



DEPARTMENT OF STATE FOIA REQUESTS FOR PERSONAL RECORDS

In certain immigration cases, you may want to submit a Freedom of Information Act (FOIA) request to the U.S. Department of State (DOS), such as to try to find information about previous visa applications and passport records. This Practice Advisory will go over the DOS FOIA process in detail and provide practice tips for obtaining personal records from them, including best practices.¹ For the purposes of this Practice Advisory, the “Requestor” is the individual who is requesting the records while the “Subject” is the individual who is the subject of the FOIA request. In some cases, this may be the same person.

I. Introduction

The U.S. Department of State (DOS) is a federal agency that leads the nation’s diplomatic affairs and foreign policy issues and provides a variety of services to U.S. citizens and noncitizens seeking to immigrate to the United States. These services include consular processing, visa applications, and passport applications. DOS may have records related to an individual’s immigration history, including previous applications, interviews, or adjudications.² DOS’s FOIA website, which provides guidance, frequently asked questions, and more is located at <https://foia.state.gov/>.

Please note, however, that immigration records for clients who immigrated to the United States, e.g., who successfully obtained lawful permanent resident (LPR) status after consular processing, are held by U.S. Citizenship and Immigration Services (USCIS). Thus, if the subject of the FOIA request is an LPR, you should direct the FOIA request to USCIS, which maintains their immigration records, including A-files, a copy of the visa approval notice, authorization of permission to work, and records regarding adjudication for immigrant visa petitions. For more information regarding filing a FOIA with USCIS, see the ILRC’s Step by Step Guide to Completing FOIA Requests with DHS, available at <https://www.ilrc.org/step-guide-completing-foia-requests-dhs>, and the ILRC’s FOIA manual.

DOS also publishes its “Information Access Guide,” which provides a comprehensive overview of its FOIA practices. The Information Access Guide is located at <https://foia.state.gov/Request/Guide.aspx>. The regulations that govern DOS’s release of records under FOIA are located at 22 CFR § 171, but DOS’s website and the Information Access Guide provide a more user friendly, easy-to-navigate summary of this information.

¹ Note that there is a separate process to seek records other than personal records from DOS that this beyond the scope of this Practice Advisory. For information about how to request non-personal records from DOS, please refer to DOS’s Information Access Guide located at <https://foia.state.gov/Request/Guide.aspx>.

² Importantly, “permanent records 25 years and older, pre-1925 passport and pre-1940 visa records” are maintained by the National Archives and Records Administration at <http://www.archives.gov>.

II. What Records Can I Obtain?

DOS considers “**personal records**” to include applications from U.S. citizens for U.S. passports, visa requests from noncitizens, and personal correspondence with U.S. Embassies and Consulates.

While DOS maintains a variety of different records, for the purpose of immigration, two categories of personal records will be most relevant for your client: (a) applications for U.S. passports; and (b) visa requests from noncitizens. The first category of records may be helpful if you are investigating a client’s claim for citizenship. You may want to request any and all applications that they or their family members filed for U.S. passports. A best practice is to request all related records, but you could also specify certain forms by name if you are searching for certain documents in particular. These forms could include any previously completed *Application for U.S. Passport* (Form DS-11), *U.S. Passport Renewal Application for Eligible Individuals* (Form DS-82), and *Corrections, Name Change Within 1-Year of Passport Issuance, and Limited Passport Holders* (Form DS-5504).³

Documents related to visa applications will be particularly important for any clients whose visas were previously denied, or who are applying for other forms of relief and want to check their immigration history. You may want to file a FOIA for these records to identify potential grounds of inadmissibility (or other derogatory information) that your client admitted to in previous applications, or that were triggered through the submission of previous applications (e.g., by making materially false statements in those applications), or to compare statements in previous applications to pending or soon to be filed immigration applications.

III. How Do I File a Request?

A. Where Do I File the Request?

DOS accepts FOIA requests by mail, fax, or electronically. **Most FOIA requests for personal records must be submitted by physical mail.**⁴ There are several different FOIA addresses for DOS, depending on the type of request. Please check the DOS website before sending in a FOIA request, as these addresses could change.

