

# Answers to the most frequently asked questions about Freedom of Information Act requests at the Golden Field Office

This fact sheet is intended to make it easier for you to request information under the Freedom of Information Act (FOIA). Our policy is to handle all FOIA requests as quickly as possible and to respond in a spirit of openness and candor. We will only withhold information when we have a sound reason to believe that disclosure would cause actual harm to a vital government interest and that the information is clearly exempt from disclosure under the FOIA.

## FAQs.....

### Submitting a request

#### **Q** Who handles FOIA requests at the Golden Field Office?

Golden's Freedom of Information Officer is Anna Martinez-Barnish. Her mailing address is: U. S. Department of Energy, 1617 Cole Boulevard, Golden, Colorado 80401. She can be reached at telephone: 303-275-4927, fax: 303-275-4790, or e-mail: [anna.martinez-barnish@go.doe.gov](mailto:anna.martinez-barnish@go.doe.gov) Please call or e-mail her if you have questions that are not clearly answered here.

#### **Q** How do I submit a FOIA request?

Send a request by mail, fax or e-mail marked "FOIA Request" to Golden's FOIA Officer (see above). State that you are making the request under the Freedom of Information Act. Be as specific as you can in describing the records you are seeking. State your willingness to pay any fees that may be required or the maximum amount you would be willing to pay. Also, please include a telephone number or e-mail address in case we have any questions; our ability to contact you will make it more likely you will receive the information you are requesting within the 20-day time limit specified in the FOIA.

## **Q** How much time are government agencies allowed under the FOIA?

We have 20 working days from the date we receive the request to put a response in the mail. The 20-day window does not begin until the request is determined to be valid and, in the case of requests that are overly broad, it is sufficiently narrowed. However, especially complex requests, those which require a significant amount of time for search, review or duplication, or which require coordination with other DOE offices, other federal agencies or private sector organizations, could take longer. In such cases, we may need to send an interim response, explaining the reasons for the delay and providing a date to expect the completed request to be fulfilled. DOE may also negotiate with requesters seeking a large volume of material – for example, the release of a certain amount of material per week or the release of material the requester has deemed as first priority.

## **Q** For what organizations does the Golden Field Office have FOIA responsibility?

The Department of Energy's Golden Field Office (GO) has FOIA responsibility for GO and DOE's six regional offices: Southwest Regional Office (Atlanta, GA.); Northeast Regional Office (Boston, MA.); Midwest Regional Office (Chicago, IL.); Central Regional Office (Golden, CO); Mid-Atlantic Regional Office (Philadelphia, PA.); Western Regional Office (Seattle, WA.). The regional offices are primarily responsible for formula grants under the Weatherization Program and for assisting with energy efficiency and renewable energy technology deployment. Golden also has FOIA responsibility for DOE's National Renewable Energy Laboratory.

## **Types of Information**

### **Q** What types of information does the FOIA apply to?

The FOIA only applies to "agency records," information in the possession and control of the government. Information contained in the files of Golden's contractors, including the contractor that manages and operates DOE's National Renewable Energy Laboratory (NREL), is releasable under the FOIA only if the contract states that specific documents relating to work under the contract will be the property of the government. In such cases, the documents are contractually treated as

government documents and are subject to a FOIA. The NREL contract does specify that some records are the property of the contractor and some are the property of the government.

The types of material considered records are books, brochures, electronic files, punch cards, magnetic tapes, paper tapes, sound recordings, maps, pamphlets, photographs, microfilm, microfiche, or other documentary materials, regardless of physical form or characteristics, made or received by DOE in pursuance of Federal law or in connection with DOE functions, policies, decisions, procedures, operations, programs, or other activities in transacting public business. However, a "record" does not include objects or articles such as tangible exhibits, models, equipment, processing materials, formulas, designs, drawings, items of value, books, magazines, pamphlets, or reference material in formally organized and officially designated libraries.

Also, the FOIA requires us to provide material to requesters in whatever form they prefer, within reason. For example, printing out a digital record is normally fairly simple. However, agencies are not required to purchase software or go through other extraordinary steps to convert material from one form to another. If a document is in the public domain, such as on a web site, DOE does not have to provide a copy of the document. A requester not owning a computer is not sufficient excuse to provide a paper copy of a document that is posted online.

The FOIA only applies to existing agency records that are in the possession and control of the government. We cannot create documents in response to a FOIA request.



**I want a copy of the NREL management and operating contract. Can I get that through the FOIA?**

It is not necessary to submit a FOIA request to obtain the NREL contract. The NREL contract is a publicly available document. A copy with a very limited number of redactions (withheld portions) is available in the Public Reading Room on our Web site ([www.eere.energy.gov/golden](http://www.eere.energy.gov/golden)) and in the Public Reading Room at the NREL Visitors Center at the entrance to the NREL main campus, at the Denver West Boulevard exit, just off Interstate 70 in Golden. If a document is in the public domain, such as on a Web site, we are not required to provide a copy under the FOIA. If the requester does not own a computer or can not easily visit the NREL Visitor Center, we suggest trying the nearest library to access a computer.

Among the other "official" documents maintained in the Reading Room are the Golden Field Office and NREL standard operating procedures, various NREL reports, environmental assessments under the National Environmental Policy Act (NEPA), general Golden and NREL information, and information on significant DOE-wide issues, including nuclear waste cleanup, transportation and storage. The Reading Room also contains many informative, "unofficial" documents, including information on using renewable energy and energy efficiency technologies.

