

FOIA

Sample FOIA letter

[Date]

[Return Address]

USDA Forest Service
ATTN: Rita Morgan
Stop 1143
1400 Independence Avenue, SW
Washington, DC 20250-1143

Dear Mrs. Morgan:

Under the Freedom of Information Act, I am requesting access to [*identify the records as clearly and specifically as possible including the time period applicable to the records you seek, i.e., 1 month, 2 years, etc.*].

[Specify if you are a commercial requester, are representing an educational institution or a noncommercial scientific institution, are a member of the news media or a public interest group, or other.] If there are any fees charged for searching or copying 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 \$_____, which I agree to pay.]

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

If you have any questions processing this request, you may contact me at the following telephone number [*number*].

Sincerely,

[*your signature*]

Here is an actual sample FOIA

jcuevas@fs.fed.us

September 24, 2002

Todd M Shuman
49515 Brett Ave.
Tehachapi, CA 93561

USDA Forest Service
Pacific Southwest (R5)
ATTN: Juanita Cuevas
1323 Club Drive
Vallejo, CA 94592

Under the Freedom of Information Act, I am requesting access to Tahoe NF, Eldorado NF, Inyo NF, Stanislaus NF, Sequoia NF, Plumas NF, Lassen NF, Modoc NF, Sierra NF, and

LTBMU range information that specifies meadows (or parts of meadows) that are currently in "poor" condition with regard to range condition class.* Please provide information that specifies meadow name, how many acres of the total meadow are in poor condition, in which grazing allotment the poor condition meadow acreage is located, and if the poor condition meadow acreage was grazed by livestock cattle this year (and at what grazing intensity, in terms of AUMs). Please also include information that states when the grazing allotment that includes the poor condition meadow acreage is scheduled to undergo (or has recently undergone) a National Environmental Policy Act (NEPA) review.

I am requesting this information so that myself and other members of the public can better understand and participate in the planning, implementation, and monitoring of activities on the national forests listed above. I am not seeking this information for commercial purposes, and I will not sell this information. I request that this information be provided free of charge, pursuant to the Freedom of Information Act and the Council of Environmental Quality's regulations implementing the National Environmental Policy Act. (5 U.S.C. sec. 552, subd. (a) (4) (A) (iii); 7 C.F.R. Subpart A, Appendix A, Section 6 (a) (2), 6 (a) (3) (ii), 6 (a) (3) (iii); 40 C.F.R. sec. 1506.6, subd. (f).)

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

If you have any questions processing this request, you may contact me at the following telephone number, 661-823-9369. Any information forwarded to me can be forwarded by mail or email.

Sincerely, Todd M. Shuman

*The April 2000 Sierra Nevada Forest Plan Amendment DEIS, in chapter 3 page 520 documented 14,677 acres of poor condition meadow in the national forests listed above.

Here is some more sample language that you can use in a FOIA

I am requesting this information so that myself and other members of the public can better understand and participate in the planning, implementation, and monitoring of activities on the Inyo National Forest. I am not seeking this information for commercial purposes, and I will not sell this information. I request that this information be provided free of charge, pursuant to the Freedom of Information Act and the Council of Environmental Quality's regulations implementing the National Environmental Policy Act. (5 U.S.C. sec. 552, subd. (a) (4) (A) (iii); 7 C.F.R. Subpart A, Appendix A, Section 6 (a) (2), 6 (a) (3) (ii), 6 (a) (3) (iii); 40 C.F.R. sec. 1506.6, subd. (f).)

If there will be a charge, please contact me so that I may confirm, amend, or withdraw my request before you process it and send me the bill. I have been informed that I am entitled to 100 pages of photocopy free, and the first two hours of search time are free.

USDA Forest Service

FREEDOM OF INFORMATION ACT REFERENCE GUIDE

I. Introduction

[The Freedom of Information Act](#) (FOIA), which can be found in Title 5 of the United States Code, section 552, was enacted in 1966 and provides that any person has the right to request access to federal agency records or information. All agencies of the United States government are required to disclose records upon receiving a written request for them, except for those records that are protected from disclosure by the nine exemptions and three exclusions of the FOIA. This right of access is enforceable in court. The federal FOIA does not, however, provide access to records held by state or local government agencies, or by private businesses or individuals. All states have their own statutes governing public access to state and local records; state agencies should be consulted for further information about them.

