



# **Frequently Asked Questions about OPIC's Freedom of Information Act Program**

**April 2014**

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## What is the “FOIA”?

The Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, is a Federal law that provides for public access to non-public agency records. Any record that is in OPIC’s possession and control is considered an agency record and is subject to the FOIA. The requested records will be provided in full, unless one or more of the nine FOIA exemptions applies. OPIC implements the FOIA through its [FOIA regulations](#), located at 22 C.F.R. Part 706.

## What records are already publically available?

The FOIA requires agencies to proactively post certain materials. A linked list of these documents is available through OPIC’s FOIA page at [www.opic.gov/foia](http://www.opic.gov/foia). In addition to these mandatory postings, OPIC also posts its Annual Reports, brief project descriptions, and other useful information on its website. Links to some of these are provided through the OPIC FOIA page, however the website is frequently updated and requesters are urged to browse the website before filing a FOIA request.

## What other records can I request?

A FOIA request can be made for any agency record. You should be aware that the FOIA does not require agencies to do research for you, to analyze data, to answer questions, or to create records in response to a request.

## Where do I send the request?

FOIA requests can be e-mailed to [foia@opic.gov](mailto:foia@opic.gov) or mailed to:

FOIA Director (LA)  
Overseas Private Investment Corporation  
1100 New York Avenue, NW  
Washington, DC 20527

## What information should I include in my request?

There is no special form for a FOIA request; however certain information must be included. An example is provided in [Exhibit A](#). The FOIA request:

- Must be in writing.
- Must include your name, address, and phone number.
- Must include a fee authorization or a [request for a waiver](#). A fee authorization may be for all fees or fees up to a cap, i.e. fees up to \$50.00. If your request does not contain a fee authorization, OPIC will consider your request an agreement to pay up to \$25.00 in fees.
- Must reasonably describe the records you seek. In making your request you should be as specific as possible when describing the records you seek. The more specific you are about the records or the types of records you seek, i.e., including a document title, date (range), contract number, sponsor name, or other limiting information, the more likely it is that OPIC will be able to locate your records quickly.
- May state your intended use of the records for purposes of qualifying for a [lower requester use fee category](#).
- May include the format you wish the records to be delivered in (electronic copies via e-mail, paper copies, etc.).

## What are the requirements for requesting records on myself?

If you are seeking records on yourself, your request will be processed under both the FOIA and the Privacy Act. While the FOIA covers all agency records, the Privacy Act covers only records about an individual kept in a system of records retrievable by that individual's name or other identifier. More information on OPIC's Privacy Act regulations can be found at [22 C.F.R. 707](#).

When seeking records about yourself you must verify your identity. This verification is required in order to protect your privacy and to ensure that private information about you is not disclosed inappropriately.

to someone else. You must provide either 1) a notarized statement or 2) a statement signed under 28 U.S.C. § 1746 stating that you are the person you say you are, along with a copy of a government issued ID. If you choose to certify the statement under 28 U.S.C. §1746, your statement should end “I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct. Executed on [date]. [Your signature].” OPIC may request further information from you if necessary to verify your identity. Failure to verify your identity will result in your request being treated as a third party request for your information.

## **What are the requirements for seeking information about someone else?**

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 without that person’s permission. If you have that person’s permission, you may submit either a notarized authorization signed by that individual, or a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. § 1746 along with a copy of their government issued ID. If that person chooses to certify the statement under 28 U.S.C. §1746, their statement should end “I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct. Executed on [date]. [Your signature].”

## **What fees do I have to pay?**

The types of fees are:

Search time, the time spent locating the records or locating information within a record.

Review time, the time spent determining if the records can be released or withheld under the FOIA exemptions, including notification of business submitters when their information has been requested.

Duplication, the time spent converting the records into a releasable, or the requested, format, including the costs of CDs or postage.

OPIC charges fees based on the average hourly wage plus overhead costs of its staff.

Administrative staff time is charged at \$33.50 per hour.

Professional staff time is charged at \$41.50 per hour

Photocopies are charged at \$0.10/page, otherwise duplication is charged based on the staff time consumed providing the records in the requested format plus any postage or disk costs.

The fees paid by a requester are based on the requester’s use of the information. Requesters intending to use the information for a commercial purpose are charged all of the above. Requesters from the news media, intending to use the information for news dissemination, are charged only for reproduction after the first 100 photocopied pages or \$10.00 of other media. Requesters who intend to use the

information for a non-commercial educational institution's purpose or a non-commercial scientific institution's purpose, not for their own individual use, are charged only for reproduction after the first 100 photocopied pages or \$10.00 of other media. Note that using the information to obtain school credit is not an educational institution use. All other requesters are charged for search after the first two hours and for reproduction after the first 100 photocopied pages or \$10.00 of other media. If you believe you qualify for a lower requester use category such as news media or non-commercial educational or scientific use, please explain how your request qualifies in your letter.

