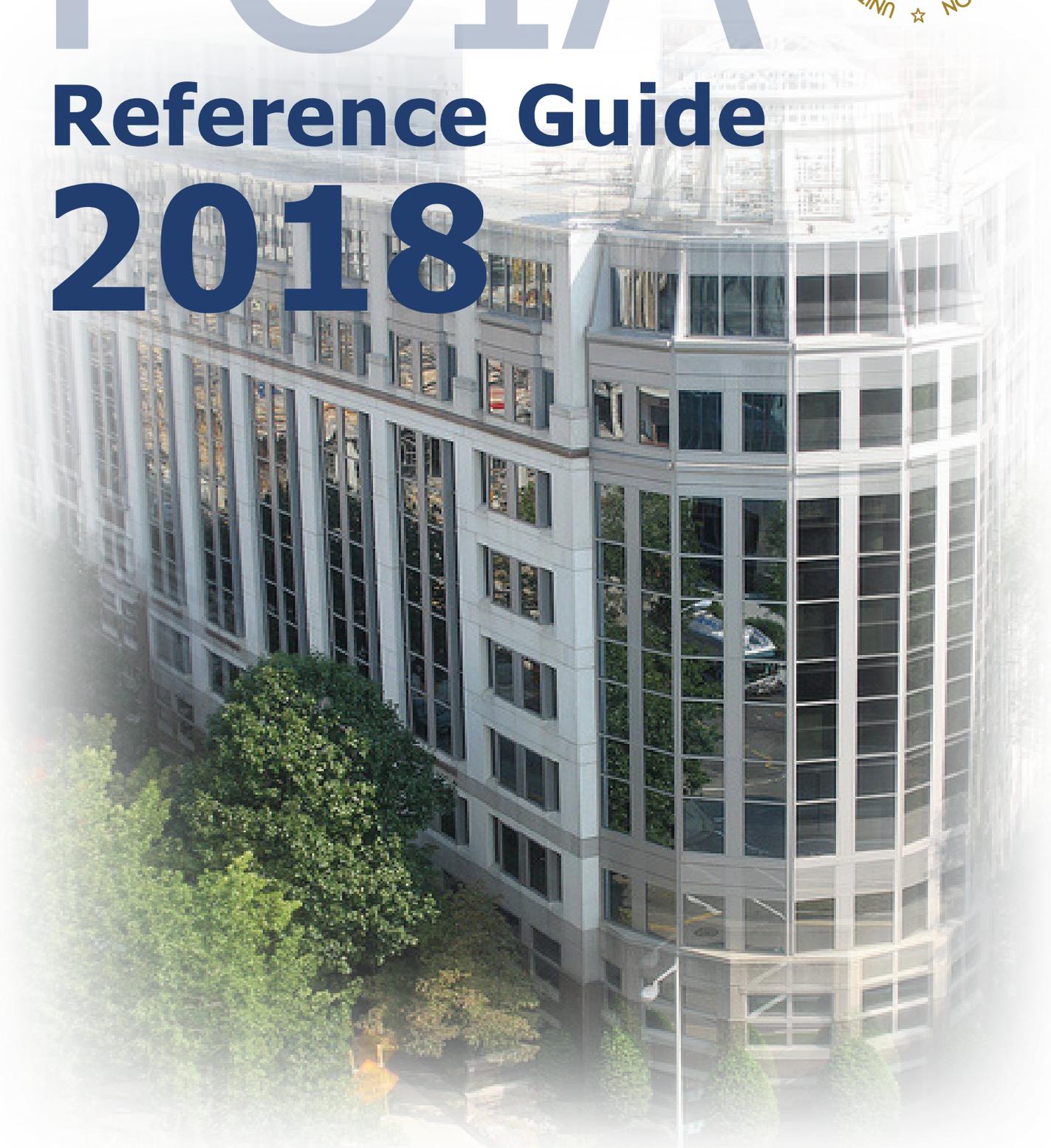


United States International Trade Commission

# FOIA



## Reference Guide 2018



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## Introduction

This Reference Guide provides general information regarding the U.S. International Trade Commission's (USITC) procedures concerning [The Freedom of Information Act \(FOIA\)](#). The Act, which is found in Title 5 of the United States Code, Section 552, affords the public the right to request records in the possession of a Federal agency, unless that record is protected from disclosure by any of the FOIA's exemptions and exclusions. FOIA applies to records of the Executive Branch of the federal government. It does not permit access to records held by Congress, the federal courts, state or local government agencies, or by private businesses or individuals. Individual states have their own laws concerning public access to state and local government records.

