

The Freedom of Information Act Overview

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FOIA & Privacy Acts Office

Agenda



- FOIA Basics
- Electronic FOIA (E-FOIA) and Transparency
- Confidential Business Information





FOIA Basics

The Freedom of Information Act



- Establishes the public's right to obtain *agency records* from the federal government
- “Any person” can file a FOIA request – U.S citizens, foreign nationals, organizations, associations, and state/local governments, etc.

Which Agencies Comply with FOIA?



- Subject to the FOIA –
 - All agencies within the executive branch of the federal government, including the Office of the President
- Not Subject to the FOIA –
 - State/local governments, the courts, Congress, private citizens, or corporations



What are Agency Records?

- Records –
CREATED or
OBTAINED by an
agency.
- Very broad:
Includes paper
documents, tapes,
photos, electronic
records, etc.





Disclosure -vs- Protecting Information



- Federal Agencies must review records to DISCLOSE information

HOWEVER

- Disclosure is not absolute – 9 exemptions to protect information from disclosure



Disclosure –vs- Protecting Information



FOIA Exemptions

1. As authorized by Executive Order or classified national security information.
2. Internal personnel rules and practices, including:
 - Trivial administrative data, and
 - Information that would risk circumvention of agency rules, regulations and a law.



Disclosure –vs- Protecting Information



FOIA Exemptions

3. Information exempt from release by other federal statutes.
4. **Confidential business information and trade secret information**

Disclosure –vs- Protecting Information



FOIA Exemptions

5. Inter- and intra-agency privileged material, including:
 - Pre-decisional advice, opinions, recommendations,
 - Attorney-client communications, and
 - Attorney-work products.

6. Personnel, medical, and similar files where release could result in a clearly unwarranted invasion of privacy.



Disclosure –vs- Protecting Information

FOIA Exemptions

7. Law enforcement records, but only those where release:
 - Could interfere with enforcement proceedings,
 - Would deprive a person of the right to an impartial adjudication,
 - Could constitute an unwarranted invasion of privacy
 - Would disclose law enforcement techniques, methods, guidelines, and
 - Could endanger the life or physical safety of any individual.



Disclosure –vs- Protecting Information



FOIA Exemptions

8. Information that is contained in or related to the examination, operating, or condition reports... prepared by an agency responsible for the regulation/supervision of financial institutions.

9. Geological information and data, including maps, concerning wells



Transparency and E-FOIA



**“A democracy requires
accountability, and
accountability requires
transparency”**

- President Barack Obama





Achieving Transparency



Agencies are to:

- ***Proactively*** post information online
- Anticipate interest in Agency records
- Utilize technology – databases and the web
- Increase the amount of information on the APHIS E-FOIA Reading Room

E-FOIA Reading Room



What is the purpose of the E-FOIA Reading Room?

- Creates informed citizens
- Quickly provides information to the public and satisfies public demand
- Public does not have to make a FOIA request



E-FOIA Reading Room

How does APHIS
Proactively disclose
information?

- Routinely make certain types of records available to the public for inspection and copying
- Ensure that records are available in our electronic reading room

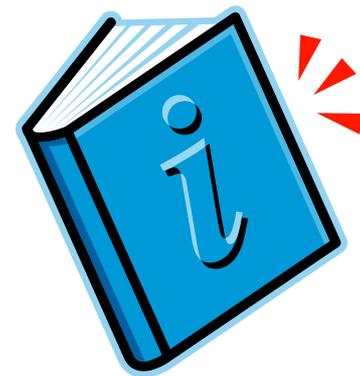


E-FOIA Reading Room



What should be placed in the E-FOIA Reading Room?

- Final Opinions & Orders
- Policies & Interpretations
- Staff Manuals & Instructions
- Hot Topics
- Discretionary Disclosures