There is no charge to use the Public Reading Room at the Visitor Center. However, you cannot remove any of the "official" documents from the premises. If you wish to make a copy of any of them, it will cost you five cents per page. "Unofficial" documents are free for the taking.

The electronic Reading Room on Golden's home page contains similar materials, as well as links to documents maintained on other DOE sites.

## Withholding Information



### Under what circumstances would you withhold information?

Our goal is to release information to the public unless releasing it would cause actual harm. Sometimes, making that judgment is not easy, and we must use court cases as our primary guide because we must be certain that whatever position we take is consistent with the law.

There are nine exemptions under the FOIA, under which government agencies can withhold information:

#### Exemption 1

National security information concerning the national defense or foreign policy.

#### Exemption 2

Records related solely to internal personnel rules and practices.

#### Exemption 3

Information specifically prohibited from disclosure by statute.

#### Exemption 4

Privileged or confidential trade secrets and commercial or financial information obtained from a person, the definition of which includes corporations.

**Exemption 5**

Inter-agency or intra-agency memorandums or letters that would not be available by law to a party in litigation with the agency.

**Exemption 6**

Information about individuals in personnel and medical files and similar files where the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

**Exemption 7**

Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (a) could reasonably be expected to interfere with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (e) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (f) could reasonably be expected to endanger life or physical safety of any individual.

**Exemption 8**

Matters contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

**Exemption 9**

Geological and geophysical information and data, including maps, concerning wells.

## **Q** Couldn't you really release information if you wanted to, even when an exemption applies?

We do have limited discretionary authority to release information, under Exemption 5, even if the exemption applies. However, we have to be certain when exercising that authority that we do not cause more harm than good. Exemption 5 covers such information as internal memoranda or other documents through which DOE employees discuss information before making a decision or to evaluate research and development proposals before making a selection. While releasing that sort of information might be of some benefit to the requester, the result could be long-term damage to government decision-making. Government employees who cannot trust that internal discussions among employees will be kept private are less likely to engage in the kind of open, candid discussion that is necessary for making intelligent decisions. Using the discretionary release authority of Exemption 5 is a balancing act between the public's right to know and the government's need to thoroughly consider options before making decisions.

## **Fees**

### **Q** How are fees for FOIA requests determined?

There are three categories of FOIA requesters, each with their own criteria:

1. Representatives of the news media and educational or scientific research institutions can only be charged for reasonable document duplication costs
2. Commercial-use requesters, those who seek information for the general purpose of making a profit, can be charged for reasonable search, review and duplication costs
3. People seeking information for personal use, public interest groups, and non-profit organizations can be charged for reasonable search and duplication costs, but not for review costs

Except for commercial-use requesters, DOE will provide the first 100 pages of duplication and the first two hours of search time without charge. For requests beyond that amount, DOE will charge for manual searches for records at the salary rate of the employee(s) making the

search. If contractor employees are conducting the search, the salary rates must be based on the salary of DOE employees with similar responsibilities. Computer searches will be charged at the actual direct cost of providing the service. The charge for reproduction of documents will be five cents per page and ten cents per page for a microfilm-to-paper and double-sided copies. For computer-generated copies, the actual cost, including operator time, for production of the tape or printout, will be charged. In addition, a requester will be charged for the full direct cost of providing additional services, such as certifying that the records are true copies or sending a response by special methods, including express mail.

With all that taken into account, we will only charge fees if the total amount equals or exceeds the estimated cost to us of processing the check, which is currently \$25.00. In other words, if the fees are less than \$25.00, it would be more costly for us to process the check than to provide the documents without cost.

### Can I get my fees waived?

A requester may be entitled to a fee waiver, based on several criteria, as follows:

1. There must be a genuine public interest in the subject matter of the request.
2. The responsive records must be informative on the issue of “public interest.”
3. The requested information cannot already be in the public domain.
4. The requester must have the qualifications and ability to use and disseminate the information.
5. The benefit to the general public must be outweighed by any commercial or personal benefit to the requester.
6. DOE has the flexibility to negotiate, eliminate or reduce fees as it sees fit, but it may not charge higher fees than permitted by law and regulation.

## Appeals



**What if I disagree with your decision to withhold information or I don't believe you searched every possible place to find what I requested?**

If we withhold any part of the information you request or if you believe we did not conduct a thorough search, you have the right to appeal to the DOE Office of Hearings and Appeals. If you have requested a fee waiver and we denied it, you can also appeal that determination.

The request for an appeal must be submitted in writing to: Director, Office of Hearings and Appeals, HG-1, Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. Both the letter and the envelope must be clearly marked, "Freedom of Information Appeal." In the letter, please refer to the FOIA request docket number from the subject line in our response letter to you, and be specific about what aspect of our response you are appealing. The judicial review will there after be available within the district in which you reside, have a principal place of business, where the records are located, or in The District of Columbia.

The Office of Hearings and Appeals will review our handling of the request and will normally either deny your appeal or remand the matter back to us with instructions to issue a new determination based on their direction. Their direction could require us to conduct a more thorough search, release the information, release part of the information, or simply provide a clearer rationale as to why the information is being withheld.

If your appeal is not resolved to your satisfaction, you have the option of taking the matter to court.