



FOIA REQUESTS AT DHS

Overview and Updates from 2025-2026

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I. Introduction

The Freedom of Information Act (FOIA) entitles every person access to certain information from the federal government.¹ 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 offices 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).

This practice advisory will review recent changes and current practice in filing FOIA requests with DHS and with the different offices within DHS. Since January 22, 2026, all have transitioned exclusively to online filing. The only exception is for persons who lack internet access, such as incarcerated requestors, who may still file on paper, by mail.²

¹ Freedom of Information Act, 5 U.S.C. §552 et. seq.

² DHS published a final rule making online filing the exclusive FOIA process on Dec. 23, 2025, effective January 22, 2026. DHS, Office of the Secretary, Privacy Act of 1974, Final Rule, 90 Fed. Reg. 59945, (Dec. 23, 2025). The rule was published as final with no prior proposed rule or period of public comment on the dubious rationale that the rule did not impact the public. The final rule mandates online filing with the only exception being for those who lack online access, such as incarcerated persons, who are directed to contact the FOIA public liaison office for the component as listed at <https://www.dhs.gov/foia-contact-information>. If a requester is unable to file electronically for reasons other than incarceration, they should contact the component office's public liaison to request paper filing by mail, although the regulation is not clear on who, other than incarcerated persons, can qualify to file on paper. For USCIS the Public Liaison is contacted at FOIAPAQuestions@uscis.dhs.gov.

Sometimes it can be complicated to determine which agency may have the records sought. Many times, it is useful to file multiple FOIAs to DHS components (USCIS, CBP, ICE, OBIM) because one office may reveal information that is not presented from another agency's FOIA response. To help you make the determination about which component typically maintains which records, 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 under "Where to Make Your Request."³

II. Challenges to FOIA Filing

Since 2025, attorneys have encountered new challenges in the FOIA process. Practitioners report very long wait times for responses to requests, frequent rejections, denials, and over-redaction of responses.⁴ Appeals are facing similarly long wait times, usually exceeding the 20-day response deadline by many months.⁵ If practitioners do receive a response, it may well be a "no records" response, where the agency claims it does not have the records requested. In many cases, practitioners may receive a "no records response" despite having evidence of records from those agencies, i.e., receiving such a response despite having a record of filing applications with USCIS such as a client's work permit or biometrics.

Practitioners also report DHS denials of FOIA requests based on reasons that do not exist in the regulations, such as not providing residence address for the subject of record, or for alleged inconsistencies in information provided in the FOIA request compared to information found in the agency's file, or for variations in names or dates. Sometimes requests are rolled together into a single denial if a second, narrower request is submitted after a full A-file request denial. Some of these obstacles appear to be a result of new USCIS internal policies described in the 2025 USCIS Whistleblower Report. See more below.

During the current administration, FOIA offices have also suffered severe cutbacks and forced resignations of government employees, further slowing processing and diverting resources away from processing FOIA requests.⁶

III. *Nightingale* Lawsuit

In June 2019, the American Immigration Council sued DHS, USCIS, and ICE over their violation of FOIA guidelines regarding response timelines to FOIA requests. The plaintiffs, immigration attorneys and their clients with FOIA requests over 30 days, were granted class certification. Subsequently, in December 2020, they were granted declaratory and injunctive

For background on these changes see ILRC, *Attacks on FOIA Continue* (Jan. 2026)

<https://www.ilrc.org/resources/attacks-foia-continue> and ILRC, *FOIA Alert on Processing Changes* (Dec. 2025), <https://www.ilrc.org/resources/foia-alert-processing-changes-%E2%80%93-december-2025>.

³ 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>.

⁴ The FOIA statute requires that all federal agencies respond to each FOIA request within 20 business days (not including Saturdays, Sundays, or legal holidays). 5 U.S.C. § 552(G)(i).

⁵ The FOIA statute requires that all federal agencies respond to appeals within 20 working days. 5 U.S.C. § 552 (G)(ii).