Benefits of Transparency

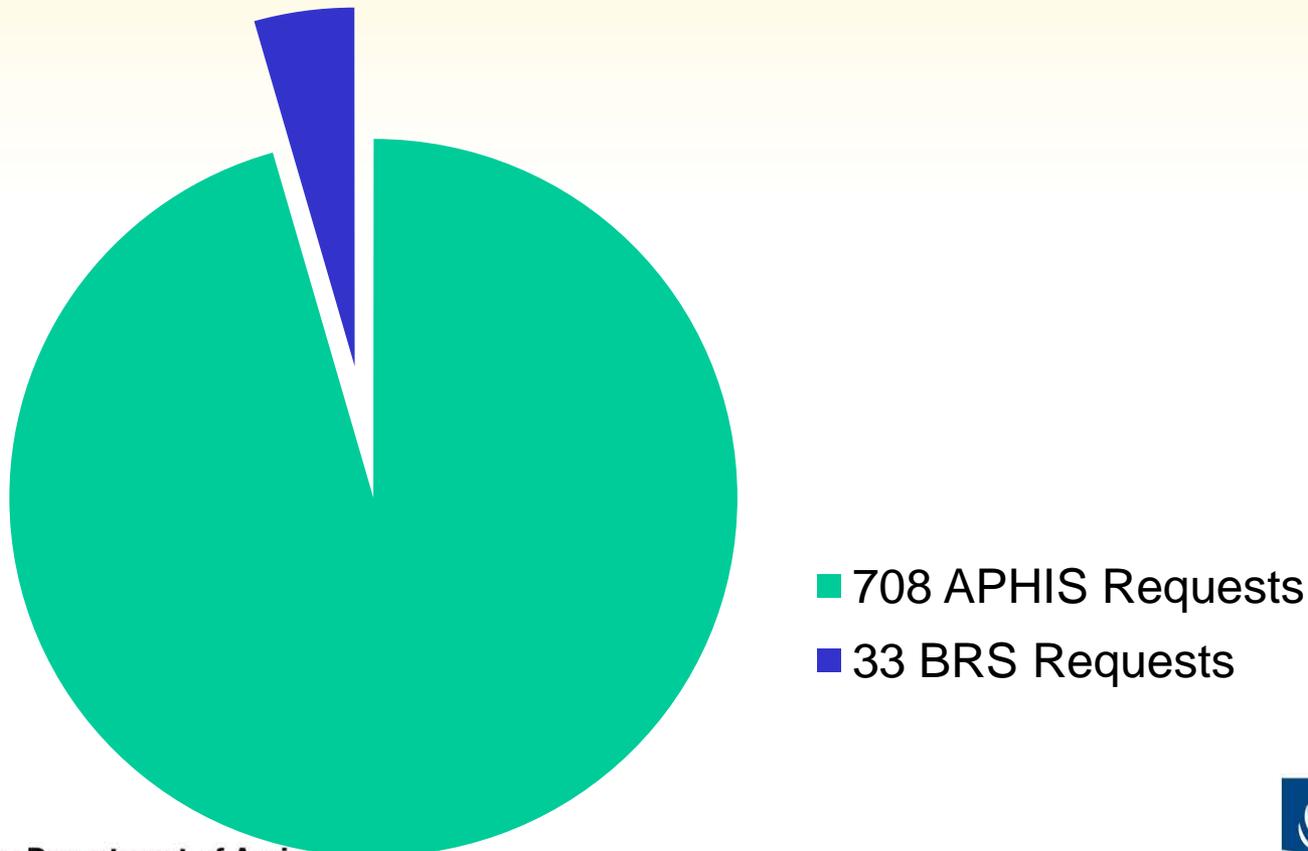
- Provides the public a better understanding of APHIS
- Increases our stakeholder engagement and collaboration
- Increases access to information



BRS & Transparency



FY10 - How Many Requests Do We Receive?





BRS & Transparency



FY 10 BRS Responses

- Closed 48 BRS Requests
 - Approximately 12,000 pages of records

- Requesters asked for
 - Petitions, Permits, and Notifications



BRS & Transparency



What Does Our FOIA Reading Room Look Like?

Browse by Audience

Select an Option

Browse by Subject

- ▶ Animal Health
- ▶ Animal Welfare
- ▶ Biotechnology
- ▶ Emergency Preparedness and Response
- ▶ Import and Export
- ▶ International Services
- ▶ Permits
- ▶ Plant Health
- ▶ Regulations and Assessments
- ▶ Wildlife Damage Management

Before submitting a FOIA request, please check to see if the information you are requesting is available on APHIS Web site.

The FOIA Electronic Reading Room contains documents specifically identified for inclusion by the Freedom of Information Act (FOIA), as well as documents for which we have received multiple FOIA requests.

APHIS only maintains an electronic reading room. If you should need assistance using the APHIS electronic reading room, you may contact the FOIA Office at 301-734-8296

- [APHIS eFOIA Reading Room](#)

APHIS FOIA Contact Information

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 Legislative and Public Affairs
 Freedom of Information Act
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 Riverdale, MD 20737

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 Email: foia.officer@aphis.usda.gov

The Freedom of Information Act (5 U.S.C. 552)

Related Topics

- [How to Make a FOIA request](#)
- [eFOIA Reading Room](#)
- [Learn more about APHIS Programs and Offices](#)
- [USDA FOIA Information](#)
 - [Annual Reports](#)
 - [Reading Room](#)
- [USDA FOIA Regulations](#)
- [USDA FOIA Reference Guide](#)

Quick Links

- [Programs and Offices](#)
- [DOJ Guides to the Freedom of Information Act](#)
- [The Privacy Act of 1974](#)
- [Open Government Act](#)
- [President Obama Memorandum](#)
- [Your Right to Federal Records](#)

Documents Released by Request

This category consists of any records that have been processed and disclosed in response to a FOIA request that APHIS determines have become--or are likely to become--the subject of multiple requests for substantially the same records.