This Reference Guide is designed to familiarize you with the specific procedures for making a FOIA request to the United States Department of Agriculture (USDA) Forest Service (FS).

It is important to understand that there is no central office in the government that processes FOIA requests for all federal agencies. Each agency responds to requests for its own records. Therefore, before sending a request to the Forest Service you should determine whether this agency is likely to have the records you are seeking.

Other general sources of information about how to make a FOIA request include:

- "Your Right to Federal Records," is available for fifty cents per copy from the Consumer Information Center, Department 319E, Pueblo, CO 81009. This publication also can be accessed electronically at:
www.pueblo.gsa.gov/cic_text/fed_prog/foia/foia.htm.

- "A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records," is published by the Committee on Government Reform and Oversight of the House of Representatives. It is available for sale for \$5.00 from the U.S. Government Printing Office, stock number 052-071-01230-3. It also can be accessed on the World Wide Web at: www.tncrimlaw.com/foia/l.html.

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The formal rules for making FOIA requests to the FS are set forth in 7 CFR 1.6.

II. Access to Certain Records Without a FOIA Request

All agencies are currently in the process of making certain types of records, created by the agency on or after November 1, 1996, available electronically. If you have access to the World Wide Web, you will not need to make a FOIA request to obtain access to these records. Such

records include: (1) final opinions and orders made in adjudicating cases; (2) final statements of policy and interpretations which have not been published in the Federal Register; (3) administrative staff manuals and instructions to staff that affect a member of the public; (4) copies of records that have been the subject of a FOIA request and that are of sufficient public interest or curiosity that the agency believes other persons are likely to request them; and (5) the agency's annual FOIA report to Congress - which includes such information as the number of requests received by the agency, the amount of time taken to process requests, the total amount of fees collected by the agency, information regarding the backlog of pending requests, and other information about the agency's handling of FOIA requests.

The FS site on the World Wide Web can be accessed at: www.fs.fed.us. You can access the FS FOIA homepage at www.fs.fed.us/im/foia. This site includes our annual report to Congress, various reference materials, information on how to make a FOIA request, copies of the relevant statutes, and a link to the Government Information Locator Service (GILS) site. Additionally, this site provides links to reading rooms of the regional offices.

The FS also makes certain information, such as publications, available in paper copy without requiring a formal FOIA request.

III. Where to Make a FOIA Request

The Forest Service is a decentralized agency that is organized into a number of [Regions](#) and [Stations](#), referred to as "field offices." Within the FS, each field office processes its own records. Therefore, your request will receive the quickest possible response if it is addressed directly to the field office that you believe has the records you are seeking.

In most cases, you should send your FOIA request to a field office FOIA Coordinator. If you believe that the FS does maintain the records you are seeking, but are uncertain about which field office has the records, you may send your request to:

USDA Forest Service
ATTN: FOIA/PA Officer
Post Office Box 96090, Stop 1143
Washington, DC 20250-6090
wo_foia@fs.fed.us

Personnel in that office will determine whether your request should be responded to in the Washington Office or a field office. They will then forward your request to the FS program staff or field office that they believe is most likely to maintain the records you are seeking.

IV. How to Make a FOIA Request

A FOIA request can be made for any agency record. This does not mean, however, that the FS will disclose any record sought. There are statutory exemptions that authorize the withholding of information of a

sensitive nature. When the FS does withhold information from you, it must specify which [exemption of the FOIA](#) permits the withholding. FOIA does not require agencies to do research, to analyze data, to answer written questions, or to create records in order to respond to a request.

Although certain information may be required from a FOIA requester, there is no special form is required by the FS ([sample FOIA request letter](#)). Requests must be in writing, either handwritten or typed. Requests may be mailed, faxed or sent via [e-mail](#).