## **When will OPIC waive fees?**

OPIC will waive or reduce fees when it can determine, based on your submission, that disclosure of the requested information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interests of the requester. Requests for reduced or waived fees should be included in your original request. If you wish to request reduced or waived fees, you must show all six of the following factors for each type of record you are requesting:

1. *Operations or activities of the federal government.* The subject of the request directly concerns identifiable operations or activities of the federal government.
2. *Likely to contribute.* The disclosable portions of the requested records will be meaningfully informative about government operations or activities. The disclosure of information that is already in the public domain, in either the same or substantially identical form, would not contribute to such understanding where nothing new would be added to the public's understanding.
3. *Public understanding.* The disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, not just your individual understanding or the understanding of a narrow group of people. Your expertise in the subject area as well as your ability to effectively disseminate the information is considered in determining this factor.
4. *Contribute significantly.* The degree to which the public's understanding of the subject will be increased must be significant.
5. *Commercial interest of the requester.* What is your commercial interest?
6. *The public interest as defined in items 1-4 is greater than your commercial interest as defined in item 5.*

The best way to ensure fast and low cost processing of your request is to describe the records requested with as much detail as possible. This will enable OPIC to locate the records more quickly and to avoid searching and reviewing information you do not wish to receive. The inability to pay is not a legal basis for granting a fee waiver.

## **When can I expect a response to my request?**

OPIC generally processes requests in the order that they are received and strives to complete requests within twenty working days. In requests that constitute "unusual circumstances," OPIC may extend this to thirty working days. If your request will take longer than thirty working days, OPIC will inform you of

its completion estimate and provide you an opportunity to either alter your request so that it may be completed within the normal processing time or to agree to a longer processing time.

Processing on an expedited track is offered for requests that involve either:

- 1) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- 2) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person who is primarily engaged in disseminating information;

If you wish to request expedited processing and your FOIA request meets one of the above requirements, you must submit a statement, certified to be true and correct, explaining the basis of your request. You will be notified within ten days of your request for expedited processing whether your request has been granted.

The best way to ensure fast and low cost processing of your request is to describe the records requested with as much detail as possible. This will enable OPIC to locate the records more quickly and to avoid searching and reviewing information you do not wish to receive.

### **How will OPIC respond to my request?**

Generally OPIC will respond to you once it has completed processing and any fee issues have been resolved. The response will provide a brief description of any material withheld under one of the nine FOIA exemptions and will include any documents disclosed to you. If pages of information have been withheld in full, OPIC will estimate the number of pages or the volume of withholdings. If part of a record is withheld and part is released, the withheld portion is generally marked on the record itself. You will be provided with a brief explanation for any withholdings.

### **What types of information can OPIC withhold?**

The FOIA requires agencies to release requested information unless it falls into one of nine exemptions. All nine exemptions are described [here](#), but OPIC's most frequently used exemptions are b(4), which protects confidential commercial information; b(5), which includes legal privileges such as protection for agency deliberations and attorney-client communications; and b(6) which protects personal privacy.

### **Can I appeal OPIC's response?**

If you are not satisfied with OPIC's determinations on your information request, fee waiver request, or expedited processing request, you may file an administrative appeal to the Vice President and General Counsel. Such appeal must be written and addressed to:

Vice President and General Counsel  
Overseas Private Investment Corporation  
1100 New York Avenue, NW  
Washington, DC 20527

Both the envelope and the letter must be labeled: "FREEDOM OF INFORMATION ACT APPEAL" and should include the FOIA number of your request. In the appeal, you should explain what specific action you are seeking and which determinations you are appealing.

The appeal will be determined by the Vice President/General Counsel, or his or her delegate. A determination on your appeal will be made within twenty working days of OPIC's receipt unless an extension of up to ten working days is deemed necessary due to unusual circumstances. The determination letter will explain OPIC's reasons for upholding or reversing the denial. If the denial is reversed in whole or in part, any newly released records will be released to you promptly.

If you are not satisfied with the results of your administrative appeal, you may seek mediation through the [Office of Government Information Services](#) or relief through a FOIA lawsuit in federal court. Information on both options will be provided in the appeal determination should a denial be upheld.

## **What will OPIC do with my request and appeal letters and correspondence?**

OPIC maintains all FOIA correspondence for two to six years in accordance with federal records regulations. These are agency records and subject to the FOIA themselves. In addition, OPIC maintains a log of all FOIA requests, including the requester's name, the requester's company, what was asked for, what fees were charged, and what OPIC's determination was. OPIC generally considers the information in its log to be public information unless the requester is asking for information about him or herself under the Privacy Act. Any other requests for exemption will be considered on a case-by-case basis.