⁶ New York Times, *Public Records Requests are Surging, the Government is Falling Behind* (Aug. 3, 2026).

relief which required the agencies to follow the 20-day regulatory deadline for responses to FOIA requests. The court ordered USCIS to file quarterly reports on their compliance.⁷ The court order remains in effect. In 2025, it became apparent that USCIS was altering internal policies on FOIA handling to “improve” the statistical reporting they were required to make to the court.

IV. USCIS Whistleblower Report

In December 2025, a whistleblower report from a high-level employee at USCIS’s National Records Center (NRC) was released, revealing internal policy directives at USCIS designed to withhold records from requestors.⁸ The report describes a series of changes USCIS made in 2025 which altered how the NRC handled FOIA requests, including withholding or redacting entire documents in A-files, and designating more documents as “out of scope” of a request, even some provided by noncitizens themselves.⁹

Even more concerning are the reported 2025 USCIS policy changes that resulted in closure of requests for using attorney addresses as opposed to client ones, giving multiple last names, A-number errors even when the correct number was in the documentation, date inversion, and inconsistencies in parent information.¹⁰ The whistleblower complained to supervisors that these changes did not comply with FOIA law and regulations. The whistleblower stated that these drastic policy changes were made so the agency could demonstrate better data in its quarterly reports as mandated by the *Nightingale* Lawsuit.¹¹ The plaintiffs in the suit have notified the court of the report, but the court has not addressed these issues to date.

It is important for practitioners and clients to know about these obstacles. Nevertheless, despite all these obstacles, the FOIA statute and regulations remain in place and provide advocates with the best tool available to research a client’s immigration history prior to applying for a new immigration benefit or preparing a defense.

V. 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

⁷ *Nightingale, et al. v. USCIS et al.*, No. 19-03512, 2020 WL 7640547 (N.D. Cal. Dec. 17, 2020).

⁸ Am. Immigr. Council, *Whistleblower Report Reveals USCIS is Circumventing Court Order on Immigrants’ Access to their Records*, <https://www.americanimmigrationcouncil.org/blog/whistleblower-reportuscis-court-order-afiles/> (Dec. 2025). Review the report in the Government Accountability Project’s letter to Congress Re: *Protected Whistleblower Disclosure Violations of FOIA, Regulations, and Nightingale Court Order* (Dec. 19, 2025) https://www.govexec.com/media/general/2025/12/12-19-2025_-_uscis_nrc_disclosure_final.pdf

⁹ *Id.* The National Records Center of USCIS (NRC) maintains a vast records deposit in a federal office located in a cave in Lee’s Summit, Missouri. National Archives, Prologue magazine, *The National Archives Goes Underground*, <https://www.archives.gov/publications/prologue/2016/spring/historian-frcs.html>. The NRC is primarily responsible for processing USCIS FOIA requests.

¹⁰ Am. Immigr. Council, *Whistleblower Report Reveals USCIS is Circumventing Court Order on Immigrants’ Access to their Records*, <https://www.americanimmigrationcouncil.org/blog/whistleblower-reportuscis-court-order-afiles/> (Dec. 2025).

¹¹ *Id.*

will generally be required to gain greater access to the records. Consent is sometimes shown by attaching or uploading a signed FOIA request and a consent to release records, or a particular form requested by the agency. In the USCIS online process, in order to show consent, the subject of the record may receive questions asking for their consent either by email or text to a mobile phone. These mechanisms are described more 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 written consent when someone is seeking a record on their behalf. The regulations specify that full name, current address, date of birth, place of birth, and country of citizenship or residence are information needed to verify identity.¹² The verification can be a written statement signed by requestor under penalty of perjury, or it can be notarized.¹³

ADDRESS ISSUES

One of the 2025 internal policy changes at USCIS directed that FOIA officers interpret the “current address” requirement of the regulations to mean physical address of the requestor for those filing by USCIS Form G-639.