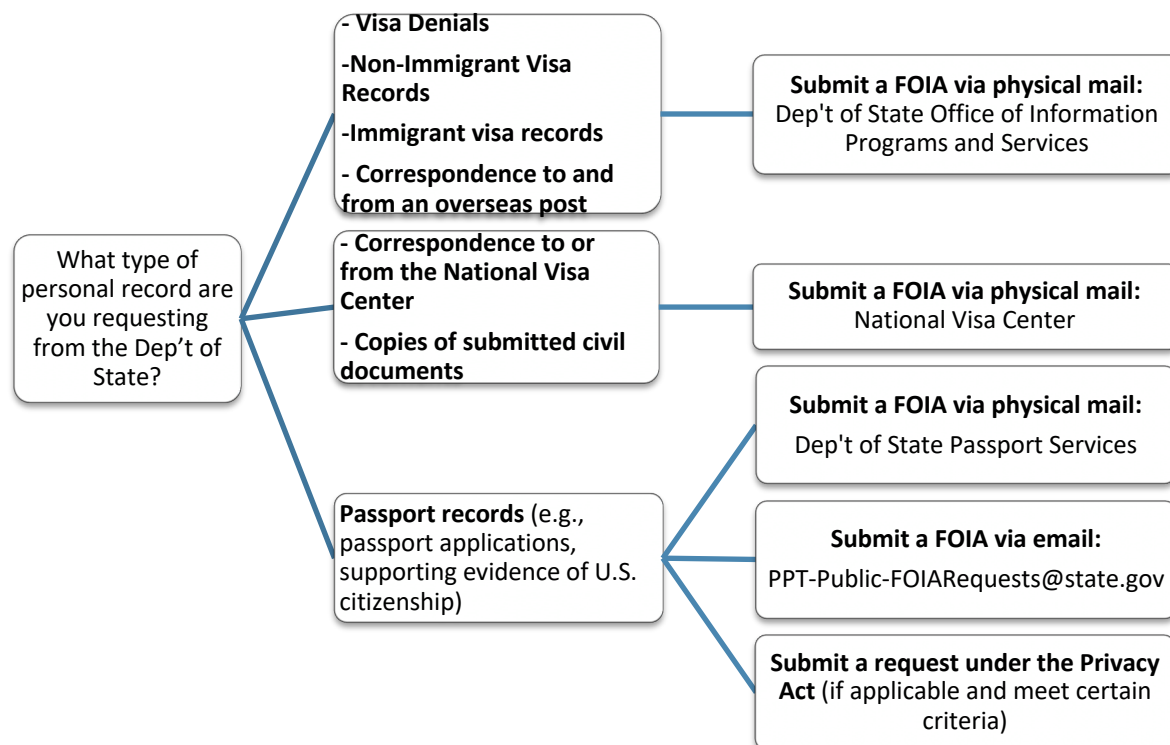
Note that if you are seeking to inquire about visa cases in progress overseas, submitting a FOIA is generally not the appropriate vehicle.⁵

There are different ways to request *passport records*, which we detail in the next section.

³ See U.S. Bureau of Consular Affairs, U.S. Department of State, *Passport Forms*, (last visited: May 3, 2019) <https://travel.state.gov/content/passports/en/passports/forms.html>.

⁴ 22 C.F.R. § 171.4. Note, however, that a Requestor for personal records from Passport Services that is either the Subject, or an individual authorized by the Subject, may send their request by email to PPT-Public-FOIARequests@state.gov. But if the Requestor wishes to receive a certified or apostilled copy of any passport or consular records, the request must be mailed along with the required consular service fee to: U.S. Department of State, Passport Services, Office of Law Enforcement Liaison, 44132 Mercure Cir, P.O. Box 1227, Sterling, VA 20166. See U.S. Department of State, *Information Access Guide*, § V.5, <https://foia.state.gov/Request/Guide.aspx>.

⁵ U.S. Department of State, *Information Access Guide*, § IV.1, <https://foia.state.gov/Request/Guide.aspx>. FOIA requests are generally not appropriate methods to make inquiries regarding visa cases in progress overseas. Instead, you should inquire with the appropriate U.S. Embassy or Consulate handling the case. A list of U.S. Embassies and Consulates may be found at <http://www.usembassy.gov>. Please note that individual U.S. Embassies and Consulates *do not* accept FOIA requests.