In order to protect your privacy, whenever you request information about yourself you will be asked to provide either a notarized statement or a statement signed under penalty of perjury stating that you are the person that you claim to be. If you request information about yourself and do not follow one of these procedures, your request cannot be processed. This requirement helps to ensure that private information about you will not be disclosed to anyone else.

When making your request, you should be as specific as possible with regard to names, dates, places, events, subjects, etc. You do not have to give a requested record's name or title, but the more specific you are about the record or types of records that you want, the more likely it will be that the agency will be able to locate those records.

When the FS receives your FOIA request, it will send you a letter acknowledging the request and assigning it a control number. If you do not provide the necessary information, the FS will not process your request, but will advise you of what additional information is required.

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

V. Response Times

Under the statute, all federal agencies are required to respond to a FOIA request within twenty business days, excluding Saturdays, Sundays, and legal holidays. This period does not begin until the request is actually received by the FOIA Coordinator of the field office that maintains the records sought. An agency is not required to send out the releasable documents by the last business day; it can send you a letter informing you of its decision and then send out the documents within a reasonable time afterward.

Some agencies use "multi-track processing" queues to deal with their heavy FOIA workloads.

Under the FOIA, an agency may extend the response time for an additional ten business days when: (1) the agency needs to collect responsive records from field offices; (2) the request involves a "voluminous" amount of records which must be located, compiled, and reviewed; or (3) the agency must consult with another agency which has a substantial interest in the responsive material or among two or more other field offices of the FS. When such a time extension is needed, the agency may notify you of this in writing and offer you the opportunity to modify or limit your request.

When a determination on your request is not made within the deadline described above and you have not agreed to a different response deadline, you may file suit in federal court to obtain a response. If, however, the court concludes that you have unreasonably refused to limit your request or to accept an alternate timetable for response, the court may find that the agency's failure to comply within the statutory time period is justified. The court also may approve a delay if it concludes that the agency is experiencing an unexpected, substantial increase in the number of requests received. In addition, the court may excuse the lack of a timely response if the agency demonstrates that it has a backlog of requests on a first-come/first-served basis, and that it is making reasonable progress in reducing its backlog. In such cases, the court may postpone its consideration of your lawsuit until the agency reaches your request in its processing backlog.

IV. Expedited Processing

Under certain conditions, you may be entitled to have your request processed on an expedited basis. However, you should realize that whenever a FOIA request is expedited for a particular requester, it results in an additional delay for previous requesters who have been waiting for a response. Therefore, in an effort to treat all requesters equitably, the FS ordinarily will process a FOIA request ahead of others only in cases in which there will be a threat to someone's life or physical safety, or where an individual will suffer the loss of substantial due process rights if the records are not processed on an expedited basis.

The FOIA also requires that requests be processed on an expedited basis if made by a person primarily engaged in disseminating information to the public and the information is urgently needed to inform the public concerning some actual or alleged government activity. Requests are not expedited under this provision merely because the requester is a representative of the news media.

A request for expedited processing must be accompanied by a statement setting forth the reasons why your request should be expedited. You should certify that the reasons you have given are true and correct. The agency will be required to notify you of its decision whether to grant expedited processing within no more than ten days after receiving your letter. If the agency denies your request for expedited processing, you will be advised of your right to submit an administrative appeal of that denial.

VII. Fees

There is no initial fee to file a FOIA request, however, an agency is entitled to charge certain fees, which depend on the category of requester you fall into.

For the purposes of fees only, the FOIA divides requesters into three categories. Commercial requesters may be charged fees for searching for records, processing the records, and photocopying them. Educational or noncommercial scientific institutions and representatives of the news media are charged only for photocopying expenses, after the first 100 pages of copies. Requesters who do not fall into either of these two categories are not charged for processing; they are charged only for record searches and photocopying - and there is no charge for the first two hours of search time or for the first 100 pages of photocopies. The FS currently charges .20 cents per page for photocopying. In all cases, if the total fee does not exceed a minimum amount, currently \$25.00, the FS will not charge any fee at all.

