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## Workshop: Freedom of Information Law CLE Credit - DOJ Freedom of Information Act Reference Guide

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# DEPARTMENT OF JUSTICE FREEDOM OF INFORMATION ACT REFERENCE GUIDE

## I. Introduction

As President Obama has declared: "In our democracy, the Freedom of Information Act (FOIA)<sup>1</sup>, which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government." Attorney General Holder, in turn, has emphasized that "[o]pen government requires agencies to work proactively and respond to requests promptly" so that the public can be informed about "what is known and done by their Government." This Reference Guide is designed to help the public understand how the FOIA process works so that the public can be better informed about the operations and activities of the federal Government.

The FOIA generally provides that any person has the right to obtain access to federal agency records except to the extent those records are protected from disclosure by the FOIA. Agencies increasingly provide a great deal of information on their websites so before making a request you are encouraged to review the materials already posted on agency websites, as you may find there the information you are interested in.

The FOIA applies to records of the Executive Branch of the federal government and does not provide access to records held by Congress, the federal courts, advisory offices of the President, state or local government agencies, or by private businesses or individuals. All states have their own statutes governing public access to state and local government records; state agencies should be consulted for further information about obtaining access to their records.

This Reference Guide is designed to familiarize you with the specific procedures for making a FOIA request to the United States Department of Justice (DOJ). The process is neither complicated nor time consuming. Following the guidance below will make it more likely that you will receive the information that you are seeking in the shortest amount of time possible. This Reference Guide also includes descriptions of the types of records maintained by DOJ's bureaus, divisions, offices, and boards, which are collectively referred to as DOJ's "components." This Guide provides contact information for all DOJ components so that you may contact those components directly. DOJ's FOIA home page, which contains this Reference Guide, is located at [www.usdoj.gov/foia](http://www.usdoj.gov/foia).

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 DOJ you should determine whether DOJ is likely to have the records you are seeking. 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

attached as Attachment A of this Guide, and is also available on DOJ's FOIA home page at <http://www.usdoj.gov/oip/foiacontacts.htm>.

The formal rules for making FOIA requests to DOJ are set forth in Chapter 16 of DOJ's regulations. These regulations are available on DOJ's FOIA website under "Making a FOIA Request" (click on "[DOJ FOIA and Privacy Act Regulations](#)"). In most cases this Reference Guide should provide you with all the basic information that you will need for submitting requests.

## II. Access to Certain Records Without a FOIA Request

DOJ's website, located at [www.justice.gov](http://www.justice.gov), should be the starting point for anyone interested in DOJ. It contains detailed information about all the activities of DOJ. The website includes news, the Justice Blog, and the DOJ Action Center where you can get information about how to report a crime, get a job, apply for a grant, or identify a "most wanted" criminal. Many resources are posted as well as information on all the components of DOJ, such as the FBI, DEA, or the Bureau of Prisons. Information is available about careers with DOJ, internship opportunities, budget and performance, as well as strategic plans. DOJ posts forms, publications, and case highlights. There is a Briefing Room with videos and a photo library. In addition, each component of DOJ posts a variety of records of interest to the public. You are encouraged to view the records and information made available on each components' page of DOJ's website.

If you are interested in information about the FOIA itself, DOJ's FOIA website contains DOJ's [Annual FOIA Report](#) and links to the Annual FOIA Reports for all federal departments and agencies. You can also view [FOIA Post](#), which is DOJ's online policy publication that includes monthly summaries of the most recent court decisions on the FOIA, as well as guidance related to FOIA implementation. The [Department of Justice Guide to the Freedom of Information Act](#), which is a comprehensive treatise on the FOIA and contains a detailed description of all aspects of the law, including the exemptions, exclusions, procedural requirements, and litigation considerations associated with the FOIA, is available at [http://www.justice.gov/oip/foia\\_guide09.htm](http://www.justice.gov/oip/foia_guide09.htm). It can also be ordered from GPO by calling toll-free 1-866-512-1800 or by visiting the online U.S. Government Bookstore at <http://bookstore.gpo.gov>. DOJ's FOIA website also contains a link to each component's FOIA website at [http://www.usdoj.gov/oip/04\\_4.html](http://www.usdoj.gov/oip/04_4.html). In sum, many potential FOIA requesters can save time by carefully reviewing what is already posted on DOJ's website before making a FOIA request.