For all FOIA requests for personal records such as visa denials, non-immigrant visa records, immigrant visa inquiries, and correspondence to and from an overseas post and related materials, the request must be submitted by physical mail.

- **Physical Mail**
Office of Information Programs and Services
A/GIS/IPS/RL
Department of State, SA-2
Washington, DC 20522-8100
Re: Freedom of Information Act Request

For correspondence to or from the National Visa Center and copies of civil documents presented by petitioner, mail your FOIA request to:⁶

- **Physical Mail**
National Visa Center
Attn: Written Correspondence
32 Rochester Avenue
Portsmouth, NH 03801-2909

Records outside of these categories may be submitted by fax or electronic submission, but most immigration-related FOIA requests will have to be filed physically by mail, as described above.

- **Fax**

⁶ *Id.* at § V.7.

(202) 261-8579

- **Electronic Form Submission⁷**
<https://foia.state.gov/Request/Submit.aspx>

B. What Do I Need to File?

Unlike DHS or DOJ, DOS does not have a form specifically for filing FOIA requests. Requests to DOS can be made on personal letterhead.

DOS recommends that you not use Form DS 5505 (Authorization for the Release of Information Under the Privacy Act) for a FOIA request, as this form concerns a record request under a separate law.⁸ You may, however, use the form if you are submitting a request for information under the Privacy Act to DOS or a U.S. Consular Office.

The written FOIA request should contain as much of the recommended information outlined below as possible, in addition to other information depending on the type of visa or personal record you seek.⁹

Recommended Checklist for FOIA Records Requests to DOS

- ☐ Full name (and any aliases) of the Subject
 - Include the family name (current last name), given name (first name), and middle name.
 - Include other names used by the Subject, including any maiden name, the adding/dropping of a middle initial, or the adding or dropping of the mother's last name.
 - If the Subject is looking to find records in their file under a different name, even a false name used in the past, they should add that name as well.
- ☐ Current mailing address
 - We are unaware of anyone currently being picked up by immigration authorities based on filing a FOIA request; however, there is no guarantee. It is always safest to list a mailing address (e.g., a post office box) instead of a residential address.
- ☐ Date of birth (MM/DD/YYYY)
- ☐ Place of birth (city and state/country)¹⁰
 - For many immigrants, it may not be in their best interest to disclose in a FOIA request that they were born outside of the United States. For example, anyone contesting removability will not want to concede alienage. To avoid this, the Subject may simply decline to write their country of birth or write: "The government alleges [insert country name]."
- ☐ A description of the records you are seeking, including the particular event, policy, or circumstance that led to the creation of the record. See the practice tip below for further guidance on how to describe the records.
 - Timeframe of records
 - It can be helpful to include the reason you believe the record exists within DOS and not another government agency.
 - You may also want to include the offices, embassies, or consulates that originated or received the record.

⁷ The Electronic Form Submission does not allow individuals to submit requests for personal records using this platform.

⁸ U.S. Department of State, *Information Access Guide*, § V.3, <https://foia.state.gov/Request/Guide.aspx>.

⁹ See U.S. Department of State, Requesting Department of State Information, <https://www.foia.state.gov/Request/Default.aspx>; see also U.S. Department of State, *Information Access Guide*, § V.3, <https://foia.state.gov/Request/Guide.aspx>.

¹⁰ If the name of the birth country has changed since the Subject was born, write the name the country used at the time of their birth.