The FOIA regulations require a “current address” for subject of record without defining whether that is a postal address, residential address, contact address, or a c/o address.¹⁴ This change resulted in rejections of numerous FOIA requests based on a new, unannounced, and erroneous interpretation of “current address.”

USCIS directed FOIA officers to reject FOIA requests on Form G-639 that used a “care of” attorney address, although according to form’s instructions and the internal memo, a Post Office box or mailing address is permitted.¹⁵ The USCIS public liaison officer stated that a physical address of subject of record was needed, although no authority was provided to

¹² 6 CFR. §§ 5.21 (e), (g).

¹³ *Id.*

¹⁴ The FOIA regulations state at 6 CFR § 5.3(a):

(3) A requester who is making a request for records about him or herself must comply with the verification of identity provision set forth in subpart B of this part.

(4) Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual, in compliance with the verification of identity provision set forth in subpart B of this part, or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual, authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (e.g., a copy of a death certificate or an obituary). As an exercise of its administrative discretion, each component can require a requester to supply additional information as necessary, in order to verify that a particular individual has consented to disclosure. FOIA regulations expressly incorporate Subpart B, which are the Privacy Act regulations, particularly 6 CFR § 5.21(g), referencing 6 CFR § 5.21(e) which states that for verification of identity: “The individual must provide their full name, current address, date and place of birth, and country of citizenship or residency.” Despite this authority, some USCIS officials insist that current address means physical address of the subject of record.

¹⁵ For background on these changes see ILRC, *Attacks on FOIA Continue* (Jan. 2026) <https://www.ilrc.org/resources/attacks-foia-continue> and ILRC, *FOIA Alert on Processing Changes* (Dec. 2025), <https://www.ilrc.org/resources/foia-alert-processing-changes-%E2%80%93-december-2025>.

support this interpretation.¹⁶ Practitioners also reported rejections when the address was listed as “confidential,” even though confidential addresses are expressly permitted under 8 USC § 1367 to protect certain survivors of domestic violence, trafficking, and other serious crimes. These erroneous rejections should be challenged by administrative appeal.

Note that the imposed requirement of physical address of subject of record may be much less of an issue since USCIS now requires almost all FOIAs to be filed online in their portal FIRST, and physical address is not a mandatory field for that online form.

VI. FOIA Process

On December 23, 2025, DHS published a final rule which made online filing the exclusive way to file a FOIA Request.¹⁷ The rule went into effect on January 22, 2026. Online filing is now required, except for those who lack internet access, such as incarcerated requestors. The regulation directs persons who wish to file on paper by mail to contact the FOIA public liaison. USCIS uses the online portal FIRST. CBP, OBIM, and ICE use the online portal SecureRelease. The process and requirements for each agency are detailed below.

The recent requirement to file only online creates different challenges for practitioners. The websites can be glitchy. Setting up user accounts requires additional steps that can be difficult to navigate for requestors. Where there are required “fields of entry” on online portals, it is impossible to submit a FOIA request without filling in an answer in that field.

VII. FOIA with USCIS

FOIA requestors to USCIS may seek an individual’s entire A-file of immigration records or a specific document.¹⁸ The requests must be filed online through FIRST, except in the limited circumstances as described above. Typical document requests appropriate for USCIS are A-files for oneself or for another person with their consent, specific documents from the file, or agency policies, data, communications, and other records.

¹⁶ Author inquiry to the USCIS liaison at USCIS FOIA PAQuestions@uscis.dhs.gov on March 26, 2026, about clarification on address requirements received this reply: “In accordance with 6 CFR § 5.21, the subject of record must provide verification of identity, which consists of a written statement from the subject stating his/her full name, current physical address, and date and place of birth. Additionally, the subject of record must sign the written statement, and the signature must either be notarized true and correct or signed under penalty of perjury. The address provided must belong to the subject of record.” While there is no legal authority to support the interpretation that current address means physical address of subject of record and not a mailing address, requestors should be aware that they will receive resistance under the current internal policies at USCIS.