Attachment C of this Reference Guide contains descriptions of DOJ's major information systems, which are the file systems and databases used by DOJ's components to maintain records. These descriptions include explanations of the types of records maintained within each information system. The descriptions are arranged in two ways -- by component and also alphabetically. These descriptions can be accessed from DOJ's FOIA website under "[Reference Guide](#)."

## III. Where to Make a FOIA Request

DOJ is organized into a number of bureaus, divisions, offices, and boards, which are referred to as "components." Within DOJ, each component processes its own records in response to FOIA requests. Therefore, your request will receive the quickest possible response if it is addressed directly to the component that you believe has the records you are seeking. As noted above, [Attachment B](#) contains a description of DOJ's components and their addresses. It also contains

contact information for each component's FOIA Requester Service Center and its FOIA Public Liaisons.

As mentioned above, the functions of each component are described on DOJ's website. They are also summarized in Part O of DOJ's regulations.

In almost all cases, you should send your FOIA request to a component's central FOIA office. Keep in mind, however, that even those components which receive all FOIA requests at a central office will sometimes require additional information from you regarding the most likely location of the records you seek. For example, if you seek records from a particular United States Attorneys Office, while your request to the Executive Office for United States Attorneys (EOUSA) should always be submitted to EOUSA's central FOIA Office, it should clearly indicate which U.S. Attorneys Office would maintain the records you seek. See Attachment B for contact information for the central FOIA offices for each of DOJ's components. You should include the notation "Freedom of Information Act Request" on the front of your request envelope and also at the beginning of your request letter.

If you believe that DOJ maintains the records you are seeking, but you are uncertain about which component has the records, you may send your request to: FOIA/PA Mail Referral Unit, Justice Management Division, U.S. Department of Justice, Room 115, LOC Building, Washington, D.C. 20530-0001, Attention: FOIA Request. Personnel in that division will then forward your request to the DOJ component(s) it determines are most likely to maintain the records you are seeking. As noted in the portion of Attachment B pertaining to the Justice Management Division, that component has a special FOIA Requester Service Center/FOIA Public Liaison for this request-forwarding function.

#### **IV. How to Make a FOIA Request**

You should send your FOIA request directly to the DOJ component which you believe has the records you seek. A FOIA request can be made for any agency record. You can also specify the format in which you wish to receive the records. There are statutory exemptions that authorize the withholding of information of a sensitive nature. The FOIA's exemptions protect, for example, national security, personal privacy, privileged records, and law enforcement interests. When DOJ withholds information from you, it ordinarily must specify which exemption of the FOIA permits the withholding. You should be aware that the FOIA does not require agencies to do research for you, to analyze data, to answer written questions, or to create records in response to a request.

DOJ does not require a special form when making a FOIA request. Requests should be in writing. Many DOJ components now accept FOIA requests submitted electronically, including by web form, email, and/or facsimile. See Attachment B for more information regarding which components accept electronic FOIA requests, and for information on how to make such requests.

In order to protect your privacy as well as the privacy of others, 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 who you say you are. You may fulfill this requirement by: (1) completing and signing Form DOJ-361 (see Attachment D), (2) having your signature on your request letter witnessed by a notary, or (3) including the following statement immediately above the signature on your request letter: "I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]." 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 inappropriately disclosed to anyone else.

Similarly, if you request records relating to another person, and disclosure of the records could invade that person's privacy, they ordinarily will not be disclosed to you. For example, if you seek information that would show that someone else (including your spouse or another member of your immediate family) has ever been the subject of a criminal investigation or was even mentioned in a criminal file and you do not provide the subject's consent or proof of their death, in almost all cases DOJ will respond by stating that it will "neither confirm nor deny" the existence of responsive law enforcement records. Such law enforcement information about a living person is released without that person's consent only when no personal privacy interest would be invaded by disclosing the information, such as when the information is already public or required to be made public, or in cases where the individual's privacy interest is outweighed by a strong public interest in disclosure.

