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## **DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

### **FREEDOM OF INFORMATION ACT REFERENCE GUIDE**

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#### **I. INTRODUCTION**

The Freedom of Information Act (FOIA), found at 5 U.S.C. § 552, provides that every person has the right to request access to Federal agency records or information. Federal agencies, such as the Defense Nuclear Facilities Safety Board (DNFSB), are required to disclose records upon receiving a written request for them, with the exception of records that are protected from disclosure by the nine exemptions of the FOIA. This right of access is enforceable in court. All states have their own statutes governing public access to state and local records, and state authorities should be consulted for further information concerning their statutes.

This Reference Guide is designed to familiarize you with the specific procedures for making a FOIA request to the DNFSB. The process is neither complicated nor time-consuming. Following the guidance below will make it more likely that you will receive the information you are seeking in the shortest amount of time. This Guide also includes descriptions of the types of records maintained by the DNFSB, some of which are available through means other than the FOIA. This Guide provides contact information for the DNFSB's FOIA Office, so that you may contact that Office directly. The DNFSB's Electronic FOIA Reading Room, which contains this Reference Guide, is located at <https://www.dnfsb.gov/foia-reading-room>.

Initially, it is important to understand that there is no central office in the government that processes FOIA requests for all Federal departments and agencies. Each Federal department and agency responds to requests for its own records. Therefore, before sending a request to the DNFSB, you should determine whether the DNFSB is likely to have the records you are seeking. In making that determination, it is important to note that the DNFSB is an independent agency and thus not a part of any other Federal Department or agency, such as DOE, the Nuclear Regulatory Commission, or the Department of Defense.

Each Federal department and agency is required to provide reference material to assist those who wish to request records from them. Accordingly, you should view the websites of any Federal agency which might have records you seek. By doing so, you will learn what records are already available on the agency's website and you will also be able to determine which agency is likely

to maintain the records you are seeking. Contact information for other Federal departments and agencies is available on the [National FOIA Portal](#).

The formal rules for making FOIA requests to the DNFSB are set forth in the DNFSB's regulations. These regulations are available on the [DNFSB's landing page](#) on the [National FOIA Portal](#). In most cases, this Reference Guide should provide you with all the basic information that you will need for submitting requests.

## II. RECORDS YOU CAN ACCESS WITHOUT A FOIA REQUEST

Depending on what kind of information you are looking for, you may not need to make a formal FOIA request. The DNFSB proactively posts a wealth of information about the agency and its operations on the DNFSB's [public website](#), including:

- DNFSB regulations and policy statements,
- DNFSB recommendations,
- External communications between the DNFSB and its stakeholders,
- Notational votes on official agency matters,
- Reports to Congress,
- Staff weekly reports,
- Monthly site reports,
- Technical reports,
- Transcripts of public meetings and hearings,
- Background information about the agency's history and mission,
- Biographical information about the current Board Members and Resident Inspectors, and
- Copies of briefing materials presented to the DNFSB by outside organizations.

The DNFSB encourages you to use the DNFSB's public website as the starting point for your search.

## III. FILING A FOIA REQUEST

### A. What is a FOIA Request?

Under the FOIA, any person can make a request for records maintained by the DNFSB. The requested records will be made available to the person seeking them, unless the records are protected from disclosure by one of the FOIA's nine exemptions. The DNFSB's formal procedures for accepting and processing FOIA requests are published at 10 C.F.R. Part 1703. This Guide summarizes the most important information from those procedures. Failure to follow those procedures may preclude the DNFSB from processing your request.

A FOIA request can be made for any agency record; however, this does not mean that the DNFSB will disclose any record sought. There are statutory exemptions that authorize the withholding of certain information. When the DNFSB does withhold information, it will specify which exemption of the FOIA permits the withholding. You should be aware that the FOIA does not require the DNFSB to do research for you, to analyze data, to answer written questions, or to create records in order to respond to a request.

## **B. Where do You File a FOIA Request?**

As required by the FOIA Improvement Act of 2016, the Office of Management and Budget and the Department of Justice created a [National FOIA Portal](#) that allows a member of the public to submit a FOIA request for records to any Federal agency from a single website. A person may file a FOIA request for records believed to be in the DNFSB's custody through the [DNFSB's landing page](#) on the National FOIA Portal.