Please note that there is no central office in the government that processes FOIA requests for all federal departments and agencies. Each federal agency processes FOIA requests for its own records, so before you submit a request make sure that you are seeking USITC records. Formal rules for making FOIA requests to the USITC are set forth in the Commission's *Rules of Practice and Procedure*, and are available on the agency FOIA webpage at [https://www.usitc.gov/documents/foia\\_dec\\_2017.pdf](https://www.usitc.gov/documents/foia_dec_2017.pdf).

The USITC Chief FOIA Officer is the Secretary to the U.S. International Trade Commission. For more information about the USITC, please see the agency website at <https://www.usitc.gov/>.

## **Access to Records**

The USITC proactively seeks to make as much information as possible available to the public. The Commission website at <https://www.usitc.gov/> contains detailed information on the mission and activities of the agency. Notably, the Commission maintains the Electronic Document Information System (EDIS), <https://edis.usitc.gov>. EDIS is a repository for documents filed in import injury investigations, intellectual property-based import investigations, and other proceedings before the Commission. Any member of the public may register for access to this system without charge. EDIS contains public documents of interest to the general public and lessens the need to formally request such documents through FOIA.

Another resource available to the public is the 337Info database, which contains information relating to the Commission's intellectual property-related investigations from FY 2009 to the present. The database includes comprehensive data from these investigations, including a list of recently filed complaints, such information concerning the complainant/respondent(s) information (i.e. their country of origin); the unfair act(s) at issue (i.e. list of specific patent numbers alleged); procedural history information (i.e. evidentiary hearing dates, target date, etc.); appeal information; and the assigned administrative law judge, among other things.

The agency also provides access on its website to various reports, publications, *Federal Register* notices, fact sheets, press releases, and handbooks for USITC procedures. Access to such information may be found at:

### **PUBLICATIONS**

[https://pubapps.usitc.gov/applications/publogs/qry\\_publication\\_loglist.asp](https://pubapps.usitc.gov/applications/publogs/qry_publication_loglist.asp)

### **FEDERAL REGISTER NOTICES**

[https://www.usitc.gov/secretary/fed\\_reg\\_notices.htm](https://www.usitc.gov/secretary/fed_reg_notices.htm)

### **ELECTRONIC READING ROOM**

[https://www.usitc.gov/secretary/foia/foia\\_ereadingroom.htm](https://www.usitc.gov/secretary/foia/foia_ereadingroom.htm)

### **FOIA RELEASABLE DOCUMENTS**

<https://www.usitc.gov/secretary/foia/foia-releasable-documents>

### **NEWS RELEASES**

[https://www.usitc.gov/press\\_room/news\\_release/news\\_release\\_index.htm](https://www.usitc.gov/press_room/news_release/news_release_index.htm)

### **OFFICIAL HARMONIZED TARIFF SCHEDULE**

<https://www.usitc.gov/tata/hts/index.htm>

### **PUBLICATIONS BY TYPE**

[https://www.usitc.gov/publications/by\\_type.htm](https://www.usitc.gov/publications/by_type.htm)

## How to Make a FOIA Request

A FOIA request must be made in writing. Requesters are encouraged to submit their requests through the FOIA Request Form System at <https://pubapps.usitc.gov/applications/foia/request.asp>. All other FOIA requests may be submitted via one of these other acceptable methods:

By mail, which should be sent to the following address:

**Secretary  
U.S. International Trade Commission  
500 E Street, SW  
Room 112A  
Washington, DC 20436**

By Fax, which should be sent to the following number

202-205-2104

By Email, which should be sent to the following email address:

FOIA.SE.SE@usitc.gov

Please write “**Freedom of Information Act Request**” in the subject line of the letter or email, and on the envelope or the subject line of your fax.