¹⁷ DHS, Office of the Secretary, Privacy Act of 1974, Final Rule, 90 Fed. Reg. 59945 (Dec. 23, 2025).

¹⁸ For example, one non-profit legal services provider who represents mainly refugees who are applying for further immigration benefits reports successful FOIAs where they limit their document request to “I-590, refugee interview transcript.” Because their FOIA requests have so often been challenged and delayed since 2025, they found that limiting their request to the most crucial document for immigration history was most likely to receive a full response.

The DHS regulation directs online filing but also states that, “Upon request, DHS FOIA public liaisons may facilitate, in limited circumstances (e.g., incarceration), an alternative method to submit requests for requesters who are unable to submit electronic requests. Please direct such requests to the liaison of the Office or DHS Component you wish to seek records from....”¹⁹ The USCIS public liaison can be contacted at FOIAPAQuestions@uscis.dhs.gov. Individuals who lack internet access, in addition to incarcerated people, should be able to file paper-based FOIAs under the rule, although a request to the FOIA public liaison should be made first.

FOIAs can be filed by mail to USCIS at:

National Records Center (NRC),
FOIA/PA Office, P.O. Box 648010
Lee’s Summit, MO. 64064-8010.

The USCIS public liaison stated: “Any wording indicating they are not able to make the request is acceptable. This can be a cover letter to the request or any indication on the G-639 that an electronic submission cannot be completed.”²⁰

USCIS created Form G-639, Freedom of Information/Privacy Act Request, to help people make their requests.²¹ The most recent revision of this form was in 2024.²² Form G-639 was the primary method to file FOIA requests for years. However, now that all DHS FOIA requests must be filed online, Form G-639 is only used in limited circumstances. While this information is not clear from the USCIS website on FOIA, the public liaison verified that Forms G-639/G-28 can serve as uploaded documents for verification of identity and consent to release information with the FIRST platform. However, an uploaded statement of consent to release information and a written verification of identity can also serve the same purpose when filing online. Note that the information requested in the online platforms is different than that requested in Form G-639.

In any FOIA, whether online or by mail, if a parent or guardian is seeking information on behalf of a child, identity verification of the subject of the request and the requestor is required, along with proof of the relationship (with a birth certificate or court order of guardianship) and a showing that the request is being made on behalf of the subject of the request.²³ If seeking information about a deceased individual, proof of the death is needed (death certificate).²⁴

VIII. USCIS FOIA Online—FIRST

In 2019, USCIS introduced an online platform for filing FOIA called “FIRST.” In 2026, FIRST became the exclusive way to file a FOIA request with USCIS. The first step is to set up a

¹⁹ DHS, Office of the Secretary, Privacy Act of 1974, Final Rule, 90 Fed. Reg. 59945 (Dec. 23, 2025).

²⁰ USCIS Public Liaison, communication with the author on May 13, 2026.

FOIAPAQuestions@uscis.dhs.gov.

²¹ USCIS, *Form G-639: Freedom of Information Act/ Privacy Act Request* (Dec. 12, 2024)

<https://www.uscis.gov/sites/default/files/document/forms/g-639.pdf>.

²² *Id.*

²³ 6 CFR § 5.3(a)(4)

²⁴ *Id.*

MyUSCIS account. If a representative as a third-party requestor wants to receive the immigration client's records, then the representative must set up their own MyUSCIS account at <https://myaccount.uscis.gov>. Setting up an account requires setting up a username and password, agreeing to the Terms of Use, and setting up security questions.

The first step of the request requires the representative/attorney to fill out the information on FIRST that pertains to themselves as third-party requestor. Identity verification and consent are required later in the request. The only required information on the initial page is first name, last name, and email.