- If you have it, it may be helpful to note the receipt number or case number for an I-130 immigrant visa petition (for both the petitioner and beneficiary/ies if applicable).
- Any other information that may assist in identifying the records
- ☐ The monetary amount you consent to pay for your request (See section VI. below for more information on fees)
 - If applicable, a statement explaining your request for the reduction or waiving of fees (optional)
- ☐ Notarized signature or Under Penalty of Perjury Statement.¹¹

In addition to the requirements outlined above, note the additional items below to include in your request for either immigrant or non-immigrant visa records requests:

Immigrant Visa Records Requests¹²

- Include the full name, date, and place of birth (city and state/country) for both the petitioner and beneficiary/ies if applicable
- Include the visa type
- Include the USCIS Receipt number or case number for I-130 immigrant visa petition (for both the petitioner and beneficiary/ies if applicable)
- Whether the visa was granted or denied
- Date of issuance or denial (if unknown, provide an approximate range of dates)

Non-Immigrant Visa Records Requests¹³

- Include the visa type, including:
 - The U.S. Foreign Service Post location abroad where the application was made
 - Whether the visa was granted or denied
 - Date of issuance or denial (if unknown, provide an approximate range of dates)

Practice Tip – Legal Considerations When Providing a Description of Records: You may provide a general description or additional information that may assist DOS in locating the documents you need. It is best to be specific, but do not reveal anything about the Subject’s immigration strategy or any facts that you do not want the government to know. Remember that this is information you are submitting to the federal government about your client. For example, instead of requesting “Any records that demonstrate [name of subject] is inadmissible under any grounds,” you should instead consider requesting, “Copies of Form I-601 and Form DS-160 submitted by [name of subject]” and then conduct the review of the responsive records for potential inadmissibility issues yourself.

IV. Passport Records

Passport records can include passport applications, supporting evidence of U.S. citizenship, consular reports of birth abroad, consular reports of death of a U.S. citizen abroad, certificates of loss of nationality, and certificates of witness to marriage.¹⁴ They do not include evidence of travel such as entrance or exit stamps, visas, or residence permits.

There are multiple ways to request your passport records.

¹¹ Use Form DS-4240, DOS’s Certification of Identity form, to provide proof of authorization requesting records on someone else’s behalf. U.S. Dep’t of State, *Certification of Identity*, <https://foia.state.gov/docs/DS-4240.pdf>.

¹² See U.S. Dep’t of State, Checklist for Requests for Personal Information (Immigrant Visas), <https://www.foia.state.gov/Request/Checklist-Visal.aspx>; see also U.S. Department of State, *Information Access Guide*, § V.3, 7, <https://foia.state.gov/Request/Guide.aspx>.

¹³ See U.S. Dep’t of State, Checklist for Requests for Personal Information (Non-Immigrant Visas) <https://www.foia.state.gov/Request/Checklist-VisaNI.aspx>; see also U.S. Dep’t of State, *Information Access Guide*, § V.3, 7, <https://foia.state.gov/Request/Guide.aspx>.

¹⁴ U.S. Dep’t of State, *Get Copies of Passport Records*, <https://travel.state.gov/content/travel/en/passports/after/passport-records.html>.

1. File a FOIA with Department of State's Passport Office, either by physical mail or by email;
2. File a request under the Privacy Act, if applicable¹⁵

If you are requesting an individual's passport records for yourself, or for someone who has given express authorization to seek those records, you can either file a FOIA or you can file a request under the Privacy Act.

Option 1: If you are filing a FOIA, please follow the guidance below and mail the FOIA request to Passport Services. Filing a FOIA is also appropriate where you are requesting an individual's passport records for whom you do not have authorization from that individual.¹⁶

U.S. Department of State
 Passport Services
 Office of Law Enforcement Liaison
 FOIA Officer
 44132 Mercure Cir.
 P.O. Box 1227
 Sterling, VA 20166

There is no specific form for a FOIA request for passport records. DOS, however, recommends that you write "Freedom of Information Act Request" on the envelope.

For U.S. passport records, you should include:¹⁷

1. Name the passport was issued under
2. Full name at birth, and any name changes of the Subject. If requesting records for your children, or using an authorization, include the full name of the Requestor.
3. Evidence of legal authorization if requesting records about anyone other than yourself, evidence of the parental or guardian relationship if you are requesting records about your minor child(ren) or legal guardian;
4. Date and place of birth of the Subject;
5. Mailing Address;
6. Daytime telephone number;
7. E-mail address, if available;
8. Date or estimated date of passport issuance;
9. Passport number of the Subject, if known;
10. Any additional comments or information to help locate the record; and
11. A clear copy of both sides of valid government-issued photo identification, such as a driver's license.

