



NEW ORLEANS, LA
504.582.8000

BATON ROUGE, LA
225.248.2000

HOUSTON, TX
713.437.1800

LAFAYETTE, LA
337.406.5610

MIAMI, FL
305.679.5700

WASHINGTON, D.C., CAPITOL HILL
202.203.1000

WASHINGTON, D.C., DOWNTOWN
202.944.1100

THE WOODLANDS, TX
281.296.4400

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FOIA at Last: New Law Intended to Force Federal Government to be More Responsive to Information Requests

Changes to the Freedom of Information Act (“FOIA”) are of interest to many sectors of society—media, government contractors, government claimants, environmentalists, regulated businesses, researchers; in short, just about anyone who needs information from the federal government.

On December 31, 2007, the President signed into law the Open Government Act of 2007. Congress passed the law, over Department of Justice objections, amending the FOIA (5 U.S.C. §552; P.L. 110-175) because of the belief that the current administration had undermined, delayed, and frustrated the open government goal of FOIA. The new Act, with most provisions effective January 1, 2009, gives more teeth to FOIA’s records disclosure requirements and is in favor of the public.

Basically, FOIA grants a requestor of identified federal agency records the right to have the agency respond within twenty days, usually with research and reproduction fees, with those records or a letter identifying records that are exempt from disclosure (there are nine exemptions from disclosure, i.e., attorney-client, law enforcement, etc.). The requestor has administrative appeal rights over a denial, the right to sue over a denial or agency inaction, and the right to attorneys’ fees if the requestor prevails in court.

The new Act has more internal reporting and oversight provisions. In particular, the following are noteworthy:

- The twenty-day agency response period cannot be tolled without the consent of the requestor or for the time needed for a requestor to clarify his request (now agencies can give themselves, or just take, extra time);
- An agency must forgo fees if it is late and has no justification therefore;
- Agency records in the custody of a private entity, e.g., agency contractors, are subject to the new Act (previously, contractors were not covered);
- Creation of a new office of Government Information Services which can audit agencies and offer mediation services, as an alternative to litigation, between a requestor and an agency over disclosure of agency records; and



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- Provision for award of attorneys' fees to a requestor if the agency voluntarily or unilaterally changed its disclosure position in court (previously, a plaintiff had to prevail by court order to win attorneys' fees).

Federal agencies will now be more "under the gun" to timely respond to FOIA requests than ever before. Will they hire more staff or just shirk their new duties by broadly claiming exemptions early on in the hope that more requestors lack funds to sue? Only time will tell.

If you have any questions, contact the Jones Walker information advocates – [Stan Millan](#), [Marc Hebert](#), [Mike Chernekoff](#), or [Michael Drew](#).