The requestor then selects the types of records they are requesting. There is a list of possible selections, but you can also list a specific document sought if the "other" box is checked. Practitioners report that requests for a specific document are much more likely to be timely processed than larger volume requests, especially because USCIS currently has understaffed FOIA offices. If an entire A-file is needed, then the "other" box should be checked, and in the box provided, write "entire A-file." At least one selection must be made on this page.

Next, the requestor must answer whether they have upcoming immigration court proceedings. This is a required question.

The requestor then fills out information relating to the client whose record is sought, including where and when the subject of the record was born.

Mandatory information fields on FIRST include:

1. Requestor first name, last name, and email;
2. What records are requested;
3. Whether the subject of the record has upcoming immigration proceedings; and
4. Subject of record name, date of birth, country of birth.

There are further questions asking the names of the parents of the subject of the record as well as other family members that may appear in the records. When fields are not mandatory, practitioners should think carefully about whether the information given would be helpful or harmful to the requestor. For example, if non-required information is slightly inconsistent with other information in the person's file, it could cause a denial. The internal policy changes at USCIS's National Records Center (NRC) in 2025 have resulted in some FOIAs being denied for so-called "inconsistency" between information provided and information found in the A-file, including non-required information such as the names of parents.²⁵

FIRST then asks the requestor to upload any supporting documents and to verify identity and consent for release of records for additional people mentioned in the record. The requestor can receive priority processing if they have a scheduled hearing before an immigration court, as shown by documents uploaded to the portal.²⁶

²⁵ For background on these internal policy changes at USCIS, see American Immigration Council, *Whistleblower Report Reveals USCIS is Circumventing Court Order on Immigrants' Access to their Records*, <https://www.americanimmigrationcouncil.org/blog/whistleblower-reportuscis-court-order-afiles/>.

²⁶ USCIS will prioritize FOIA requests for individuals who can demonstrate a hearing before an Immigration Judge with Form I-862, Notice to Appear, documenting the upcoming date of the subject's hearing before

The next page handles consent and identity verification for the subject of the request. There are two options to verify identity and show consent for release of records, and there is a box to click to demonstrate which option is preferred. One option is uploading a signed, notarized document from the requestor providing both consent to release to a third party and verification of identity. For consent provided through the platform, the requestor can provide contact information such as an email, or mobile phone number for the subject of the record.

Immediately after submission, USCIS will contact the person to verify consent, which they do through a series of questions in English. 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 will be less confusing for the client if the representative is present to consult.

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 did 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.

IX. FOIA with ICE

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. A separate link is provided on the ICE FOIA page for persons seeking a correction in their ICE record.²⁷ Requests for ICE Records are made through SecureRelease.²⁸ See below for information on submitting a FOIA request through the SecureRelease Portal.

The Certification of Identity and Affirmation forms that can be uploaded with an online ICE FOIA are linked in the SecureRelease site.

the immigration judge; Form I-122, Order to Show Cause, documenting the upcoming date of the subject’s hearing before the immigration judge; Form I-863, Notice of Referral to Immigration Judge; or a written notice of continuation of a future scheduled hearing before the immigration judge. USCIS, Request Records through the FOIA, <https://www.uscis.gov/records/request-records-through-the-freedom-of-information-act-or-privacy-act>.

²⁷ Persons seeking a correction or amendment to their ICE record are directed to contact ICEPrivacy@ice.dhs.gov.

²⁸ <https://www.securerelease.us/>.

All DHS components, including ICE, are covered in the December 2025 DHS final regulation which mandates online filing of FOIA requests, except for the possible exception for incarcerated persons or those who lack access to file electronically.²⁹ For unrepresented incarcerated persons who can file on paper by mail, their ICE FOIA request should be sent to:

United States Immigration & Customs Enforcement, FOIA Office
500 12th Street, SW, Stop 5009
Washington, DC 20536-5009

X. FOIA with CBP

CBP has a list of documents commonly supplied through FOIA on its website.³⁰ 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.

