

**Freedom of Information Act (FOIA)**

1. **REASON FOR ISSUE:** To establish Department of Veteran Affairs (VA) policy to implement the Freedom of Information Act, 5 U.S.C. § 552 as amended; The FOIA Improvement Act of 2016; Executive Order (EO) 13392 of December 14, 2005, Improving Agency Disclosure of Information; Title 38 Code of Federal Regulations Part 1, Procedures for Disclosure of Records Under the Freedom of Information Act, 38 C.F.R. §§ 1.550-1.562; and the Presidential Memorandum of January 21, 2009: Memorandum on Transparency and Open Government.
2. **SUMMARY OF CONTENT/MAJOR CHANGES:** This is a new directive. This directive sets forth:
  - a. Policy for the VA FOIA Program which requires VA-wide compliance with FOIA, [5 U.S.C. § 552](#);
  - b. Responsibilities for implementing, managing and monitoring the VA FOIA Program and;
  - c. References related to the VA FOIA Program.
3. **RESPONSIBLE OFFICE:** Assistant Secretary for Information & Technology and Chief Information Officer/Chief FOIA Officer (005).
4. **RELATED HANDBOOK:** None.
5. **RESCISSION:** VA Handbook 6300.3, Procedures for Implementing the Freedom of Information Act, 12 Jan 1998.

**CERTIFIED BY:**

**BY DIRECTION OF THE SECRETARY  
OF VETERANS AFFAIRS:**

/s/  
Dat P. Tran  
Acting Assistant Secretary for  
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/s/  
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**DISTRIBUTION:** Electronic Only

## 1. PURPOSE AND SCOPE.

- a. The FOIA was enacted on July 4, 1966 (Public Law (P.L.) 89-487, codified at 5 U.S.C. § 552, as amended), and requires Federal agencies to release agency records to the public, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.
- b. This directive establishes policy for all VA personnel on the requirements of the FOIA Program in accordance with 5 U.S.C. § 552, (as amended) and VA FOIA regulations. Further requirements regarding processes, roles and responsibilities will be addressed in an accompanying FOIA Handbook.

- 2. POLICY.** The FOIA Program incorporates various resources and components within this directive to define the requirements of compliance. The following sub-sections define these resources and components and their applicability to the FOIA Program at VA. Additionally, information regarding VA employees' roles and responsibilities as they relate to these resources and components can be found in section 3, Responsibilities.

In order to maintain independence in accord with the Inspector General Act of 1978, 5 U.S.C. App. 3, the Office of Inspector General (OIG) maintains its own independent Information Release Office which is responsible for OIG FOIA policy and compliance. See 38 C.F.R. § 1.559. This directive does not apply to the OIG.

## 3. RESPONSIBILITIES.

- a. **Assistant Secretary for Information and Technology and Chief Information Officer** shall:
  - (1) Perform duties of VA Chief FOIA Officer (CFO) as specified in The FOIA Improvement Act of 2016 and 5 U.S.C. § 552, (as amended). This is not to be confused with duties of the Chief Financial Officer, which is performed by the Assistant Secretary for Management and Chief Financial Officer. The Chief FOIA Officer will provide leadership and direction to the enterprise FOIA effort.
  - (2) Advise the Secretary, Under Secretaries, Assistant Secretaries and other Key Officials on FOIA matters.
  - (3) Monitor FOIA implementation and agency wide FOIA compliance and conduct an annual review of FOIA performance, administration, operations, policy and procedures to ensure compliance with the FOIA Improvement Act of 2016 requirements.
  - (4) Ensure resources are available to administer the FOIA program within the Office of Information and Technology (OIT).

- (5) Serve as the Agency liaison with the Office of Government Information Services (OGIS) Office of Information Policy.
- (6) Designate a FOIA Public Liaison Officer who will work with Administration FOIA Public Liaison Officers to respond to requests from the public.

**b. Under Secretaries, Assistant Secretaries and Other Key Officials shall:**

- (1) Designate one or more FOIA Officer (FO) for each FOIA Administration, who will be responsible for initial action on requests, for release of information from VA records under the jurisdiction of that office and for complying with the provisions of this directive and its accompanying handbook.
- (2) Require that FOIA and Public Liaison Officers take FOIA training located in the VA Talent Management System and the VA FOIA SharePoint site.
- (3) Require that all staff cooperate with the FOIA process, promptly conduct searches for responsive records upon request by an FO, and provide all responsive records to the FO for processing under the FOIA.

**c. OIT Deputy Chief Information Officer Quality Performance and Risk and VA FOIA Director shall:**

- (1) Provide advice, assistance and recommendations to the CFO regarding policies, procedures and other requirements governing FOIA and its implementation.
- (2) Publish on the VA FOIA website an annual list of VACO employees who are designated as FOs.
- (3) Establish procedures, reporting requirements and formats for monitoring the Department's administration of FOIA.
- (4) Establish guidance and oversight for the VA FOIA website, which includes the FOIA Public Library.
- (5) Review and distribute received FOIA requests to the appropriate administration or staff office FOs to which the request applies.
- (6) Ensure the training of VA FOs, FOIA Analysts (FAs), and staff by developing and posting mandatory VA FOIA training on the Talent Management System and the VA FOIA SharePoint site.
- (7) Prior to assignment as a FOIA Officer/Analyst FOIA administrations will ensure the mandatory training of VA FOs and FA's and staff.