Alternatively, a requester may submit a FOIA request to the Chief FOIA Officer via email at [FOIA@dnfsb.gov](mailto:FOIA@dnfsb.gov) or in writing to:

Chief FOIA Officer  
Defense Nuclear Facilities Safety Board  
625 Indiana Avenue NW, Suite 700  
Washington, DC 20004

In either case, you must clearly mark your communication as a “*FOIA Request.*”

## **C. What do You Include in a FOIA Request?**

There is no special form or particular wording for making requests. You must describe the records you seek in sufficient detail to enable DNFSB personnel to locate them with a reasonable amount of effort – i.e. by being as specific as possible with regard to names, dates, titles, file designations, author(s), and/or subject matter(s). More focused requests can generally be processed more expeditiously and cost-effectively.

You must also include (1) a statement indicating your willingness to pay the applicable fee or to pay a fee not exceeding a specific amount, or (2) a request for a fee waiver. If you wish to receive the records in a particular format (e.g., electronic or hard copy), you should note that in your request. It is also prudent to include your contact information in your request should DNFSB personnel need to consult with you.

#### **D. What Happens After You Submit a FOIA Request?**

When the DNFSB's FOIA Office receives your FOIA request, it ordinarily will send you a letter acknowledging the request and assigning it a tracking number. If the Office requires additional information from you so that it can begin processing your request, it will contact you. Additionally, you should be aware that the DNFSB FOIA Office ordinarily will use the date upon which they begin a record search as the "cut-off" date for identifying the records that are responsive to a FOIA request. Of course, you can specify a different date-range for the records you seek, and the Office would then search for records created during the time period you specify.

#### **E. Privacy Act Records**

To maximize the amount of information we can provide to you, we may process requests you make for records about yourself under *both* the FOIA and the Privacy Act of 1974 and the DNFSB's respective implementing regulations. In order to protect your privacy as well as the privacy of others, whenever you request information about yourself, you must include the following in your request:

- Your full name, current address, and telephone number;
- Proof of identification (e.g. a copy of a valid driver's license, valid passport, or other current identification that contains both your address and picture);  
and
- The system of records in which the desired information is contained.

If you request information about yourself and do not provide the requisite information, your request cannot be processed. This requirement helps to ensure that personal information about you will not be inappropriately disclosed to anyone else. Similarly, if you request records about another person and disclosure of the records would invade that person's privacy, those records ordinarily will not be disclosed to you. When a request for records pertains to a third party, you may receive greater access by submitting either written consent signed by that individual authorizing disclosure of the records to you, or by submitting proof that the individual is deceased (e.g., a copy of a death certificate or obituary).

### **IV. RESPONSE TIMES**

The DNFSB is required to respond to a FOIA request within 20 business days, excluding Saturdays, Sundays, and legal holidays. The time to respond does not begin until the *perfected* request is received by the DNFSB's Chief FOIA Officer or his designee. The FOIA permits the

DNFSB to toll (stop) the statutory time period one time to seek information from a requester and to toll the statutory time period as many times as necessary to clarify fee assessments.

Although the DNFSB makes every effort to respond to FOIA requests as quickly as possible, in some cases it simply cannot do so within the specified time period. This may be due either to the volume of records at issue in a given request or to the fact that the DNFSB has a backlog of previously received requests that are awaiting processing.

Under the FOIA and the DNFSB's implementing regulations, the DNFSB may extend the 20-day response time for up to 10 additional work days in "unusual circumstances" by written notice to the requester. Unusual circumstances exist when:

- The DNFSB needs to search for and collect the requested records from field facilities or other establishments that are separate from the DNFSB's Washington, DC offices;
- The request involves a "voluminous" amount of records that must be located, compiled, and reviewed; or
- The DNFSB needs to consult with another Federal agency that may have a substantial interest in the responsive information.

If the DNFSB will be unable to satisfy the request in this additional period of time, it will notify you in writing and offer you the opportunity to modify or limit the scope of your request. Alternatively, you may work with the DNFSB's FOIA Public Liaison to establish a different timetable for the processing of your request. As explained in Section VI below, the DNFSB will not charge you any applicable fees if it fails to comply with the timelines established in this section.