You may always include in your request letter a specific statement limiting the amount that you are willing to pay in fees. If you do not do so, you will be asked to express your commitment to pay the estimated fees and the processing of your request will be suspended until you agree to do so. You ordinarily will not be required to actually pay the fees until the records have been processed and are ready to be sent to you. If, however, you have failed to pay fees within 30 days of billing in the past, or if the estimated fees exceed \$250, you may be required to pay the estimated fees before the records are processed. If you agree to pay fees and then fail to do so within 30 days of billing, you may be charged interest on your overdue balance and the FS will not process any further requests from you until payment has been made in full. If you agree to pay fees for searching for records, be aware that you may be required to pay such fees even if the search does not locate any responsive records or, if records are located are withheld as entirely exempt.

VIII. Fee Waivers

If you expect or are advised that a fee will be charged, you may request a waiver of those fees. However, 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 is not primarily in the commercial interest of the requester. Requests for fee waivers from individuals who are seeking records on themselves usually are denied under this standard because such disclosures usually will not result in any increase of the public's understanding of government operations and activities. In addition, a requester's inability to pay fees is not a legal basis for granting a fee waiver.

IX. Initial Request Determinations

Once the FS has processed your request and any fee issues have been resolved, the agency will send you a written initial determination. The FOIA provides access to all federal agency records (or portions of those records), except for those records that are withheld under any of [nine exemptions](#) or three exclusions (reasons for which an agency may

withhold records from a requester). The determination letter will advise you of whether any information is being withheld pursuant to one or more of the exemptions. When a page is being withheld in its entirety, the FS will either specify the number of pages being withheld or will make a reasonable effort to estimate the volume of the withheld information.

The exemptions authorize federal agencies to withhold information covering: (1) classified national defense and foreign relations information; (2) internal agency rules and practices; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets and other confidential business information; (5) inter-agency or intra-agency communications that are protected by legal privileges; (6) information involving matters of personal privacy; (7) certain types of information compiled for law enforcement purposes; (8) information relating to the supervision of financial institutions; and (9) geological information on wells. The three exclusions, which are rarely used, pertain to especially sensitive law enforcement and national security matters. Even if information may be withheld under the FOIA, the agency may disclose it as a matter of administrative discretion if it is not prohibited by any law and would not cause any foreseeable harm, although the agency is not legally obligated to do so.

X. Appeals

You may file an [administrative appeal](#) if you are not satisfied with the agency's initial response. You may disagree with the agency's withholding of information or you may believe that there are additional records responsive to your request that the agency failed to locate. You also may file an administrative appeal if you have requested expedited processing or a fee waiver and the agency has not granted your request. You may also appeal a determination that a record does not exist, that a record is not readily reproducible in the form requested, that the requested information is not a record subject to the FOIA, or any disputed fee matter. You should be advised of your right to file an appeal in the initial determination letter sent by the agency or in the letter denying your request for expedited processing or a fee waiver. Ordinarily, your appeal must be received within 45 days of the date of the agency's determination letter.

Both the front of the envelope and the appeal letter should contain the notation "Freedom of Information Act Appeal."

There is no specific form or particular language needed to file an administrative appeal. You should include the initial request number that the agency assigned to your request and the date of the agency's action. You may explain the reasons why you disagree with the agency's action, but a simple statement that you are appealing the decision ordinarily is sufficient. If, however, you are appealing because you believe there are additional records that have not been located in response to your request, you should specify why you think such records exist and, if possible, where you believe they might be located.

XI. Judicial Review

If you still believe that the FS has not handled your FOIA request in accordance with the law after your appeal has been decided, you have the right to challenge the agency's action in a lawsuit filed in federal court, through the litigation process known as "judicial review." Before doing so, you ordinarily will be required first to have filed an administrative appeal and to have received a response. However, if the FS fails to respond to either your initial request or your appeal within the time limits discussed above, you may file suit as soon as the time limits have expired.

If you do bring a court action, you may file your suit in a federal district court in any of the following places: (1) where you reside, (2) where you have your principal place of business (if any), (3) in the District of Columbia, or (4) where the records are located, if they are not located in the District of Columbia. If you have waited until you have received an administrative appeal determination, that final administrative response letter will advise you of your right to seek judicial review and will specify where you can do so. You have six years to file suit from the time your right to sue begins