To obtain records from CBP, review CBP's instructions.³¹ FOIAs should be submitted online through SecureRelease but the regulations allow an exception for incarcerated people and others who may lack electronic access.

CBP's online FOIA requests with SecureRelease require similar information as ICE and OBIM. The requester must reasonably describe the records sought. The verification of identity can be completed with a U.S. Department of Justice Certification of Identity form (DOJ-361) or by uploading a signed verification of identity statement made under penalty of perjury, or notarized. The Certification of identity form is available at: https://www.justice.gov/ust/file/doj361_form.pdf/dl.

If a request is made on behalf of a third party, Form G-28 should be uploaded.

If an individual is incarcerated, CBP has alternative filing of FOIA on paper by mail to:

U.S. Customs and Border Protection, FOIA Division
1300 Pennsylvania Avenue NW, Mail Stop 1181
Washington, DC 20229³²

XI. FOIA with OBIM

OBIM is the arm of DHS that houses and supplies the agency's biometric data, which constitutes the largest biometric repository in the U.S. government. This system, called the

²⁹ Paper-filed FOIAs are still possible for incarcerated individuals and others who lack electronic filing access by request to the ICE public liaison. Under the 2025 regulation, individuals who seek to file a paper-based FOIA by mail must contact the ICE FOIA liaison at ice-foiapublicliaison@ice.dhs.gov, which is listed at <https://www.dhs.gov/foia-contact-information>.

³⁰ CBP, *Common FOIA Requests*, <https://www.cbp.gov/site-policy-notice/foia/records>.

³¹ CBP, "Freedom of Information Act (FOIA) Frequently Asked Questions," <https://www.cbp.gov/site-policy-notice/foia/faq-foia>.

³² Email from CBPFOIAPublicLiaison@cbp.dhs.gov to ILRC on May 14, 2026.

Automated Biometric Identification System, also known as IDENT, holds more than 200 million unique identities (including a person's right index fingerprint and photograph) and processes more than 300,000 biometric transactions per day.³³ Although sometimes heavily redacted and difficult to decipher because of the government vocabulary used, OBIM records include the IDENT information along with the date and location it was collected, which can be a great resource for practitioners seeking border records.

OBIM mandates the online filing of FOIA requests through the SecureRelease platform. A fingerprint card should be scanned in and uploaded when filing online.

XII. Tips on Submitting a FOIA Using SecureRelease (ICE, CBP, OBIM)

When submitting a FOIA request through SecureRelease, the first step is to select the Department (DHS) you are requesting, and then what component agency you are requesting (i.e., ICE, CBP, OBIM). The form is substantially the same among the component DHS agencies. However, the initial information pages vary, and there are some small differences between each form. It is important that practitioners read the guidelines carefully.

When requesting records about a third party, ICE instructs attorneys to submit a provided Affirmation/Declaration form, Form G-639, and/or Form G-28. CBP requires Form G-28. OBIM requires a set of fingerprints, certification of identity and third-party consent, which can be shown through Form G-639, Form G-28 or through a written identity statement signed under penalty of perjury or notarized, and a consent to release to a third party.

After the initial information page, requestors must select what type of requestor they are (either requesting their own file, or a third-party requestor). On the next page, they must choose if they are requesting under FOIA or the Privacy Act (most people will be submitting the request under FOIA), describe what they are requesting in a response box, and select that they are requesting for a third party (OBIM has this information filled out already and it cannot be changed). This page also includes boxes for all the information about the subject of request information.

The next page provides a place to upload any forms and documentation, which includes any forms verifying identity and consent. Following this is a page with discussion of fees and a place to request a fee waiver. The last page before submitting allows attorneys to request expedited processing and gives a place to justify why expedited processing is necessary.

