

§ 1250.3 Definitions.

The following definitions apply to this part:

(a) *Archival records* means permanently valuable records of the United States Government that have been transferred to the legal custody of the Archivist of the United States. These are historical documents and do not include NARA operational records as defined in paragraph (l) of this section.

(b) *Commercial use request* means a request that asks for information for a use or purpose that furthers a commercial, trade, or profit interest of the requester or the person or entity on whose behalf the request is made.

(c) *Confidential commercial information* means records provided by a submitter that may contain trade secrets or confidential business or financial information that is exempt from release under the FOIA because disclosure could reasonably be expected to cause the submitter substantial competitive harm.

(d) *Educational institution request* means a request made by a school, university, or other educational institution that operates a program of scholarly research. To qualify for this category, a requester must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are sought to further scholarly research, not for a commercial use.

(e) *Expedited processing* means the process set forth in the FOIA that allows requesters to ask for faster processing of their FOIA request if they can demonstrate a specific compelling need.

(f) *Fee category* means one of the four categories set forth in the FOIA to determine whether a requester will be charged fees for search, review, and duplication. The categories are: Commercial requesters; non-commercial scientific or educational institutions; news media requesters; and all other requesters.

(g) *Fee waiver* means the waiver or reduction of fees if a requester is able to demonstrate that certain standards set forth in the FOIA are satisfied, including that the information is in the public interest and is not requested for a commercial interest.

(h) *FOIA Public Liaison* means an agency official who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(i) *FOIA request* means a written request, that cites the Freedom of Information Act, for access to NARA operational records, records of the executive branch of the Federal Government held by NARA, or Presidential or Vice Presidential records in NARA's custody that were created after January 19, 1981.

(j) *Freedom of Information Act (FOIA)* means the law codified at 5 U.S.C. 552 that provides the public with the right to request Government records from Federal executive branch agencies.

(k) *Non-commercial scientific institution request* means a request submitted by an institution that is not operated on a basis that furthers the commercial, trade, or profit interests of any person or organization, and which is operated solely for the purpose of conducting scientific research.

(l) *Operational records* means records that NARA creates or receives in carrying out our mission and responsibilities as an executive branch agency. This does not include archival records as defined in paragraph (a) of this section.

(m) *Original Classification Authority* means the authority to classify information as National Security Information at creation, as granted by the President of the United States in Executive Order 13526, section 1.3, and defined in 32 CFR part 2001.

(n) *Other request* means a request submitted by any individual whose request does not qualify as a commercial-use request, representative of the news media request (including a request made by a freelance journalist), or an educational or non-commercial scientific institution request.

(o) *Presidential records* means the official Presidential and Vice Presidential records created or received by the President, the Vice President, or the White House staff since January 20, 1981, and covered under the Presidential Records Act, 44 U.S.C. 2201-2207. Presidential Executive orders also apply to these records.

(p) *Presidential Records Act* (PRA) means the law that, in part, governs access to Presidential and Vice Presidential records and is codified at 44 U.S.C. 2201–2207 and Part 1270 of these regulations. The PRA contains six restrictions that authorize NARA to withhold information, which apply for 12 years after a President leaves office. Four of the PRA restrictions are identical to FOIA Exemptions 1, 3, 4, and 6. Two relate to appointments to Federal office and confidential communications requesting or submitting advice between the President and his advisers, or between and among such advisers. The PRA also excludes application of FOIA Exemption 5.

(q) *Representative of the news media* means a person or entity that is organized and operated to publish or broadcast news to the public, and that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast news to the public at large and publishers of periodicals, including print and online publications that disseminate news and make their products available through a variety of means to the general public. We consider requests for records that support the news-dissemination function of the requester to be a non-commercial use. We consider “freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity as working for that entity. A publishing contract provides the clearest evidence that a journalist expects publication; however, we also consider a requester’s past publication

record. We decide whether to grant a requester media status on a case-by-case basis, based on the requester’s intended use.

(r) *Review* means examining documents responsive to a request to determine whether any portions of them are exempt from disclosure. Review time includes processing any record for disclosure (i.e., doing all that is necessary to prepare the record for disclosure), including redacting the record and marking the appropriate FOIA exemptions.

(s) *Search* means the process of looking for and retrieving records or information responsive to a request. It also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

(t) *Submitter* means any person or entity providing potentially confidential commercial information to an agency, which information may be subject to a FOIA request. The term submitter includes, but is not limited to, individuals, corporations, state governments, and foreign governments.

§ 1250.4 Who can file a FOIA request?

Any individual, partnership, corporation, association, or public or private organization other than a Federal agency, regardless of nationality, may file a FOIA request with NARA. The Administrative Procedure Act, 5 U.S.C. 551(2), excludes Federal agencies from filing FOIA requests. However, state and local governments may file FOIA requests.

§ 1250.6 Does the FOIA apply to all of the records at NARA?

No, the FOIA applies only to the records of the executive branch of the Federal Government and certain Presidential and Vice Presidential records:

If you want access to . . .	Then access is governed by . . .
(a) Records of executive branch agencies	This CFR part and parts 1254 through 1260 of this chapter. FOIA applies to these records.
(b) Records of the Federal courts and judicial branch agencies.	Parts 1254 through 1260 of this chapter. FOIA does not apply to these records.
(c) Records of Congress and legislative branch agencies.	Parts 1254 through 1260 of this chapter. FOIA does not apply to these records.
(d) Presidential records (created by Presidents and Vice Presidents holding office since 1981).	This part and parts 1254 through 1270 of this chapter. FOIA applies to these records five years after the President and Vice President leave office.