## **V. EXPEDITED PROCESSING**

You may be entitled to have your request processed on an expedited basis if you can demonstrate a "compelling need" for the requested records. A "compelling need" exists when:

- The lack of expedited treatment could reasonably be expected to pose an imminent threat to someone's life or physical safety;
- The request is 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 Federal government activity; or
- The requested records pertain to an immediate source of risk to the public health and safety or worker safety at a defense nuclear facility under the DNFSB's jurisdiction.

A request for expedited processing should be accompanied by a statement of all the facts supporting your need for expedited processing. Your request must also include the following

certification statement: “*These facts are true and correct to the best of my knowledge and belief.*”

The DNFSB will notify you of its decision to grant or deny expedited processing within 10 calendar days after receiving your request. If the DNFSB denies your request for expedited processing, you will be advised of your right to submit an administrative appeal of that denial, which will be handled expeditiously.

## VI. FEES

There is no initial fee required to submit a FOIA request and, in the majority of requests made to the DNFSB, no fees are charged. However, the DNFSB is entitled to charge duplication, search, and processing fees, as explained below. Nonetheless, the DNFSB **may not charge any fees** if it fails to comply with the administrative time limits set forth in Section IV.

For purposes of calculating fees, the FOIA divides requesters into three categories: (1) commercial use requesters, (2) educational or non-commercial scientific institutions and representatives of the news media, and (3) all other requesters. Different fees are assessed depending on the category.

Category	Chargeable Service Fee
Commercial Use Requesters	Charged for record searches, review, and duplication.
Educational or Non-commercial Scientific Institutions and Representatives of the News Media <sup>1</sup>	Charged only for duplication fees after the first 100 pages.
All Other Requesters	Charged only for record searches after the first two hours and duplication after the first 100 pages.

<sup>1</sup> In determining whether a requester qualifies as a “representative of the news media,” the DNFSB will implement the holding in *Cause of Action v. Federal Trade Commission*. See 799 F.3d 1108 (D.C. Cir. 2015). Specifically, a requester must satisfy the following five criteria to qualify as a “representative of the news media:” (1) the person or entity must gather information of potential interest, (2) to a segment of the public, (3) use its editorial skills to turn the raw materials into a distinct work, and (4) distribute that work (5) to an audience. *Id.* at 1120; 5 U.S.C. § 552(a)(4)(A). In making a news media requester fee category determination, the DNFSB will focus on the nature of the requester and not its request.

The DNFSB currently charges \$85 per hour of search or review time. The duplication charge for paper is \$.05 per page if done in-house, or \$.10 per page if done externally. The duplication charges for other items, such as electronic media, can be found in the DNFSB's [Schedule of Fees](#). In all cases, if the total fee does not exceed \$25, the DNFSB 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, the DNFSB will assume that you are willing to pay fees of up to \$25. If the DNFSB estimates that the search or duplication fees for your request will exceed \$25, it will notify you in writing of the estimate, unless you have indicated in advance your willingness to pay fees as high as those anticipated. The notice will offer you an opportunity to narrow your request in order to reduce the fees. Depending on your fee category, you may be required to pay fees even if the search does not locate any responsive records, or if responsive records are determined to be exempt from disclosure.

Generally, you will not be required to pay the fees until the records have been processed and are ready to be sent to you; however, if you have previously failed to pay fees, or if the estimated fees exceed \$250, you may be required to pay the estimated fees in advance of receipt of the records. In all situations involving advance payment, the administrative time limits set forth in Section IV will begin only after the DNFSB has received the fee payment.

## **VII. FEE WAIVERS**

If you expect or are advised that a fee will be charged, you may request a waiver of those fees. Under the FOIA, 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 pertaining to themselves usually do not meet this standard because such disclosures usually benefit the individual requester rather than increase 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.

The DNFSB will issue a final decision on a fee waiver request within five (5) business days of receipt.

## **VIII. INITIAL REQUEST DETERMINATIONS**

Once the DNFSB has processed your request and any fee issues have been resolved, the DNFSB will send you a written initial determination. In the vast majority of cases, the DNFSB will include all documents that can be disclosed along with the determination letter, though in some cases the documents themselves may be sent to you separately, within a reasonable time after the determination letter has been sent to you. As mentioned previously, the FOIA provides access to all Federal agency records, or portions of those records, except to the extent those records are protected by any of the FOIA's nine exemptions. The determination letter will advise you of

whether any information is being withheld pursuant to one or more of the exemptions. When a page of a record is being withheld in its entirety, the DNFSB ordinarily will specify the number of pages being withheld or make a reasonable effort to estimate the volume of the withheld information. Where a page of a record is being withheld in part, the withheld portions of the page will ordinarily be specifically marked with the applicable exemptions.

