What You Don’t Know Can Hurt You

The Freedom of Information Act is there to benefit people just like you!

The Freedom of Information Act provides access to federal agency records, except those which are protected from release by nine specific exemptions.

The exemptions cover such material as (1) classified national defense and foreign relations information, (2) internal agency personnel rules and practices, (3) material prohibited from disclosure by another law, (4) trade secrets and other confidential business information, (5) certain inter-agency or intra-agency communications, (6) personnel, medical, and other files involving personal privacy, (7) certain investigatory records compiled for law enforcement purposes, (8) matters relating to the supervision of financial institutions, (9) and geological information on oil wells.

The FOIA does not apply to Congress or the courts, nor does it apply to records of state or local governments. However, nearly all state governments have their own FOIA-type statutes. You may request information about a state’s law by writing the attorney general of the state.

The FOIA does not require a private organization or business to release any information directly to the public, whether it has been submitted to the government or not. However, information submitted by private firms to the federal government may be available through a FOIA request provided that the information is not a trade secret, confidential business information or protected by some other exemption.

What does this mean to you?

You may have heard that a certain building product is being investigated for a safety hazard. You want to know the details because you stock the same or similar product.

You might even want to know if various federal agencies have a file on your company, or on you personally. These agencies could include the FBI, OSHA, or Federal Trade Commission.

Perhaps the greatest use some people find for the FOIA is to unwrap the shield of secrecy surrounding the workings of the Internal Revenue Service.

You may not realize it, but the IRS is one area where you are presumed to be guilty unless you prove yourself innocent-contrary to constitutional guarantees that you are innocent until proven guilty.

There are a multitude of horror stories where the IRS alleged taxes were due and seized assets, even personal ones, of corporate officers. But the FOIA does give taxpayers some breaks in finding out information the government wants to keep to itself.

Consider the case of taxpayer Grasso. He was interviewed by IRS agents, who prepared a report of the interview. Two months later, Grasso worried about the interview and decided he wanted a copy to show to the attorney he wanted to hire.

Grasso filed a request to the IRS under the FOIA, asking for a copy of the report tied by the agents. He did get the IRS to give him a copy, but major portions were deleted.

Grasso sued in District Court to force the IRS to disclose the entire report to him. The IRS claimed that Section 6103 of the Income Tax Code (dealing with confidentiality of return information) governed disclosure of the report, and that Section 6103(e)(7) exempted disclosure. That section protects information if disclosure would impair federal tax administration.

FOIA gives taxpayers a break in finding information.

The district court ruled for Grasso and ordered the IRS to furnish complete copies of the reports prepared by the agents. The decision held that the FOIA, not Section 6103 of IRC, is the applicable statute, and that FOIA exemptions 3 and 7 did not apply.

But a word of warning. The Courts of Appeals throughout the country do not agree on whether the FOIA or Section 6103 governs disclosure of Agents’ reports to taxpayers. The Third, Ninth, Fifth, and Eleventh Circuits say the FOIA governs, while the Seventh Circuit
and several district courts say Section 6103 governs. For those taxpayers who want to refer to the Grasso decision, see GRASSO, 86-1 USTC ¶9263, 57 AFTR 2d 86-922 (CA-3, 1986).

A classic case is that of the Longs of Bellevue, Washington. Philip and Sue Long filed joint returns for 1966, 1967, and 1968. They reported taxes due of $21,412 and the IRS assessed an additional $38,144 because of disallowed business expenses. Mr. Long cooperated with the IRS and was expecting reciprocal treatment.

Asking questions as to guidelines covering negotiations leading to resolutions of issues, Long was rebuffed. He kept digging and found that written guidelines existed but were available to IRS personnel only.

Told the manuals, handbooks, and internal reports were “classified and unavailable to the public,” the Longs sued under the old Freedom of Information Act of 1967.

On August 10, 1972, U.S. District Judge William T. Beeks ruled the Longs were entitled to inspect the in-house manuals. Soon after the verdict, Long went to the local IRS office and asked to see the Closing Agreement Handbook. The Public Information Clerk refused and an IRS attorney had to be called to order that the information be made available to Mr. Long.

Long uncovered that arrests, indictments, and convictions are heralded to the press, but defeats are concealed or underplayed.

The Long case cracked the wall of silence and secrecy surrounding the IRS. In fact, on April 1, 1974, the IRS established a Disclosure Division to handle all matters under the Freedom of Information Act.

And, the bottom line was that after an eight-year battle the returns filed by the Longs were accepted without any additional taxes due.

Requests for information under the FOIA should be made in writing. (See exhibit A for sample copy of letter.) But you get best results when you know where to write. Try to find out just which agency has the information you want.

If not sure, contact the public information officer of an agency with your problem and get directed to the proper agency. (See Exhibit B for sources of information.) Assistance can also be had by contacting the nearest Federal Information Center, detailing information you seek, and asking for the appropriate agency to contact.

