own records, it is important to determine which component is likely to have the records sought and direct the request to that component. For example, if requesting a copy of a green card application, submit the FOIA to USCIS. However, if you are looking for more information about an expedited removal at the border, then submit it to CBP or OBIM. In some cases, it may be best to submit requests to multiple components because of differences in processing times and variation in thoroughness of responses.

In one example, a practitioner who filed multiple FOIAs found that the USCIS FOIA revealed encounters at the border, but the same encounters did not show up in the CBP FOIA. In the same case, the USCIS FOIA released a copy of an I-213 record of arrest and documents showing that a Notice to Appear had been issued. However, a FOIA to ICE was returned stating “no records.” These inadequate responses can be challenged through appeal, but in the meantime, representatives may want to do research by filing multiple FOIAs to the related DHS components.

<sup>1</sup> Freedom of Information Act, 5 U.S.C. § 552.

<sup>2</sup> For a listing of all the DHS offices, see DHS, *Organizational Chart* (2023), [https://www.dhs.gov/sites/default/files/2023-02/23\\_0221\\_dhs\\_public-organization-chart.pdf](https://www.dhs.gov/sites/default/files/2023-02/23_0221_dhs_public-organization-chart.pdf).

Sometimes it can be complicated to determine which agency or component may have the records sought. To help you make this determination, USCIS provides a list of records/request types, and the agency that is likely to keep those records. The list is available on the USCIS FOIA website.<sup>3</sup>

## II. Who Can File a FOIA

Any person can file a FOIA, either for their own records with a federal government agency or for someone else. If the record sought is about someone else, then the consent of that party will generally be required for a full response. Consent is sometimes shown by accompanying the filing with a G-28 Entry of Appearance, or sometimes in the online process there are questions transmitted to the party whose record is concerned which ask for consent. These mechanisms are described below.

FOIA regulations for DHS require that requestors verify their identity when making a request for their own record, or that a subject of record supply identity verification and consent when someone is seeking a record on their behalf. The regulations specify that full name, address, date and country of citizenship or residence are information needed to verify identity.<sup>4</sup>

However, practitioners report that DHS will sometimes process FOIAs without country of birth information if submitted by mail, such as with Form G-639. Omission of country of birth information is one way to avoid admitting alienage, which could be important in a situation where there is a risk of removal proceedings and USCIS does not already have the information about country of birth for the noncitizen. However, practitioners who omit this information should be prepared for a possible challenge to their FOIA request because of the requirements of the regulations. Another way to avoid admitting alienage is to complete the country of birth information with a qualification, such as “allegedly, (name the country of birth).”

If a parent is seeking information on behalf of a child or guardian, proof of that relationship would be required. If seeking information about a deceased individual, proof of the death would be needed.

If a file is about someone else, without consent, the information released would generally be limited by privacy interests.

## III. FOIA Process

USCIS created Form G-639, Freedom of Information/ Privacy Act Request, to help people make their written requests for information. The content and instructions on the G-639 were most recently revised on November 3, 2022, and the changes posed some new challenges to FOIA users because of a change in instructions about requestors, subject of record, and third-party requestors.<sup>5</sup> These revisions will be discussed below.

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<sup>3</sup> USCIS, *Request records through the Freedom of Information Act*, <https://www.uscis.gov/records/request-records-through-the-freedom-of-information-act-or-privacy-act>.

<sup>4</sup> 6 CFR §§ 5.21 (e), (g).

<sup>5</sup> USCIS, G-639 Freedom of Information Act Request (11/3/2022), <https://www.uscis.gov/sites/default/files/document/forms/g-639.pdf>

Form G-639 is not essential to a FOIA request, however. Any written request that contains the basic information needed can also be used to make a FOIA request. Increasingly, however, DHS and its components are also processing FOIAs online through platforms each agency has developed. Online filing will generally receive a faster response from an agency, but it requires an individual to set up a MyUSCIS or Secure Release user account to allow online filing, systems which some practitioners find to be less than user-friendly.

#### **IV. FOIA with United States Citizenship and Immigration Services (USCIS)**

Many FOIA requests seek an individual's immigration records or complete A-files with USCIS. These can be filed by regular mail, usually with Form G-639, and Form G-28 Entry of Appearance if a representative is filing on someone else's behalf as a third party requestor. FOIAs filed by mail to USCIS are sent to:

National Records Center, FOIA/PA Office  
PO Box 648010  
Lee's Summit, MO. 64064-8010.