## **I am submitting confidential commercial information to OPIC, how can I protect that information?**

For purposes of the FOIA, confidential commercial information is information that would be exempt from disclosure under FOIA exemption b(4). Exemption b(4) protects only 1) trade secrets, 2) confidential commercial information that would cause you competitive harm if released, and 3) if the information was not required to apply for or receive OPIC assistance, information that you do not normally make public. When submitting this type of information to OPIC, you may mark the information as "CONFIDENTIAL COMMERCIAL INFORMATION." Such markings will be taken into consideration when OPIC processes requests for the information, but will not be considered dispositive. These markings will expire five years after the project repayment or ten years after submission, whichever is later, unless extended in writing. Please note that regardless of whether your information is marked as confidential commercial information, OPIC will notify you when someone requests your commercial information under the guidelines below.

## **Will OPIC notify me if someone requests my commercial information?**

If OPIC receives a request for your commercial information and the information is either [marked as confidential commercial information](#) or OPIC believes that it may contain confidential commercial information, OPIC will use reasonable efforts to notify you. OPIC need not notify you, however, if the information is already public, is required to be released by a law other than the FOIA, or if OPIC determines that it is exempt under the FOIA and will be withheld.

The notification will contain a description of or a copy of the responsive records that contain your confidential commercial information and provide you a reasonable time to provide comments in objection to the release of the information. If making an objection under exemption b(4), which exempts certain confidential commercial information submissions, you must provide OPIC with the following information:

- 1) A designation of what information you believe is exempt. Designating an entire document as exempt is not acceptable unless the entire document is, in fact, exempt. You may describe the exempt information or you may provide OPIC with a marked copy of the records.
- 2) Why the information is exempt. In other words, why release of the information will cause you competitive harm, or both why your submission to OPIC was not required to request or receive OPIC assistance and why you or your company would not ordinarily release that information to the public. Please note that if OPIC required the information in order for you to be considered for assistance, the information may only be withheld if you show its release will cause substantial competitive harm. A failure to specify why the information is exempt may result your objections being rejected.

An example of a comments letter may be found in [Exhibit B](#). All comments are reviewed on a case by case basis and following the example letter does not guarantee that OPIC will adopt your comments. Any comments or objections submitted during this process are subject to the same FOIA request and notice rules as the original information.

## Exhibit A: Sample FOIA Request

[March 3, 2014]

FOIA Director  
Overseas Private Investment Corporation  
1100 New York Avenue, NW  
Washington, DC  
RE: FOIA Request

Dear FOIA Director,

Under the Freedom of Information Act, 5 U.S.C. § 552, I request a copy of [the finance agreement between Johnny Appleseed Corporation and OPIC for a \$10 million direct loan to build an apple orchid in Fruitsylvania. A press release announcing this loan was issued by OPIC on January 1, 2000.]

I agree to pay fees for this request up to [\$100.00]. Please notify me if you expect fees to exceed that amount. I would prefer to receive the files in [electronic format at jonorangeseed@...]

Thank you,

[Jon Orangeseed]  
[Apples & Oranges Co.  
123 Main Street  
Anywhere, ST 12345]  
[(555) 555-5555]

## Exhibit B: Sample Comments Letter

April 1, 2014

FOIA Director  
Overseas Private Investment Corporation  
1100 New York Avenue, NW  
Washington, DC  
RE: FOIA Number 2014-00123

Dear FOIA Director,

This letter is in response to your March 25, 2014 letter informing Johnny Appleseed Corporation (JAC) of a FOIA request for its finance agreement with OPIC. JAC believes that the information marked on the attached pages 8, 14, 22-24, and 30-35 is confidential commercial information that should be withheld under FOIA exemption b(4).

The information on pages 8 and 22-24 reveal JAC's estimated costs and profit in building the orchid. Releasing this information to the public would cause substantial competitive harm because it would enable JAC's competitors to know what JAC expects to charge for its final product as well as what it is required to charge to break even. This knowledge would enable JAC's competitors to undercut JAC's prices and drive JAC out of the market by reducing JAC's revenue below costs.

The information on pages 14 and 30-35 reveal JAC's proprietary apple orchid plans. JAC has spent thousands of dollars and put several of its most experienced staff to work on a viable plan for growing apples in Fruitsylvania. Through JAC's efforts, a strain of apple more suited for the weather of Fruitsylvania has been developed and the optimal irrigation, shade, and altitude determined. Release of this information to the public would cause substantial competitive harm because it would enable competitors to take advantage of JAC's substantial time, effort, and costs without investing similar resources. Currently JAC is the only apple grower who is able to plant a successful apple orchid in these types of climates, but JAC is still recovering the costs of this advance. If competitors were able to gain this information for free or for cheap, JAC's competitive advantage would be eliminated, but not its costs or time. Release of this information would therefore not only harm JAC's competitive position, it would put JAC in a worse position than its competitors.

For the above reasons, JAC requests that you withhold the information marked on the attached sheets. If you have any questions, please call me at 555-555-5555.

Thank you,

Johnny Appleseed  
Johnny Appleseed Corporation  
124 Main Street  
Anywhere, ST 12345