- (8) Delegate, as needed, the responsibilities of FOs to individuals within the various elements of their respective offices.
- (9) Prepare and deliver to the Department of Justice (DOJ), the VA FOIA Annual Report, Quarterly FOIA Reports and VA CFO FOIA Report.
- (10) Establish procedures for implementing and maintaining the VA's electronic library, including maintenance of information in the VA FOIA library.
- (11) Assist VA FOs in placing records in the VA FOIA Public library which is maintained and administered by the VA FOIA Support Office on the VA FOIA website.

d. **Administration and Staff Office FOIA Officers** shall:

- (1) Receive FOIA requests for VA or the component agency office.
- (2) Upload FOIA requests into the FOIAXpress (FX) tracking system and maintain the administrative record of the search and processing of the request in the FX system.
- (3) Acknowledge and grant or deny requests for records under the FOIA.
- (4) Process FOIA requests or refer them to another internal or interagency component FO for processing.
- (5) Provide the initial request notification and status to the requester.
- (6) Coordinate requests across multiple VA FOIA Offices.
- (7) Send Substantial Interest Notification (SI) as directed by the SI Policy as referenced in 4 g below to appropriate representatives.
- (8) Notify a requester of opportunities to discuss their request by telephonic communication or written correspondence to modify it to meet the requirements of this section.
- (9) Close requests that lack a proper response from the requestor.
- (10) Determine whether to charge the requester fees, as per our VA FOIA Regulations 38 C.F.R. § 1.561, for responding to a request. Notify and work with the requestor to finalize the fees associated with the perfected request.
- (11) Determine, with appropriate program FOs, which records in response to a FOIA request have become or are likely to become the subject of repeated requests for essentially the same records and ensure that these records

are provided to the VA FOIA Support Office for upload to the FOIA Public Library.

- (12) Conduct assessments of requested FOIA records to determine releasability of agency records. Releasability assessment may be performed in consultation with other FOs and FAs.
- (13) Report directly to the Administration's FO for FOIA specific matters and responsibilities. Notify the Administration FO when resources are insufficient for performance of the FOIA program or program elements.
- (14) Request additional support from the VA Central Office (VACO) FOIA Service Office and coordination with other component office FOs to fulfill the component office FOIA program requirements.
- (15) Provide advice, assistance and recommendations to the FA regarding policies, procedures and other requirements governing FOIA and its implementation.

e. **General Counsel** shall:

- (1) Provide legal advice and assistance to ensure that VA fully complies with the provisions of the FOIA and other laws and policies as appropriate.
- (2) Receive appeals for adverse determinations denying the request for records, except for those concerning OIG records.
- (3) Act on behalf of the SECVA in responding to appeals. Provide the requester with a decision on an appeal in writing.
- (4) Support requests which involve or may involve records or information that maybe related to a matter in litigation or that may result in litigation.

f. **District Counsel** shall:

- (1) Support requests which involve or may involve records or information that may be related to a matter in litigation or that may result in litigation.
- (2) Provide legal review for local VA FOIA Offices as needed to process a FOIA request.

#### 4. REFERENCES.

- a. Freedom of Information Act, 5 U.S.C. § 552 [Freedom of Information Act](#)
- b. Privacy Act of 1974, 5 U.S.C. § 552a [Privacy Act](#)
- c. Open Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524 [Open Government Act](#)

- d. OPEN FOIA Act of 2009, (Section 564 of the Department of Homeland Security Appropriations Act, 2010), Pub. L. No. 111-83, Stat. 2142, 2184 [OPEN FOIA Act](#)
- e. FOIA Improvement Act of 2016, Pub. L. No. 114-185 [FOIA Improvement Act](#)
- f. Procedures for Disclosure of Records Under the Freedom of Information Act, [38 C.F.R. §§ 1.550-1.562](#)
- g. Memorandum, Update to Freedom of Information Act Substantial Interest Notification Process, Sept. 14, 2020 [Substantial Interest Policy](#)

## 5. DEFINITIONS.

### Agency

An agency is any executive department, military department, government corporation, government-controlled corporation, or other establishment in the executive branch of the Federal government, or independent regulatory entity.

### Agency Records

Agency records include all documents or records created or obtained by an agency of the government that are in an agency's possession and control at the time a FOIA request is received. Four factors determine an agency's control: The intent of the creator of the document to retain control over the record; the ability of the agency to use and dispose of the record as it sees fit; the extent to which agency personnel have read or relied upon the document; and the degree to which the document was integrated into the agency's record systems or files.

Information maintained by an entity pursuant to a Government contract for a VA component for the purposes of records management is considered in the VA component's possession. Records created by an agency employee during employment, including emails, may be either agency records or personal files.