The requests can also be filed online through FIRST. USCIS formerly accepted FOIAs by email or fax, but the agency discontinued that practice on December 16, 2022. Typical document requests appropriate for USCIS are A-files for oneself or for another person with their consent, or agency policies, data, communications, and other records.

#### **V. Form G-639 (Freedom of Information Act Request)**

The November 2022 Form G-639 revisions changed where the representative and the client had to sign the form (in cases where an attorney or accredited representative was requesting records on behalf of someone else), which caused many rejections of FOIA forms. Under the current version of Form G-639, "requestor" refers to the client when a representative is filing on a client's behalf, and every space that asks for a requestor signature should be signed by the client. In previous versions of the form, the representative signed as requestor, but that is no longer the case.<sup>6</sup>

Some FOIA requests on Form G-639 were rejected after the November 2022 revisions because attorneys were signing on parts of the form where client/requestor/subject of record should have been signing. Under the current version of the form, the client who has legal representation should sign two times: once as requestor, and again in the consent section at the end of the form.

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<sup>6</sup> In the current Form G-639 where it asks for information of the "third party requestor," that now refers to the representative, not to the client. Where the form asks for "subject of record," that information pertains to the client.

### Part 3. Certification of Request and Consent to Release, Amend, or Correct Records

#### Requestor Consent to Pay Potential Fees

USCIS will contact you with instructions if any fees are required. **Please do not send any payment at the time of your request.**

In accordance with Department of Homeland Security Regulations, your request constitutes an agreement to pay any fees that may be chargeable up to **\$25.00**. We may charge fees for searching for records at the respective clerical, professional, and/or managerial rates of **\$4.00/\$7.00/\$10.25** per quarter hour, and for duplication of copies at the rate of **\$.10** per copy. We do not charge for the first 100 copies and two hours of search time, and the remaining combined charges for search and duplication must exceed **\$14.00** before we will charge you any fees. Search and processing fees are not applicable for Privacy Act requests.

If the total anticipated fees are more than **\$250**, or you have failed to pay fees in the past, USCIS may request an advance deposit. USCIS will not process any Form G-639 until you pay all fees from prior requests.

I, the requestor, consent to pay all costs incurred for search, duplication, and review of documents up to **\$25**.

#### Declaration that the Request is True and Complete

If you are the subject of record and requesting records about yourself or requesting a correction or amendment of your records, you must verify your identity by providing the information requested in **Part 2**. You **MUST** also sign your request below and have your signature notarized **OR** submitted under penalty of perjury.

Sign and date the request. A stamped or typewritten name in place of a signature is not acceptable.

I certify, swear, or affirm, under penalty of perjury under the laws of the United States of America, that the information in this request is complete, true, and correct.

1. Signature of Requestor

Date of Signature (mm/dd/yyyy)





### Part 4. Third-Party Requestor

#### 1. Third-Party Requestor Identifying Information

Family Name (Last Name)

Given Name (First Name)

Middle Name (if applicable)

The second signature of the client will be in the following section as consent by the subject of record:

**Consent by Subject of Record to Release Records to a Third-Party Requestor or Allow Amendment or Correction of Records by a Third-Party Requestor**

USCIS generally requests that third-party requestors prove they have the subject of the record's consent to receive the records. Alternately, third-party requestors must prove the subject of record is deceased, or otherwise demonstrate that the requested records are subject to release, such as when there is no privacy interest in the records, or if there is a public interest in the records that outweighs the subject's privacy interests. Consent by the subject of record is generally not requested if the subject of record's birthdate is more than 100 years before the submission of this request. Third party requestors who are seeking amendment or correction of records pertaining to the subject of record must demonstrate that they have the subject of record's consent and that they are acting on behalf of the subject of record.

To provide consent, complete one of the following options:

**Option 1: Declaration Under Penalty of Perjury**

I, the subject of record, consent to USCIS releasing my records to a third-party requestor and/or allowing amendment or correction of my records by a third-party requestor, as named in **Part 4**. I certify, swear, or affirm, under penalty of perjury under the laws of the United States of America, that the information in this request is complete, true, and correct.

5. Signature of Subject of Record

Date of Signature (mm/dd/yyyy)





Again, on current Form G-639 there is no place where the attorney must sign. This was a change in practice from prior versions of the form, which caused confusion among practitioners.

## VI. USCIS FOIA Online – FIRST

Beginning in 2019, USCIS introduced an online platform for filing FOIA called “FIRST.” The agency has been heavily promoting online filing for FOIA as an administrative efficiency measure because it eliminates delays from regular mail delivery and scanning that are involved in paper filed FOIA requests. The first step is to set up a MyUSCIS account. If a representative as a third party requestor wants to receive the client’s records, then the representative must set up their own MyUSCIS account at <https://myaccount.uscis.gov>.