The request should include the following information: 1) your name, address, and daytime phone number; 2) detailed information about the material you are seeking; 3) and the maximum amount of fees you are willing to pay for copying and/or search time or whether you are seeking a fee waiver. Providing detailed information about the record or types of records you seek will help the agency identify and locate any responsive records.

You should be aware that FOIA was designed to provide access to existing government documents. FOIA does not require federal agencies to analyze data, perform research on specific issue, create or recreate records, answer written questions, or develop information in order to respond to a request. You may specify that the Commission provide the requested information in a specific format, such as paper or a particular electronic format. However, FOIA only obligates a federal agency to provide records in a specified format if it can do so with a reasonable amount of effort.

## Processing FOIA Requests

Once the FOIA office receives the FOIA request, you will be provided with a written acknowledgment and an individualized tracking number for each request via e-mail, letter or fax. By law, the Commission has 20 working days (excluding Saturdays, Sundays and legal holidays) to locate the records that are responsive to the request, and to decide whether to release those records. The Commission may take an additional 10 days when the request involves records located in a field facility or a voluminous quantity of records, or when the Commission needs to consult with another federal agency that has a substantial interest in the request. It is particularly helpful to include an accurate email and/or telephone number where we can contact you to discuss any issues involving your FOIA request.

Except in the case of requests that qualify for expedited processing, requests are processed in the order in which they are received.

## Expedited Processing

You may obtain expedited processing of your FOIA request under certain conditions. To obtain expedited processing of a request, you will need to submit a certified statement to the Commission stating that the request involves: (1) circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent danger to the life or physical safety of an individual; (2) an urgency to inform the public about an actual or alleged federal government activity, if you are a person primarily engaged in disseminating information; (3) the loss of substantial due process rights; or (4) a matter of widespread and exceptional media interest and there exist possible questions about the government's integrity which affect public confidence.

Decisions to grant or deny expedited handling for a request will be made within 10 calendar days of receipt of a request for expedited processing. If your request for expedited treatment is granted, the request will be given priority by the agency and will be processed as soon as practicable. If your request for expedited processing is denied, the Commission will act on any appeal of that decision expeditiously.

## Fees Related to FOIA Requests

Any member of the public may submit a FOIA request, and there is no fee charged for submitting a request. Under FOIA, however, requestors may be charged for document searches by agency staff, review of records by agency staff to ensure that they are not subject to FOIA exceptions and exclusions, or duplication services. For purposes of fee assessment only, FOIA divides requesters into the following three categories:

- **commercial-use requesters, who may be charged fees for searching for responsive records, “processing” the records (i.e., reviewing them to determine the application of FOIA exemptions), and duplicating them to respond to a request.**
- **educational or noncommercial scientific institutions and representatives of the news media, who are charged only for duplication fees, and who are provided the first one hundred (100) requested pages free-of-charge.**
- **all other requesters, who are charged only for record searches and duplication.**

When you submit a FOIA request, you must specify the maximum fee amount you are willing to pay. If the USITC estimates that your search charges are likely to exceed \$25.00 or the amount which you have indicated you are willing to pay, whichever is larger, we will notify you of the estimated fee charge prior to doing the search. This provides you with an opportunity to revise the request to reduce the estimated fee, or state that you are willing to pay the estimated fee even if it exceeds the maximum fee you previously indicated. Please note that you may be charged search and review fees even if the search does not locate any records responsive to your request or if all of the responsive records found are withheld from disclosure because statutorily exempt from disclosure under FOIA ([see section below Exemption from Disclosure](#)).

The Commission’s fees for searching for and copying of records are set forth in section 201.20 of its *Rules of Practice and Procedure* (19 CFR 201.20). Fees for duplication of documents are ten cents per page. There is no charge for copying and search time if the total fee would be \$25.00 or less.

For each quarter hour spent by agency personnel in salary grades GS-2 through GS-10 in searching for and retrieving a requested record, the agency will charge you \$4.00. When the time of agency personnel in salary grades GS-11 and above is required, the agency will charge you \$6.50 for each quarter hour of search and retrieval time spent by such personnel.