If the Subject is also the Requestor, they will need to sign and notarize the request. Alternatively, if you are requesting records regarding a third party, e.g., a beneficiary of a visa application, you must include a: (a) third-party authorization under penalty of perjury¹⁸; or (b) a notarization from a notary public.

¹⁵ The Privacy Act of 1974 is a separate law from FOIA. See 5 U.S.C. § 552a; see also U.S. Dep't of State, *Information Access Guide*, § IV.1, 2, <https://foia.state.gov/Request/Guide.aspx>.

¹⁶ U.S. Dep't of State, *Get Copies of Passport Records*, <https://travel.state.gov/content/travel/en/passports/after/passport-records.html>.

¹⁷ U.S. Dep't of State, *Get Copies of Passport Records*, <https://travel.state.gov/content/travel/en/passports/after/passport-records.html>.

¹⁸ Use Form DS-4240, DOS's Certification of Identity form, to provide proof of authorization requesting records on someone else's behalf. U.S. Dep't of State, *Certification of Identity*, <https://foia.state.gov/docs/DS-4240.pdf>.

Note that a request for a certified or apostilled copy of any passport or consular records will incur a fee.¹⁹ The FOIA request and the fee must be mailed to the address above.

Option 2: You may also email your FOIA request for passport records to PPT-Public-FOIARequests@state.gov.²⁰ If, however, you are requesting a certified or apostilled copy of passport records, submitting the FOIA via physical mail may be the best option to ensure that you are able to also submit the appropriate fee.

Practice Tip – Legal Considerations When Providing a Description of Passport Records: You may provide a general description or additional information that may assist DOS in locating the documents you need. It is best to be specific, but do *not* reveal anything about the Subject’s immigration strategy or any facts that you do not want the government to know. You may want to consider requesting “Copies of previous U.S. passport applications on behalf of [name of subject]” and not indicate that you are reviewing whether the subject did in fact acquire citizenship.

Option 3: You can avoid the FOIA process if you file a request under the Privacy Act. This law is distinct from FOIA and has different requirements.²¹ For example, a request for personal records maintained by DOS under the Privacy Act requires that the Subject be a citizen of the United States or an LPR.

You can use DOS Form DS-5505 to submit a request under the Privacy Act.²² While there are no fees for submitting a request under the Privacy Act, a request for certified or apostilled copies of one’s passport records may incur a fee.

For more information, visit <https://travel.state.gov/content/passports/en/passports/services/obtain-copies-of-passport-records.html>

V. Withholding of Visa Application Records Under § 1202(f)

Under federal law, DOS has substantial discretion to withhold records related to the adjudication of visa applications. Specifically, “records of the Department of State ... and consular offices ... pertaining to the issuance or refusal of visas or permits” are exempt from disclosure under FOIA.²³ DOS and courts, however, have interpreted this provision to mean that only records that were never in the possession of the Subject may be withheld. This means that those records that were in the possession of the Subject, e.g., visa applications, cannot be withheld.²⁴ Thus, DOS will consistently withhold internal memoranda or legal analyses related to the decision making process underlying a visa application.²⁵ DOS, however, should not withhold records such as previous visa applications.

Nevertheless, in practice, DOS seems to use the exception in 8 USC § 1202(f) arbitrarily and inconsistently, sometimes withholding all records from the Requestor, including the original visa application. To reduce the possibility that DOS will withhold these records, we recommend that, when possible, requests for the visa application be submitted by the Subject

¹⁹ At the time of publication, the fee for certified copies is \$50 and the fee for apostilled copies is \$8. Checks or money orders should be made to the U.S. Department of State. See U.S. Dep’t of State, *Get Copies of Passport Records*, <https://travel.state.gov/content/travel/en/passports/after/passport-records.html> (last visited Aug. 8, 2019).

²⁰ See U.S. Dep’t of State, *Information Access Guide*, § V.5, <https://foia.state.gov/Request/Guide.aspx>.

