



ATTACKS ON THE FREEDOM OF INFORMATION ACT (FOIA) CONTINUE

DHS FOIA Final Rule Effective January 22, 2026: Elimination of Paper-filed FOIAs, Authority for Administrative Closure

By Peggy Gleason and Liz Taufa

On December 22, 2025, DHS published a final rule impacting processing of FOIA requests by all DHS components.¹ The rule is effective January 22, 2026. Despite the major changes made by the rule, no period of public comment was provided. DHS claims that the rule is only procedural and that public comment is unnecessary because the public already is accustomed to filing forms electronically and will not be impacted. The violation of the Administrative Procedures Act notice and comment requirements could be subject to litigation although, at the time of this writing, no litigation has yet been filed.

The rule eliminates paper filing of FOIA requests with DHS as of January 22, 2026. FOIAs to DHS must be filed online after that date. The only specific exception is for incarcerated individuals who can make a request to the FOIA liaison² for the agency inquiring how to make the alternative request. No further details are provided on what this process for alternative FOIAs consists of.

The rule also allows DHS to administratively close (that is, reject) FOIA requests that it deems to be insufficient. The rule states that DHS can, in its discretion, administratively close or make “requests for clarification” where it deems the request to be an inadequate description of the records sought. This appears to explicitly authorize rejections of FOIA requests at the discretion of the DHS component.

If the DHS component elects to seek additional information instead of administratively closing the request, it may do so by phoning the requester, by sending an email message to requester, or by sending a message in the electronic portal. If a phone request for information is made, it should be summarized by the DHS agency in a follow-up message via electronic means. Responses to electronic requests for more information are due within 30 working days of the agency’s request.

This rule follows months of deterioration in DHS’s treatment of FOIAs. Practitioners reported multiple issues with FOIA processing at USCIS throughout 2025, all of which demonstrate the government’s aim to restrict access to FOIA: rejections due to address issues, over redaction FOIA responses, denials stating “no record” where an individual can verify that a record exists with the agency, and unexplained rejections of FOIAs prior to processing, among others. The publication of the final rule appears to simply codify what has been DHS FOIA practice for months.

A whistleblower complaint by a high-level government employee was published in December 2025 which details USCIS’s campaign to stifle FOIA and alter statistics that it is required to report to Federal Court under a

¹ DHS, Office of the Secretary, Privacy Act of 1974, Final Rule, 90 Fed. Reg. 59945, <https://www.govinfo.gov/app/details/FR-2025-12-23/2025-23783> (Dec. 23, 2025).

² A list of contact information and staffing for the various DHS components appears on the DHS website. However, contact information is limited to electronic means, which may be difficult for incarcerated individuals to access to request an alternative submission method. See Dep’t. of Homeland Security, FOIA Contact Information (last updated Jan. 7, 2026), available at <https://www.dhs.gov/foia-contact-information>.

permanent injunction in *Nightingale v. USCIS*, No. 3:19-cv-03512 (N.D. Cal. Aug. 8, 2019).³ The internal directives at USCIS revealed in the whistleblower report are consistent with the current rule, all aiming to deny the public access to information that Congress guaranteed in creation of FOIA. The report details a series of steps taken by USCIS to manufacture favorable statistics on FOIA processing for the court reports required in *Nightingale*. These included mass closures of FOIA requests and other procedural mechanisms to remove requests from pending FOIA inventory. Further hearings in the case are raising the issues detailed in the whistleblower report.

The FOIA statute has not changed. FOIA requests are still able to be submitted. Practitioners should continue to assert their clients' rights to records available through FOIA and appeal inadequate responses from DHS. For more information on recent FOIA processing changes and challenges, see the ILRC's recent practice alert, "FOIA Alert on Processing Changes," available at <https://www.ilrc.org/resources/foia-alert-processing-changes---december-2025>.



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³ American Immigration Council, *Whistleblower Report Reveals USCIS is Circumventing Court Order on Immigrants' Access to their Records*, <https://www.americanimmigrationcouncil.org/blog/whistleblower-report-uscis-court-order-afiles/> (Dec. 2025); See a full description of the report in the Government Accountability Project's letter to Congress, (Dec. 19, 2025) https://www.govexec.com/media/general/2025/12/12-19-2025_-_uscis_nrc_disclosure_final.pdf.