You may request a waiver of FOIA fees. Under FOIA, fee waivers are limited to situations in which a requester can show that the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government, and that the disclosure is not primarily in the commercial interest of the requester. If the information you seek meets these requirements, the Commission may waive or reduce any fees. Requests for fee waivers from individuals who are seeking records pertaining to them usually do not meet this standard because such disclosures do not typically result in any increase of the public’s understanding of government operations and activities. Moreover, your inability to pay fees is not a legal basis for granting a fee waiver. Please see Commission rule, 201.20(d) when seeking a fee waiver or reduction of fees.

## Exemptions to Disclosure

Although a FOIA request may be submitted for any agency record, please be aware that there are statutory exemptions within FOIA that authorize the withholding of certain information from disclosure to the public. 5 U.S.C. §552(b). If the Commission withholds information from you, we will specify which exemption permits the withholding.

Under FOIA, federal agencies may withhold the following types of information:

- ( 1 ) Information that is properly classified as secret in the interest of national defense or foreign policy (Section 552(b)(1)).
- ( 2 ) Information that is related solely to internal personnel rules and practices (Section 552(b)(2)).
- ( 3 ) Information that is specifically exempted by other statutes (Section 552(b)(3)).
- ( 4 ) Trade secrets, or commercial or financial information obtained from a person that is privileged or confidential (Section 552(b)(4)).
- ( 5 ) Privileged interagency or intra-agency memoranda or letters, such as the attorney-client privilege, attorney work-product privilege, or communications reflecting the agency's deliberative process (e.g., internal recommendations and drafts of agency decisions) (Section 552(b)(5)).
- ( 6 ) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as the official personnel file of any Commission employee (Section 552(b)(6)).
- ( 7 ) Investigatory records compiled for law enforcement purposes (Section 552(b)(7)).
- ( 8 ) Information that is contained in, or related to, certain examination, operating, or condition reports concerning financial institutions (Section 552(b)(8)).
- ( 9 ) Geological and geophysical information and data, including maps, concerning wells (b)(9).

Records falling within in one or more these exemptions are not subject to the disclosure requirements of the FOIA. In addition, FOIA provides that three other categories of information are protected from disclosure to the public. The three exclusions, which are rarely used, pertain to sensitive law enforcement or national security matters.

Administrative Appeals.

## Administrative Appeals

If the Commission's Chief FOIA Officer (i.e., the Secretary to the Commission) denies your request in whole or in-part, or if a response to your request is not issued within 20 working days of the filing of the request (or during any extension of that 20-day period), you may file an appeal of the denial or lack of response with the full Commission. A finding that there are "no records" responsive to your request may also be appealed to the Commission. An appeal from a denial of a request must be received within 90 days of the date of the letter of denial. All appeals must be in writing.

Appeals must be addressed to the:

**Chairman**  
**U.S. International Trade Commission**  
**500 E Street SW**  
**Washington, DC 20436**

You should clearly indicate both on the envelope and in the letter that it is a "**Freedom of Information Act Appeal**".

The Commission has 20 working days to decide an appeal. The person filing the appeal may seek judicial review of the Commission's decision on the appeal. For detailed information regarding the FOIA Administrative Appeals process, please see the Commission *Rules of Practice and Procedure*, § 201.18(b).

## FOIA and the Privacy Act

Under certain circumstances, you may be entitled to receive more information under the Privacy Act of 1974 (a separate federal statute) than you would be entitled to receive under FOIA. Under FOIA, generally anyone can request access to any federal agency record. Privacy Act requests are more limited and can be made only by (a) U.S. citizens or aliens lawfully admitted for permanent U.S. residence, (b) who are seeking information about themselves, if that information is maintained in a system of records which is accessed using their names or other personal identifiers. Even if a request does not mention the Privacy Act, the USITC automatically treats applicable requests as being made under both FOIA and the Privacy Act. In this way, requesters receive the maximum amount of information available to them under the law.

Requestors seeking records under the Privacy Act must adhere to the stringent requirements set forth in Commission *Rules of Practice and Procedure*, 19 CFR Subpart D.