The information you seek will sometimes cost for search and copying fees. Search fees range from $4 to $26 per hour, depending on salary level of personnel needed for research. The usual fee for photocopying anything is ten cents, but can be as much as twenty-five cents per page.

Different agencies have different rules about charging, and some agencies will waive what they consider to be minimal. Waivers or reductions of fees can be had if it is

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Agency Head or FOIA Officer
Name of agency or agency component
Address (see discussion above on whom to contact)

Dear

Under the Freedom of Information Act, 5 U.S.C. 552, I am requesting access to, or copies of [identify the records as clearly and specifically as possible.]

If there are any fees for copying or searching for the records, please let me know before you fill my request. [Or, please supply the records without informing me of the cost if the fees do not exceed $XX, which I agree to pay.]

Optional: I am requesting this information because [state the reason(s) if you think it will help you obtain the information.]

If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information and notify me of appeal procedures available under the law.

Optional: If you have any questions about handling this request, you may telephone me at_______(home phone) or at_______(office phone).

Sincerely,

Name
Address
shown the information will primarily benefit the general public.

Normally, it will take less than ten business days to get information. Where an agency cannot meet the ten-day deadline, it will advise of a problem and take an additional ten days.

Nearly all state governments have FOIA statutes.

There is the possibility the agency will tell you the information cannot be furnished. In such event, you will be informed the reason in writing. Your recourse is to appeal the decision within 30 to 45 days after denial.

If your appeal is denied, you can take the matter to court. This is done by filing an FOIA lawsuit in the District Court where you live, where you have your principal place of business, where the documents are kept, or in the District of Columbia.

What about the Privacy Act?
The federal government compiles a wide range of information on individuals. The government keeps records on everyone who was ever in military service, worked for a government agency, applied for a federal grant or student loan (certified by the government), filed a federal income tax return, has or is receiving Social Security or Medicare checks, and probably others.

The Act passed in 1974 established certain controls over what information the government can collect and how it can be used. The Act guarantees three primary rights: (1) the right to see records about yourself, subject to the Act’s exemptions; (2) the right to amend that record if it is inaccurate, irrelevant, untimely, or incomplete; and (3) the right to sue the government for violations of the statute, including permitting others

**Other Sources of Information**

**Consumer’s Resource Handbook**
Published by the U.S. Office of Consumer Affairs, this comprehensive booklet tells consumers how to complain and get results. It lists the federal agencies which are responsible for resolving particular consumer problems and tells where help is available in state and local governments and private organizations. Single copies are free and may be obtained by writing to Handbook, Consumer Information Center, Pueblo, CO 81009.

**U.S. Government Manual**
This is the official handbook of the federal government. Published by the U.S. General Services Administration, it describes the programs in each federal agency, lists the names of top personnel, the mailing address, and a general information telephone number. It is available in most public libraries or can be purchased for $12.00 by sending a check or money order to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Please specify stock number 022-003-0199-9.

**The Privacy Act of 1974**
This Act gives citizens the right to see files about themselves, subject to its exemptions; to request an amendment if the record is incomplete, untimely, irrelevant, or inaccurate; and the right to sue the government for permitting others to see their files unless specifically permitted by the Act. A complete copy of the Privacy Act can be found in the back of the U.S. Government Manual. It can also be found as Section 552a of Title 5 of the U.S. Code. Or you may order a copy of the Privacy Act, Public Law 93-579, from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, for $2.50. Specify stock number 022-003-90866-8.

**A Citizen’s Guide on How To Use the Freedom of Information Act and the Privacy Act in Requesting Government Documents**

**Short Guide to the Freedom of Information Act**
This detailed discussion is annually updated by the Justice Department’s Office of Information and Privacy. Especially useful to attorneys, it is a comprehensive summary of the law, including a discussion of the nine FOIA exemptions and its most important procedural aspects. It is included in the Freedom of Information Case List, 1984 edition, which may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

**FOIA Update**

EXHIBIT B
to see your records unless specifically permitted by the Act.

There are many safeguards built into the Act to prevent abuse of persons exercising their First Amendment rights. The law applies only to documents about individuals, maintained by agencies in the executive branch of the federal government. It applies only to those records kept in a “system” of records, which means they are retrieved by an individual’s name, Social Security number, or other personal identifier.

Thus you can’t get the government to disclose information about you contained in the records filed under subject matter, such as organizations or events.

As with the FOIA, the Privacy Act does not apply to records held by Congress, the courts, or state agencies.

You get information under the Privacy Act much the same way you do for the FOIA. You will have to furnish proof of your identity to protect against unauthorized persons seeking personal files. The usual way is to furnish a photocopy of your driver’s license. Otherwise, send your request with notarization of your signature.

In both the FOIA and the Privacy Act, there are provisions providing for reimbursement of legal fees where you sue and win.

ABOUT THE AUTHOR...

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