In making your request you should be as specific as possible when describing the records you are seeking. It is not necessary for you to provide the name or title of a requested record, but the more specific you are about the records or types of records that you seek, the more likely it will be that the DOJ component will be able to locate these records. For example, if you have been interviewed by a law enforcement component of DOJ (such as the FBI) in connection with a law enforcement investigation and you wish to request a copy of the interview report, your listing of the date and location of the interview, and the name of the interviewing agent and subject of the investigation, if known, will be helpful to the component in determining where to search and which records are responsive to your request.

In addition to the above-mentioned requirements for making a FOIA request, some DOJ components require additional specific information in order to process a request for particular types of records. For example, when an individual makes a FOIA request to the Executive Office for Immigration Review (EOIR) for his or her immigration records, EOIR requires that individual to provide his or her alien "A" number. Such special requirements are noted, where applicable, as part of the descriptions of components in Attachment B.

When a DOJ component receives your FOIA request, it ordinarily will send you a letter acknowledging the request and assigning it a tracking number. If the component requires additional information from you so that it can begin processing your request, it will contact you. Additionally, you should be aware that DOJ components 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 component would then search for records created during the time period you specify.

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, generally anyone can request access to any federal agency record. Privacy Act requests are more limited and can be made only by (a) U.S. citizens or aliens lawfully admitted for permanent U.S. residence, (b) who are seeking information about themselves, (c) 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, however, DOJ automatically treats applicable requests as being made under both the FOIA and the Privacy Act. In this way, requesters receive the maximum amount of information available to them under the law.

## V. Response Times

<https://thekeep.eiu.edu/jcba/vol0/iss7/7>

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Under the FOIA, all federal agencies are required to respond to a FOIA request within twenty business days, excluding Saturdays, Sundays, and legal holidays. This time period generally begins when the request is actually received by the FOIA office of the DOJ component that maintains the records sought. If your request was misdirected, the DOJ component receiving the request will forward it to the proper DOJ component. If DOJ takes more than ten days to route your request to the appropriate component, the twenty-day time period begins to run at that point, even if the appropriate component has not yet received your request. An agency is not required to send the releasable documents to you by the last business day; it can send you a letter informing you of its decision and then send you the documents within a reasonable time afterward.

Some DOJ components, such as the FBI and DEA, receive thousands of requests each year. Many of these requests require a line-by-line review of hundreds or even thousands of pages of documents. Although DOJ 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 component has a backlog of previously received requests that are awaiting processing. Some components use "multi-track" processing queues to manage their heavy FOIA workloads; components' descriptions of their multi-track processing systems are contained in Attachment B.

Under the FOIA, a component may extend the twenty-day response time for an additional ten business days when "unusual circumstances" exist, including the following situations: (1) the component needs to collect responsive records from separate offices; (2) the request involves a "voluminous" amount of records that must be located, compiled, and reviewed; or (3) the component needs to consult with another federal agency or other DOJ components that have a substantial interest in the responsive information. When such a time extension is needed, the component will notify you of this in writing and offer you the opportunity to modify or limit the scope of your request. Alternatively, you may agree to a different timetable for the processing of your request. The component's FOIA Public Liaison can assist you with this.

FOIA requesters may contact at any time a component's FOIA Requester Service Center to check on the status of their FOIA requests. As mentioned above, DOJ has established such a center for each of its components. There is also a FOIA Public Liaison named for each Service Center, whom FOIA requesters may contact if they are dissatisfied with the response of the component's FOIA Requester Service Center. (The individual names and telephone numbers are listed, on a component-by-component basis, in Attachment B.) FOIA requesters are strongly encouraged to make use of these services whenever they have a question or concern about their request.