Below please find additional resources that may be helpful:

“Your Right to Federal Records” is a joint publication of the General Services Administration and the Department of Justice. It is available on the World Wide Web at [https://www.gsa.gov/graphics/staffoffices/Your\\_Right\\_to\\_Federal\\_Records.pdf](https://www.gsa.gov/graphics/staffoffices/Your_Right_to_Federal_Records.pdf). It is also available for sale for one dollar (\$1.00) per copy from the Federal Citizen Information Center by calling (888) 878-3256.

“A Citizen’s Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records.” This report is published by the Committee on Government Reform of the House of Representatives. It can be accessed at <http://www.fas.org/sgp/foia/citizen.pdf>.

The U.S. Department of Justice’s “Freedom of Information Act Guide” contains an extensive analysis of the statute and FOIA case law. It is available at <http://www.usdoj.gov/oip/foi-act.htm>.

The Office of Government Information Services (OGIS) is a FOIA resource for the public and the government. It is available at <https://ogis.archives.gov/>.

## Releasable FOIA Proactive Responses

In June 2016, in conjunction with President Obama signing the *FOIA Improvement Act of 2016*, the White House announced the establishment of a “Release to one, Release to all” presumption. Under this policy, if an agency releases records to a requester, the agency will also place those records on its website for the public to access unless the records are ineligible for release by law or are otherwise exempted from disclosure. Unlike *Frequently Requested Records*, this policy promotes the proactive posting of requested documents to the public once a FOIA request has been completely processed.

The United States International Trade Commission’s FOIA Releasable Documents page <https://www.usitc.gov/secretary/foia/foia-releasable-documents> provides the public with documents that have been requested under the Freedom of Information Act (FOIA) beginning fiscal year 2017.

For more information please see <https://www.justice.gov/oip/foia-resources>.

## Conclusion

Consistent with the mission of the United States International Trade Commission, this Reference Guide seeks to provide the public with helpful information and assistance. If you have any further questions concerning any topic in this Guide, or if you have suggestions as to how we can make it more useful for you, please contact the USITC FOIA Public Liaison listed in Appendix A.

## APPENDIX A – FOIA CONTACT INFORMATION

You may submit a FOIA request to the USITC by using the online web portal at <https://www.usitc.gov/secretary/foia/foiarequests.htm>, or via mail, fax or email.

**Address:**

Secretary to the Commission  
U.S. International Trade Commission  
500 E Street, SW  
Room 112A  
Washington, DC 20436

**Telephone:**

202-205-2595

**Fax:**

202-205-2104

**E-mail:**

[FOIA.SE.SE@usitc.gov](mailto:FOIA.SE.SE@usitc.gov)

If you have questions or concerns about the status of your request, or how the Commission has handled your FOIA request, please contact the FOIA Public Liaison (Jacqueline N. Gross) at 202-205-2595 or 202-205-1816.

In addition, the Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers mediation to FOIA requesters. They may be contacted in any of the following ways:

**Address:**

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001

**Telephone:**

301-837-1996

**Fax:**

301-837-0348

**E-mail:**

[ogis@nara.gov](mailto:ogis@nara.gov)

## Appendix B – Sample FOIA Request Letter

### FREEDOM OF INFORMATION ACT REQUEST

Date:

U.S. International Trade Commission  
Secretary to the Commission  
500 E Street, SW  
Room 112A  
Washington, DC 20436

Dear Secretary to the Commission:

This is a request under the Freedom of Information Act.

I request a copy of [a] document(s) concerning [*identify the document or information as specifically as possible; for example, the subject, recipient, document title, investigation number, office name, or when documents were created or filed with the USITC; and specify timeframe parameters for the search*].

In order to help to determine my status to assess fees, I affirm that I am [a person seeking information for personal use and not for a commercial use] [a commercial-use requester] [from an educational or noncommercial scientific institutions or a representative of the news media].

I agree to pay up to a maximum fee of \$ \_\_\_\_\_ to cover search and duplication costs. [I am not using the information I receive for any commercial purpose, therefore I understand that I will not be charged for the first two hours of search time or for the first 100 pages of document copying.]

[Optional] I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. **[Include a specific explanation.]**

Thank you for your consideration of this request.

Sincerely,

Name  
Address  
City, State, Zip Code



500 E Street, SW  
Washington, DC 20436