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services

### Sign In

Email \*

aeblock@dcn.org

Password \*

.....

[Forgot your Password?](#) [Show Password](#)

[Sign In](#)

One account for all of your USCIS needs.  
[Create an account.](#)

[Didn't receive confirmation instructions?](#)

The representative/attorney must fill out the information on FIRST that pertains to them as third-party requestor, and then the client who is the subject of record will be asked to verify consent (by text or by email) in a series of questions. Alternatively, the representative must upload Form G-28 and Form G-639 to the FIRST platform, and this will suffice for consent.

The representative will need to fill out the third party requestor information on the following page:

# Request About Someone Else

Step 1 of 5 - Details About the Third-Party Requester



## Primary Requester Information

A "\*" indicates a required field.

Window Snip

Family name (last name) \*

Block

Given name (first name) \*

Ann

Middle name (if applicable)

[← Back](#)

[Next >](#)

What is your mailing address?

The attorney then fills out information relating to the client whose record is sought under the sections asking for information on the subject of record.

The screen that follows will need information about the client/subject of record:

A- 

Where was the Subject of Record born?

Country \*

MEXICO



Window Snip

When was the Subject of Record born?

Month \*

07 - July

Day

4

Year \*

2000

Has the Subject of Record filed a previous receipt(s) with USCIS?

Application, Petition, or Receipt Number

MSC223034567





There is also a screen listing a series of documents under “Select records requested.” If an entire A-file is needed, then the “other” box should be checked, and in the box provided, write “entire A-file.”

If Form G-28 and Form G-639 are not uploaded into FIRST, the client will receive either an email or text (depending on what they provided) asking for consent to release information to the representative. The communication will ask a series of questions in English to complete the consent.

The mobile phone number or email requested pertains to the subject of record and is how USCIS will contact the person to verify consent. Only **one** method should be provided, either email or a mobile phone number for texts.

Practitioners recommend filing FIRST while the representative is with the client, if possible, because the questions will be transmitted immediately and it may be less confusing for the client if the representative is present to consult.

Again, if the G-28 and G-639 are uploaded (see the following screen) then the verification questions will not be needed.


#### How can we contact the Subject of Record for release of records?

Note: Providing this information is optional. However, to complete this request electronically, you must provide an email address or cellular phone number for the Subject of Record. This information will only be used to obtain electronic consent for the release of information. Alternatively, you can upload a notarized signature from the Subject of Record providing consent.

Upload a notarized signature from the Subject of Record providing consent and verification of identity.

#### Upload Documents

If you have any additional documentation in support of your request, you may attach it here.



Please upload files to your request by [choosing a file here](#).

Maximum size: 25 Pages and 10MB per file

Accepted formats: PDF, JPG, JPEG

The verification questions to the client/subject of record are on country of birth (note, not country of residence), as well as date of birth. The client is also asked to verify that the information submitted on their behalf by the representative is correct by checking a box under penalty of perjury. The client must also agree to pay costs. Note that costs are very rarely assessed for FOIAs as the statute requires the government to release the information for free except for very voluminous requests.

Next, the client is asked to type in their name, and it should appear as it was entered in the initial FIRST request. Then the client is asked, “approve request, deny request, or return request to requestor for changes.” If the client wants to continue with the FOIA request, client should check the box for “approve the request,” then hit submit, and the FIRST request will be processed. The representative should soon afterward see the FOIA request listed as “pending” in their MyUSCIS account.

## VII. FOIA with United States Immigration and Customs Enforcement (ICE)

FOIAs can be filed at ICE by regular mail, including with Form G-639, to:

US ICE  
500 12<sup>th</sup> St. SW, Stop 5004  
Washington, D.C. 20536-5004

Typical documents that can be found at ICE include SEVIS (Student and Exchange Visitor Information) records, medical or other records while someone was detained, I-213: Record of Deportable Alien, bond obligor and investigation records. Many ICE records will also be found in an A-file from USCIS. The agency also encourages FOIA filing through an online portal called Secure Release.<sup>7</sup> Secure Release was established as the online platform for ICE FOIAs in November 2022. ICE asks the applicant to complete a certification of identity form available on their website. A separate link is provided on the ICE FOIA page for persons seeking a correction in their ICE record.<sup>8</sup>

## VIII. United States Customs and Border Protection (CBP)

CBP has a list of documents commonly supplied through FOIA on its website.<sup>9</sup> Typical documents that can be obtained from CBP include records of apprehension, detention, deportation, entry, exit, expedited removal, background investigations, or inspections, Form I-94 records, travel industry reservation data such as a passenger name, and voluntary return records. CBP does not have complete records of apprehensions before 2000 and directs requestors to seek that information from USCIS files.