### Annual FOIA Report

A report required to be filed each year with the DOJ by all federal agencies detailing the agency's administration of the FOIA. Annual FOIA Reports contained detailed statistics on the number of FOIA requests and appeals received, processed and pending at each agency.

### Chief FOIA Officer (CFO)

A designated high-level official within each agency who has overall responsibility for the agency's compliance with the FOIA program.

## Chief FOIA Officer Report

A report required to be filed with the DOJ which details each agency's progress in improving transparency and compliance with the FOIA.

## Component

Each distinct VA entity, including Administrations, staff offices, services, or facilities that processes FOIA requests.

## Exemptions

Congress established nine categories of information that are not required to be released in response to a FOIA request because release would be harmful to a government or private interest. These categories are called "exemptions" from disclosure.

## Fees

For fees and fee-related definitions, see [38 CFR § 1.561](#).

## FOIA Program

The VA FOIA program consists of four main components, Veterans Health Administration, Veterans Benefits Administration, National Cemetery, and the VACO FOIA Offices. These components and Staff Offices comprise the VA FOIA program.

## Freedom of Information Act (FOIA)

The FOIA was enacted on July 4, 1966 (P.L. 89-487), and is codified at [5 U.S.C. § 552](#). FOIA requires Federal agencies to release, to the fullest extent possible, agency records to the public except to the extent that such records (or portions of them) are protected from disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.

## FOIA Analyst (FA)

Person within the organization that executes the FOIA request. Responsibilities may be performed by the FO/FA or by a Subject Matter Expert temporarily assigned to assist in completing a FOIA request.

## FOIA Library

A web page (sometimes called an "electronic Public Reading Room"), typically on the agency's FOIA website, where certain categories of records are proactively disclosed. FOIA Libraries contain both operational documents about the agency as well as records that have been frequently requested under the FOIA.

**FOIA Office**

The FOIA Office is the point of receipt for Agency FOIA requests where they are reviewed for conformity with the Act, acknowledged and assigned to the appropriate component FOIA Office.

**FOIA Officer (FO)**

The individual within a VA component whose responsibilities include addressing and granting or denying requests for records under the FOIA.

**FOIA Public Liaison**

The FOIA Public Liaison is a supervisory agency FOIA official who assists in the resolution of any disputes between the requester and the agency. The FOIA Public Liaison is also responsible for supervising the FOIA Requester Service Center.

**FOIA Request**

A FOIA request is a written demand for records under FOIA. A FOIA request must be made in writing (submitted via US mail, special carrier, fax or email) and in accordance with VA's implementing regulations. The term request includes any action emanating from the initial demand for records, including an appeal to the initial demand.

**FOIA.gov**

The government's comprehensive FOIA website for all information on the FOIA. Among many other features, FOIA.gov provides a central resource for the public to understand the FOIA, to locate records that are already available online and to learn how to make a request for information that is not yet publicly available. FOIA.gov also promotes agency accountability for the administration of the FOIA by graphically displaying the detailed statistics contained in Annual FOIA Reports, so that they can be compared by agency and over time.

**FOIAXpress**

FOIAXpress (FX) is the official VA FOIA tracking system. Use of FX is mandatory. The FX System automates the FOIA business process for all FOIA requests received at the various VA departmental FOIA offices. FX is designed specifically to automate FOIA and PA request case processing, including request tracking and management, document management, electronic redaction, fee management and invoicing and annual reporting. FX provides compliance with FOIA/PA regulations with a powerful application that will provide VA with a tool that will transform FOIA/PA processing from a cumbersome, manual process to an automated, electronic one. The FX system processes FOIA request data received by FOIA users. FOIA data consists of requests for information received from the public which includes personal identification information and financial information related to the processing of FOIA request.



**Office of General Counsel (OGC)**

The OGC provides legal advice on FOIA matters including application of exemptions and exclusions; issues final agency decisions on FOIA appeals; and assists Department of Justice attorneys in FOIA litigation.

**Records**

Information in an agency's possession and control in any format including electronic format. DOJ notes that for FOIA purposes, "records" includes all tangible documentations of information regardless of whether they are records under 44 U.S.C. § 3301. Physical objects such as human specimens (e.g., blood samples), equipment (e.g., computers and furniture), and office supplies; or personal notes of VA employees or contractor employees are not records.

**Requester**

Generally, any individual, partnership, corporation, association, or foreign or state or local government, which has made a demand to access an agency record (a FOIA request). Requests from Federal agencies, the Government Accountability Office, or Congress (e.g., the Speaker of the House, the President of the Senate, or the chair of a committee or subcommittee) are not covered under this policy.

**Substantial Interest FOIA Request**

A FOIA request for information in which there has been or is likely to generate substantial public interest. This includes, but is not limited to, the following types of requests, regardless of the requester: (1) those related to a threat to the public health; (2) high profile local or national incidents or situations involving VA beneficiaries, employees or officials and (3) incidents involving an alleged breach of the public trust (e.g., waste, fraud or abuse).

**VA**

The Department of Veterans Affairs

**VA Central Office (VACO)**

The headquarters of VA that provides general administrative functions for VA.