XIII. Appeals

The FOIA statute provides an opportunity to file an administrative appeal of a FOIA determination. This is an important tool for attorneys because appeals can often result in more information being released. Under DHS rules, an administrative appeal must be filed within 90 business days of an adverse determination.³⁴ Any adverse response can be appealed, and

³³ OBIM, *OBIM: A Decade in Review 2013–2023*, https://www.dhs.gov/sites/default/files/2024-02/24_0229_obim_decade-in-review-13-23.pdf.

³⁴ 6 CFR § 5.8(a)(1).

some appeals that are particularly relevant in today's FOIA environment are: denial of all or part of the request, lack of response in a timely manner, inadequate search, and impermissible redactions or exemptions³⁵ Agencies are required to respond to the appeal in 20 business days; however, many practitioners report that agencies are not following this required timeline.³⁶

The appeal must be in writing and must state the legal basis for the challenge to the determination.³⁷ Requestors can use case law and other supporting evidence to support their claim. Appeals should be clearly labelled "Freedom of Information Act Appeal" in the subject line.³⁸

Appeals should be submitted online to the agency that made the adverse determination. For USCIS, the website advises requestors that instructions on appeals are in their final determination letter. However, the USCIS Public Liaison advises that appeals should be filed online through FIRST. For ICE, the website instructs requestors that their preference is for requestors to submit their appeal through SecureRelease. However, the ICE website does not mandate online filing for appeals and leaves paper filing as an option. For CBP, the website also instructs requestors to appeal through SecureRelease. For OBIM, requestors should submit their appeals through SecureRelease.

When an agency responds to the appeal, it should be in writing.³⁹ Once DHS issues a final decision on the appeal, this is considered a DHS final action.⁴⁰ From there, practitioners can seek review with a federal district court.⁴¹ Practitioners can also pursue federal litigation if they do not get a response to their request by the 20-day deadline.⁴² The suit can be filed where the practitioner lives, where their principal place of business is, where the agency records are, or in Washington D.C.

The government has the burden to show that the decision to withhold records is justified; however, some of its evidence receives substantial weight.⁴³ The district court will review the request de novo, sometimes privately to determine if the agency was justified in withholding records.⁴⁴ District court suits are typically the last legal remedy attorneys can seek regarding denied or partially fulfilled requests. Attorneys for a requester may also be able to recover reasonable attorney fees and other litigation costs if they "substantially prevailed" in their case. The court considers the requester to have "substantially prevailed" if they have obtained relief through either: 1) a judicial order, or an enforceable written agreement or consent decree; or 2)

³⁵ *Id.*

³⁶ 6 CFR. § 5.8(d)

³⁷ 6 CFR § 5.8(a)(1)

³⁸ *Id.*

³⁹ 6 CFR § 5.8(c).

⁴⁰ 6 CFR § 5.8(a)(2).

⁴¹ 5 U.S.C. § 552(a)(4)(B).

⁴² 5 U.S.C. § 552(6)(C)(i).

⁴³ 5 U.S.C. § 552(a)(4)(B).

⁴⁴ 5 U.S.C. § 552(a)(4)(A)(vii)

a voluntary or unilateral change in position by the agency if the claim in the lawsuit is not insubstantial.⁴⁵

Given the increase in FOIA delays, withholding of information, and erroneous denials, appeals are a valuable tool for advocates to pursue in order to obtain the information that their clients are entitled to. For more information, see ILRC's FOIA manual.⁴⁶

XIV. 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 Public Liaison which can be contacted with information about systemic problems in FOIA processing. Although DHS has implemented new policies and staffing that make it more difficult to access documents, practitioners should continue to request documents they and their clients need and hold DHS to its statutory burden to release documents to individuals and the public.



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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.

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⁴⁵ 5 U.S.C. §§ 552(a)(4)(E)(ii)(I)–(II).

⁴⁶ ILRC, *FOIA Requests and Other Background Checks: A Practical Guide to Filing Records Requests in Immigration Cases*, <https://store.ilrc.org/publications/foia-requests-and-other-background-checks-practical-guide-filing-records-requests>.