CBP also processes FOIAs by regular mail with a written FOIA request (on Form G-639 or by letter with the necessary information) to:

FOIA Officer, USCBP  
FOIA Division  
90 K St. NW  
Washington, D.C. 20229

<sup>7</sup> For full instructions, see ICE, *Freedom of Information Act*, <https://www.ice.gov/foia>.

<sup>8</sup> Persons seeking a correction or amendment to their ICE record are directed to contact ICEPrivacy@ice.dhs.gov.

<sup>9</sup> CBP, *Common FOIA Requests*, <https://www.cbp.gov/site-policy-notices/foia/records>.

CBP FOIAs can also be filed online through the Secure Release platform. CBP began using this online platform in October 2022.<sup>10</sup> The agency strongly encourages use of the online platform and states that requests filed by regular mail will take longer to process. If the FOIA is requested on behalf of someone else, CBP specifies that Form G-28 must be included.

## IX. Office of Biometrics Identity Management (OBIM)

OBIM also processes written FOIA requests (either with Form G-639 or by letter specifying the needed information) by regular mail to:

OBIM  
Privacy Office, Mail Stop 0655, DHS,  
2707 Martin Luther King Jr. Av. SE,  
Washington, D.C. 20538-065

FOIAs can also be filed with OBIM through the Secure Release platform.<sup>11</sup> The request should be accompanied by an affirmation document that can be printed off the OBIM webpage, filled out, signed, scanned, and then uploaded.<sup>12</sup> The third-party affirmation allows the subject of record/client to verify their identity and gives consent to release information to a particular representative. The first party affirmation form is used when a person is requesting their own records. A fingerprint card typically accompanies the OBIM FOIA request by mail or is scanned in or uploaded to process an OBIM FOIA through Secure Release, along with the affirmation document. An A-number can be submitted instead of fingerprints to request a FOIA search, but a fingerprint record may be more complete.

A FOIA request for third-party records to OBIM typically includes Form G-639, Form G-28, and a fingerprint card for the subject of record; but a requestor may also write out the request without these forms to file the FOIA.

## X. Appeals

The FOIA statute provides an administrative appeal of a FOIA determination. Under DHS rules, an administrative appeal must be filed within 90 business days of an adverse determination.<sup>13</sup> The appeal must be in writing, clearly labelled “FOIA Appeal,” sent to the appeals office designated for that DHS component office, and state the legal basis for the challenge to the determination.<sup>14</sup> A separate avenue of challenge to FOIA determinations is available through federal district courts.<sup>15</sup>

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<sup>10</sup> CBP, FOIA, <https://www.cbp.gov/site-policy-notice/foia>.

<sup>11</sup> OBIM, <https://www.dhs.gov/foia-contact-information>.

<sup>12</sup> *Id.*

<sup>13</sup> 6 CFR § 5.8(a)(1).

<sup>14</sup> The appeals office address is specific to each DHS component office and can be found on their website. For USCIS, for example, appeals must be filed to USCIS/FOIA Appeals Office, 150 Space Center Loop, Ste 500, Lee's Summit, MO. 64064-2139. More information on administrative appeals and litigation challenges to FOIA is found at Department of Justice, *Department of Justice Guide to the Freedom of Information Act* (updated July 2023), <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

<sup>15</sup> 5 U.S.C. § 552(a)(4)(B).

## XI. Conclusion

Information gained through FOIA requests in immigration cases can make a crucial difference in defending clients and in deciding whether to file for an immigration benefit. All DHS agencies must comply with FOIA's mandates, and each has a FOIA office. There is also a central office with FOIA responsibility called the DHS Public Liaison.<sup>16</sup> They can be contacted with information about systemic problems in FOIA processing.

Online FOIA filing is increasingly encouraged by DHS agencies, but filing by regular mail remains available. While USCIS uses a platform called FIRST, the other DHS offices use a system called Secure Release.

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<sup>16</sup> The DHS Public Liaison officer is Amy Bennett and she may be contacted at [foia@hq.dhs.gov](mailto:foia@hq.dhs.gov).



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**About the Immigrant Legal Resource Center**

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.