The FOIA authorizes agencies to withhold information when they reasonably foresee that disclosure would harm an interest protected by one of nine exemptions covering:

1. Classified national defense and foreign relations information;
2. Internal agency personnel rules and practices;
3. Information that is prohibited from disclosure by another federal law;
4. Trade secrets and other confidential or privileged commercial or financial information;
5. Inter-agency or intra-agency communications that are protected by legal privileges;
6. Information involving matters of personal privacy;
7. Records or information compiled for law enforcement purposes, to the extent that the production of those records:
  - 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 and/or information provided 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, or
  - F. could reasonably be expected to endanger the life or physical safety of any individual;
8. Information relating to the supervision of financial institutions; and
9. Geological information on wells.

## **IX. RESOLVING DISPUTES**

The DNFSB has a FOIA Public Liaison who can help you if you are dissatisfied with the services received from the DNFSB's FOIA Office. The FOIA Public Liaison can assist you throughout the request process, from working with you to arrange an alternative time frame for processing your request, to increasing understanding regarding the status of your request, to assisting you in resolving disputes. The contact information for the DNFSB's FOIA Public Liaison can be found in the [DNFSB's Electronic Reading Room](#).



In addition, the Office of Government Information Services (OGIS), an office created within the National Archives and Records Administration, offers mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001  
Email: [ogis@nara.gov](mailto:ogis@nara.gov) (link sends e-mail)  
Phone: 301-837-1996  
Fax: 301-837-0348  
Toll-free: 1-877-684-6448

Finally, the FOIA provides requesters with the right to challenge an agency's action in Federal court. Before doing so, you ordinarily will be required to have first filed an administrative appeal.

## **X. ADMINISTRATIVE APPEALS**

You may file an administrative appeal if you are not satisfied with the DNFSB's initial response. You also may file an administrative appeal if you have requested expedited processing or a fee waiver and the DNFSB has not granted that request. You may also appeal a determination that what has been requested is not reasonably described, that a record does not exist or cannot be located, that a record is not readily reproducible in the form or format requested, that the requested information is not a record subject to the FOIA, or a determination regarding the charging of a fee. In short, you may appeal any adverse determination made by the DNFSB.

A person denied a fee waiver may appeal that determination within 30 days. All other appeals must be received within 90 days of the date of the DNFSB's determination letter. All appeals must be made in writing, marked "*Freedom of Information Act Appeal*," and addressed to:

General Counsel  
Defense Nuclear Facilities Safety Board  
625 Indiana Avenue NW, Suite 700  
Washington, DC 20004

There is no specific form or particular language needed to file an administrative appeal. You may explain the reasons for your disagreement with the action, but a simple statement that you are appealing the decision 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.

The General Counsel will review the initial decision and make an independent determination as to whether your request was properly processed. Under the FOIA, the General Counsel is required to make a determination on your administrative appeal within 20 business days. In unusual circumstances, the General Counsel may extend the time to respond by an additional 10 working days. If this occurs, you will be notified in writing and given the reasons for the extension and the expected determination date.

The General Counsel may take one of several actions on your appeal:

- Affirm the initial decision in full and identify which exemptions have been appropriately claimed;
- Affirm part of the initial decision (identifying the applicable exemptions), but order the release of other information previously withheld;
- Order the release of all withheld information; or
- Under some circumstances, return or “remand” the request for complete reprocessing. When a case is remanded, you will have an opportunity again to appeal to the General Counsel after the DNFSB’s FOIA Office has processed the records if you remain dissatisfied with the Office’s action.

## **XI. JUDICIAL REVIEW**

If you still believe that the DNFSB has not handled your FOIA request properly under 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. If the DNFSB fails to respond to either your initial request or your appeal within the time limits discussed above, however, you may file a lawsuit once the time limits have expired. If you do bring a court action, you may file your lawsuit in a Federal district court in any of the following places:

- Where you reside;
- Where you have your principal place of business (if any);
- In the District of Columbia; or
- Where the records are located, if they are not located in the District of Columbia.

If 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 (6) years to file a lawsuit from the time your right to sue begins.