## **VI. Expedited Processing**

Under certain conditions you may be entitled to have your request processed on an expedited basis. DOJ recognizes four specific standards by which requesters will be afforded expedited processing of a FOIA request or appeal. First, expedited processing will be granted if the lack of expedited treatment could reasonably be expected to pose a threat to someone's life or physical safety. Second, if an individual will suffer the loss of substantial due process rights, expedition is appropriate. In this regard, a request will not normally be expedited merely because the requester is facing a court deadline in a judicial proceeding. Third, expedition will be granted if 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. Finally, expedition is granted if the subject of the request is of widespread and exceptional media interest and the information sought involves possible questions about the government's

integrity which affect public confidence. Decisions to expedite under this fourth standard are made by DOJ's Director of Public Affairs.

A request for expedited processing must be accompanied by a statement setting forth the reasons why your request or appeal should be expedited. You should certify that the reasons you have given are true and correct. The component will be required to notify you of its decision whether to grant or deny expedited processing within ten calendar days after receiving your letter. If the component 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. (For information about filing administrative appeals, see Section X of this Reference Guide.)

## VII. Fees

There is no initial fee required to submit a FOIA request; in fact, in the majority of requests made to DOJ, no fees are ever charged. The FOIA does provide for the charging of certain types of fees in some instances.

For purposes of fee assessment only, the FOIA divides requesters into three categories. The first category includes commercial-use requesters, who may be charged fees for searching for records, "processing" the records (i.e., reviewing them to determine the application of FOIA exemptions), and duplicating them to respond to a request. The second category includes educational or noncommercial scientific institutions and representatives of the news media, who are charged only for duplication fees, and who are provided the first one hundred requested pages free of charge. The third category includes all other requesters, who are charged only for record searches and duplication. For non-commercial-use requesters there is no charge for the first two hours of search time or for the first 100 pages of duplication or their cost equivalent. DOJ currently charges ten cents per page for duplication. It charges an hourly search fee that roughly approximates the salary and experience level of the personnel conducting the search. In all cases, if the total fee does not exceed a minimum amount, currently \$14, DOJ 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, DOJ will assume that you are willing to pay fees of up to a certain amount, currently \$25. If a component estimates that the total fees for processing your request will exceed \$25, it will notify you in writing of the estimate and offer you an opportunity to narrow your request in order to reduce the fees. If you continue to seek all of the records involved, 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 thirty days of billing in the past, or if the estimated fees exceed \$250, you may be required to pay the estimated fees in advance -- that is, before the records are even processed. If you agree to pay fees and then fail to do so within thirty days of billing, you may be charged interest on your overdue balance and DOJ will not proceed with any further requests from you until payment in full has been made. If you agree to pay fees for a records search, 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, even if they are determined to be entirely exempt from disclosure. If you have any questions about a fee estimate or assessment you should feel free to contact the component's FOIA Requester Service Center or FOIA Public Liaison.

## VIII. 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.

## IX. Initial Request Determinations

Once the component has processed your request and any fee issues have been resolved, the component will send you a written initial determination. In the vast majority of cases, DOJ components 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 or three law enforcement exclusions. 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 component 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's nine 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 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. The three exclusions pertain to especially sensitive law enforcement and national security matters.

## X. Administrative Appeals

You may file an administrative appeal if you are not satisfied with a DOJ component's initial



response. You also may file an administrative appeal if you have requested expedited processing or a fee waiver and the component 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 a component.

You will be advised of your right to file an administrative appeal in the component's response containing the adverse determination. Ordinarily, your administrative appeal must be received within sixty days of the date of the component's determination letter. All appeals must be made in writing and addressed to:

Office of Information Policy  
U.S. Department of Justice  
Suite 11050  
1425 New York Avenue, N.W.  
Washington, D.C. 20530-0001

Both the front of the envelope and the administrative appeal letter should contain the notation "Freedom of Information Act Appeal." The Office of Information Policy also accepts administrative appeals by facsimile if sent to (202) 514-1009.

