

Freedom of Information Act (FOIA) Reference Guide



**Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573**

December 2016

Overview

This guide provides general information regarding the Freedom of Information Act (FOIA) and procedures for making a request under the FOIA to the Federal Maritime Commission (FMC). The FOIA, 5 U.S.C. § 552, a disclosure statute, provides that every person has the right to request access to federal agency records or information. Federal agencies, such as the FMC, are required to disclose records upon receiving a written request, with the exception of records that are protected from disclosure by the nine exemptions and three exclusions of the FOIA. This guide is designed to familiarize you with the specific procedures for making a FOIA request to the FMC and not intended to be a comprehensive discussion of the complex issues associated with the FOIA. For additional information regarding the FMC FOIA program, visit our website at www.FMC.gov and select FOIA at the top right portion of your screen. The formal rules for making a FOIA request to the FMC are found in Part 503 of Volume 46 of the Code of Federal Regulations (CFR), [46 C.F.R. part 503](#).

Information available from the FMC that does not require a FOIA request:

A great deal of Agency information is publicly available and does not require a FOIA request. For a full description of documents that are publicly available see the Commission's regulations at: [46 C.F.R. §§ 503.21-22](#). If you are uncertain whether you need to file a FOIA request to receive information, please call the FOIA Service Center at 202-523-5707 for assistance.

The following records are available without the requirement of a FOIA request and can be found on the Commission's Website or by contacting the Office of the Secretary, Federal Maritime Commission, 800 North Capitol St. N.W., Washington, DC 20573, secretary@fmc.gov.

- (1) Proposed and final rules and regulations of the Commission including general substantive rules, statements of policy and interpretations, and rules of practice and procedure.
- (2) Federal Maritime Commission reports.
- (3) Official docket files in all formal proceedings including, but not limited to, orders, final decisions, notices, pertinent correspondence, transcripts, exhibits, and briefs, except for materials which are the subject of a protective order.
- (4) News releases, consumer alerts, Commissioner statements, and speeches.
- (5) Approved summary minutes of Commission actions showing final votes, except for minutes of closed Commission meetings which are not available until the Commission publicly announces the results of such deliberations.
- (6) Annual reports of the Commission.
- (7) Agreements filed or in effect pursuant to section 5 (46 U.S.C. 40301(d)-(e), 40302-40303, 40305) and section 6 (46 U.S.C. 40304, 40306, 41307(b)-(d)) of the Shipping Act of 1984.
- (8) List of FMC-licensed and bonded ocean transportation intermediaries.

(9) Notification of ocean transportation intermediaries license applications, revocations, and suspensions.

(10) General descriptions of the functions, bureaus, and offices of the Commission, phone numbers and email addresses, as well as locations of Area Representatives.

(11) Information about how to file a complaint alleging violations of the Shipping Act, and how to seek mediation or alternative dispute resolution services.

(12) Commonly used forms.

(13) Final and pending proposed rules.

(14) Access to statements of policy and interpretations as published in part 46 C.F.R. §545.

(15) Lists of the location of all common carrier and conference tariffs and publicly available terminal schedules of marine terminal operators.

Information not available under the FOIA

While the focus of FOIA is on making government information available to the public, the statute recognizes that certain types of information should not be disclosed. Thus, FOIA provides nine categories of exemptions from the general mandatory disclosure rule. These exemptions are:

1. Classified documents
2. Internal personnel rules and practices
3. Information exempt under other laws
4. Confidential business information
5. Internal government communications
6. Personal privacy
7. Law enforcement
8. Financial institutions
9. Geological information

Pursuant to number (3) in exemption categories above, the following is a list of the most common statutes pertaining to documents requested from the Commission and a brief description of information exempt from disclosure:

46 U.S.C. § 40306 – Agreement information and documents filed with the Commission (other than the actual Agreements) under 46 U.S.C. § 403

26 U.S.C. §§ 6103, 6105 - Certain tax return information, to include taxpayer/employer identification numbers

46 U.S.C. § 40502(b)(1) - Service Contracts entered into by an individual ocean common carrier or an agreement

5 U.S.C. § 574 - Dispute resolution communication between a neutral and a party to the dispute

Congress also provided special protection in the FOIA for three narrow categories of law enforcement and national security records. The provisions protecting those records are known as “exclusions.” The first exclusion protects the existence of an ongoing criminal law enforcement investigation when the subject of the investigation is unaware that it is pending and disclosure could reasonably be expected to interfere with enforcement proceedings. The second exclusion is limited to criminal law enforcement agencies and protects the existence of informant records when the informant’s status has not been officially confirmed. The third exclusion is limited to the FBI and protects the existence of foreign intelligence or counterintelligence, or international terrorism records when the existence of such records is classified. Records falling within an exclusion are not subject to the requirements of the FOIA. If it is determined that any of the information requested falls into one of the exempted categories/exclusions, the entire record may be withheld, or sections of it will be redacted or omitted.

How to file a FOIA request with the FMC

You may submit a FOIA request by email, mail, or fax. When submitting a FOIA request, include the words "FOIA Request" in the subject line. FOIA requests must be directed to the Secretary of the Commission and submitted through one of the following formats:

(1) Email: FOIA@fmc.gov

(2) Mail:

Secretary (FOIA)
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573, or

(3) Fax: 202-523-0014

The request must reasonably describe the record or records sought. In describing the records, you should be as specific as possible with regard to names, dates, places, events, subjects, etc. The more specific you are about the records or types of records that you are seeking, the more likely it will be located. A FOIA request can be made for any agency record. However, as mentioned above there are statutory exemptions that authorize the withholding of certain information. When the FMC does withhold information, it will specify which exemption of the FOIA permits the withholding. You should be aware that the FOIA does not require agencies to research, analyze data, answer questions, or create records in order to respond to a request. It is also important to include your contact information on the request.

Expedited Processing

Under certain conditions you may be entitled to have your request processed on an expedited basis. The Secretary will provide for expedited processing of request for

records when the person requesting the records can demonstrate a compelling need as described in [46 C.F.R. § 503.32\(e\)](#).

Fees

There is no initial fee required to submit a FOIA request. The FOIA does provide for processing fees in certain instances. Although, in the majority of requests made to the FMC, no fees are charged. For information regarding FOIA processing fees please see [46 C.F.R. § 503 Subpart F](#).

Administrative Appeals

You may file an administrative appeal if you are not satisfied with any adverse determination in response to your FOIA request. Appeals should be submitted to the Chairman of the Federal Maritime Commission pursuant to [46 C.F.R. § 503.32](#).

Contact information regarding FOIA requests submitted to the FMC

Always feel free to contact the FMC FOIA Service Center to ask questions regarding the FMC FOIA process, or a submitted FOIA request at 202-523-5707. Also, the FMC FOIA Public Liaison is available at 202-523-5725.

The Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies and can be reached at 202-741-5770 or 1-877-684-6448.