- [eFOIA Requests](#)

Animal Health

- [Animal Diseases](#)
- [Animal Health Reports](#)
- [Animal Health Monitoring and Surveillance](#)
- [State Veterinarian in Charge](#)

Animal Welfare

- [Animal Welfare Act](#)
- [Animal Welfare Act Dockets - Judicial Officer Decisions](#)
- [Enforcement Actions](#)
- [Horse Protection Act Information](#)
- [Pet Travel](#)
- [Publications and Reports](#)
 - [List of Active Licensees and Registered Facilities](#)
 - [Inspection Reports](#)

Memorandum

- [Your Right to Federal Records](#)

by Audience

Option

by Subject

- al Health
- al Welfare
- chnology
- gency Preparedness Response
- rt and Export
- ational Services
- its
- Health
- lations and ssments
- fe Damage gement

FOIA REQUESTS:
[2010](#)

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http://www.aphis.usda.gov/foia/foia_requests.shtml

loomacres

View Favorites Tools Help

USDA - Animal and Plant Health Inspection Service (A...



Filter by Audience

Filter Option

Filter by Subject

Animal Health

Animal Welfare

Biotechnology

Emergency Preparedness
Response

Import and Export

International Services

Permits

Plant Health

Regulations and
Assessments

Risk and
Life Damage
Management

FOIA REQUESTS: [FOIA Requests](#) > 2010

[Animal Care \(AC\)](#)

[Biotechnology Regulatory Services \(BRS\)](#)

[Executive Correspondence \(EC\)](#)

[Freedom of Information Act \(FOIA\)](#)

[Investigative and Enforcement Services \(IES\)](#)

[Marketing and Regulatory Programs Business](#)

[Services \(MRBPS\)](#)

[Plant Protection and Quarantine \(PPQ\)](#)

[Veterinary Services \(VS\)](#)

[Wildlife Services \(WS\)](#)

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- ▶ Permits
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- ▶ Regulations and Assessments
- ▶ Wildlife Damage Management

FOIA REQUESTS: [FOIA Requests](#) > [2010](#) > [Biotechnology Regulatory Services \(BRS\)](#)

- [10-012 - Monsanto Co - Petition 09-183-01p](#)
- [10-013 - Monsanto Co - Petition No. 09-201-01](#)
- [10-109 - Permit Application 08-337-106r](#)

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E-FOIA and Confidential Business Information

Confidential Business Information



How Does APHIS Obtain Confidential Business Information (CBI)?

- Business submitters are **required** to provide the government with information
 - Required by a law, regulation, or executive order -Contracts, licensing, regulatory oversight
- Business submitters may **give** the government information

Confidential Business Information



How does the FOIA protect CBI?

Exemption 4 of the FOIA protects from disclosure:

1. Trade Secrets
2. Commercial or financial information
 - Obtained from a person (individuals, partnerships, corporations, and governments), AND
 - Privileged or Confidential



Purpose of Exemption 4

The exemption protects the interests of the gov't and the business submitter:

- Encourages submitters to provide gov't with reliable and accurate information
- Protects information that will cause competitive harm



Confidential Business Information



Exemption 4 - Partnering with Business Submitters

- Must advise the submitter about any FOIA request if APHIS believes that information could cause substantial competitive harm
- Ask the submitter whether disclosure would cause substantial competitive harm

Submitter Notice Process

1. Provide the submitter with a copy of the request and the requested records
2. Advise the submitter to identify any information that should be protected under Exemption 4

Submitter Notice Process – Cont'd



3. Require the submitter to detail in writing how release would adversely impact their competitive position or commercial interests
4. Afford the submitter a reasonable time period to provide written justifications
5. Agency evaluates the submitter's comments



Submitter Notice Process



6. If APHIS completely agrees with the submitter comments – the Agency will withhold the requested information
7. However, if APHIS does not agree with some (or all) of the submitter's comments, APHIS will explain in a letter of intent why the responsive information will be disclosed

Submitter Notice Process

8. The Agency will advise the submitter of the date the information will be disclosed.
9. The submitter is notified of their right to go to court to keep the agency from releasing information the business submitter wants withheld.



Other Considerations



- Submitter Notice Process is governed by Executive Order 12600
- If the Agency does not hear from the business submitter – we will presume you have no objections to the release of information

Q & A



Questions?