There is no specific form or particular language needed to file an administrative appeal. You should identify the component that denied your request and include the initial request number that the component assigned to your request and the date of the component's action. If no request number has been assigned, then you should enclose a copy of the component's determination letter. There is no need to attach copies of released documents unless they pertain to some specific point you are raising in your administrative appeal. You should explain what specific action by the component that you are appealing, but you need not explain the reason for your disagreement with the component's action unless your explanation will assist the appeal decision-maker in reaching a decision.

Administrative appeals from DOJ components are reviewed by an attorney in the Office of Information Policy. The attorney ordinarily will have available all of the files pertaining to the processing of your request and will make an independent determination as to whether the component has properly handled your request.

Under the FOIA, the Office of Information Policy is ordinarily required to make a determination on your administrative appeal within twenty business days. The Office of Information Policy may take one of several actions on your administrative appeal. It may affirm the component's action in full, in which case it will often identify the reason why the component's action was proper. Alternatively, it may affirm part of the component's action, but otherwise "remand" the request in part for the component to take some further action. Finally, under some circumstances, it may remand the request to the component in its entirety for further action. When a case is remanded, you will have an opportunity to appeal again to the Office of Information Policy if you are dissatisfied in any respect with the component's action on remand.

## **XI. Resolving Disputes**

As mentioned previously, each component has a FOIA Public Liaison who is a supervisory official

to whom you may turn if you are dissatisfied with the services received from the component's FOIA Requester Service Center. The FOIA Public Liaison can assist you throughout the request process, from working with you and the component 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. All of DOJ's FOIA Public Liaisons are listed in Attachment B and their contact information is also available on each component's website.

In addition, the Office of Government Information Services, 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)  
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.

## XII. Other Reference Materials

Other general sources of information about using the FOIA include:

- Your Right to Federal Records This pamphlet is a joint publication of the General Services Administration (GSA) and DOJ. It is available for sale from the Federal Citizen Information Center, Department 320N, Pueblo, CO 81009 or (888) 878-3256. This publication is also available on GSA's Federal Citizen Information Center website at [www.pueblo.gsa.gov](http://www.pueblo.gsa.gov) (click on "Federal Programs," then click on "More Books on this topic" and scroll down to the publication's title) and on DOJ's FOIA website under "FOIA Reference Materials" at: [http://www.justice.gov/oip/right\\_to\\_federal\\_records09.htm](http://www.justice.gov/oip/right_to_federal_records09.htm)
- A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records This report was published in 2005 by the Committee on Government Reform of the House of Representatives. It can be accessed on DOJ's FOIA website under "FOIA Reference Materials" at: <http://www.fas.org/sqp/foia/citizen.html>. It is also available for sale at the U.S. Government Printing Office by calling 1-866-512-1800.

Also, a more general publication, the Consumer Action Handbook, describes which federal agencies are responsible for specific consumer problems and where to write for assistance. Copies of this publication may be obtained for free by calling (888) 878-3256. This booklet also can be accessed on the General Services Administration's website at [www.consumeraction.gov](http://www.consumeraction.gov) (click on "view handbook"). The print version of this book can also be ordered online by going to [http://www.consumeraction.gov/caw\\_orderhandbook.shtml](http://www.consumeraction.gov/caw_orderhandbook.shtml).

- A general source of information about the federal government is The United States Government Manual. This manual describes all three branches of government. The United States Government Manual is issued annually by the Government Printing Office (GPO) and is available in most libraries. It can be purchased directly from the GPO. For pricing and ordering information, call toll-free 1-866-512-1800 or visit the online U.S. Government Bookstore at <http://bookstore.gpo.gov/>. A free text version is available on the GPO's website at [www.gpoaccess.gov/gmanual](http://www.gpoaccess.gov/gmanual).

Attachments:

[A -- Listing of FOIA contacts at all federal agencies](#)

[B -- Descriptions of DOJ components and related information, including contact information for FOIA Requester Service Centers and FOIA Public Liaisons](#)

[C -- Descriptions of major information systems](#)

[D -- Copy of Form DOJ-361 \(Certification of Identity\)](#)

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<sup>1</sup> 5 U.S.C. § 552 (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524.

Go to: [Reference Guide](#) // [DOJ FOIA Page](#)