²¹ See 5 U.S.C. § 552a. The procedures for filing a Privacy Act request for personal records from the DOS are the same as those when requesting records under FOIA, except: (1) you must be a U.S. citizen or an LPR to make a request under the Privacy Act; (2) The Privacy Act only applies to records within the DOS that can be identified by an individual’s name or personal identifier; (3) records will be processed under both FOIA and the Privacy Act “to ensure the greatest possible disclosure of those records”; and (4) no fees will be charged for access to or change of records requested under the Privacy Act. See U.S. Department of State, *Information Access Guide*, § IV.1, 2, <https://foia.state.gov/Request/Guide.aspx>.

²² U.S. Dep’t of State, *Authorization for the Release of Information Under the Privacy Act*, <https://efrms.state.gov/Forms/ds5505.pdf>.

²³ 8 USC § 1202(f).

²⁴ *Medina-Hincapie v. Dep’t of State*, 700 F.2d 737, 744 (D.C. Cir. 1983).

²⁵ *Id.*

of the records or with a third-party authorization.²⁶ Under caselaw, DOS is more likely to provide records in response to these types of requests because it is clear that the records were once in the possession of the Subject.²⁷

Practice Tip: Did DOS deny part or all of your FOIA request under § 1202(f)? If so, consider sending an appeal letter on behalf of your client to contest the negative determination.

VI. Filing Fees

Most FOIA requests filed for immigration purposes are free. Those requests that are not free are assessed at the conclusion of processing a request. Although DOS can recover certain costs for the time spent searching for records and the number of pages copied, the first two hours of search time is free, and the first 100 pages copied are free.²⁸ Additionally, DOS currently does not charge even beyond that if the total amount is \$10.00 or less.²⁹ Most FOIA requests, especially for people who have had little to no interaction with immigration authorities, fall well under this threshold and cost the Requestor nothing.

Technically, however, by submitting a FOIA request, the Requestor is agreeing to pay all applicable fees up to \$25.00, should the costs go over what is provided for free.³⁰ Within the request, note the maximum amount that you are willing to pay. The Requestor will be notified if they owe any money up to \$25.00 and is expected to pay that amount.³¹

Fee waivers are generally not available for FOIA requests for individual immigration cases. A person can qualify for a fee waiver only if they demonstrate: 1) disclosure of the documents is in the public interest because they are likely to contribute significantly to the public's understanding of the government; and 2) disclosure of the documents is not primarily for commercial interests.³² Most FOIA requests for immigration cases would not meet this standard;³³ you should thus think through how much money you can pay for the FOIA request and state that amount upfront, especially if it is less than \$25.00. If the Requestor states \$0, they will be given all the records up to the \$10.00 mark over which DOS begins charging. If possible, however, we recommend agreeing to the stated minimum of \$25.00.

²⁶ U.S. Dep't of State, Certification of Identity, Third Party Authorization (Form DS-4240), available at: <https://foia.state.gov/docs/ds-4240.pdf>.

²⁷ *Medina-Hincapie* at 744.

²⁸ 6 C.F.R. § 5.11(d)(3).

²⁹ U.S. Department of State, *Information Access Guide*, § V.5, <https://foia.state.gov/Request/Guide.aspx>.

³⁰ 22 C.F.R. § 171.13.

³¹ *Id.* (If the agency expects the work to cost more than \$25.00, no additional work in excess of \$25.00 will be done unless the Requestor agrees to pay the additional amount. If the Requestor does not wish to agree to \$25.00 upfront, the Requestor can specify a greater or lesser amount when making FOIA request and/or submit a fee waiver.).

³² 22 C.F.R. § 171.17.

³³ An individual case that *may* meet this standard would be a Requestor that seeks their immigration file for purposes of understanding, criticizing, or publicizing broader immigration policies. For example, an individual working with a not-for-profit organization to highlight information from their case to inform the public about the implementation of the enforcement priorities could make an argument that such request would fall under the "public interest" prong of the FOIA statute.



San Francisco

1458 Howard Street
San Francisco, CA 94103
t: 415.255.9499 f: 415.255.9792

ilrc@ilrc.org www.ilrc.org

Washington D.C.

1015 15th Street, NW, Suite 600
Washington, DC 20005
t: 202.777.8999 f: 202.293.2849

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.