



**A STEP-BY-STEP GUIDE TO FILING A FOIA LAWSUIT**  
June 20, 2023

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## **I. Introduction**

Records held by federal agencies often provide information critical to determining whether immigrants are eligible for certain immigration benefits or relief from removal. In most cases, the only way to obtain these records is through a Freedom of Information Act (“FOIA”) request. Sometimes a FOIA lawsuit may be necessary to obtain these records because agencies are slow to respond to FOIA requests, improperly apply exemptions to redact documents, or do not conduct an adequate search for documents.

This toolkit<sup>1</sup> provides immigration practitioners a step-by-step guide to filing a lawsuit under the FOIA. This guide briefly explains certain FOIA provisions to address how these requirements impact a FOIA lawsuit, but it does not provide an in-depth analysis of the law. For more detailed information about FOIA and specific guidance on filing FOIA requests, please refer to the American Immigration Council’s Practice Advisory—Freedom of Information Act and Immigration Agencies.<sup>2</sup>

## **II. Steps to take before filing a FOIA complaint in federal court**

Filing a complaint in federal court is a relatively straightforward process, but it requires a certain level of familiarity with the administrative process, including exhausting administrative remedies, before filing a lawsuit.

### **A. Timing considerations and exhaustion of administrative remedies**

Under FOIA, an agency is required to determine whether to comply with a records request within 20 business days.<sup>3</sup> Under certain circumstances, an agency may extend the response period for an additional 10 business days.<sup>4</sup> An agency often sends an email to requesters acknowledging receipt of the FOIA request. The email also provides the requesters with a tracking number and informs requesters if the agency invokes the 10-day extension allowed by the law. In response to

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<sup>1</sup> **This toolkit is for informational purposes only.** Samples provided as part of this toolkit are for guidance and must be revised to fit each individual situation.

<sup>2</sup> American Immigration Council, *Freedom of Information Act and Immigration Agencies Practice Advisory*, May 2021, [https://www.americanimmigrationcouncil.org/sites/default/files/practice\\_advisory/practice\\_advisory\\_foia\\_for\\_immigration\\_lawyers\\_2023.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/practice_advisory_foia_for_immigration_lawyers_2023.pdf). Practitioners should also review American Immigration Lawyers Association, *AILA’s FOIA Toolbox: A Practical Guide to Obtaining Records for Immigration Cases through FOIA and Other Document Requests* (Mark A. Prada and Anam Rahman eds., 2022).

<sup>3</sup> 5 U.S.C. § 552(a)(6)(A)(i).

<sup>4</sup> 5 U.S.C. § 552(a)(6)(B)(i).

a FOIA request, agencies are required by the FOIA to issue a determination letter,<sup>5</sup> which usually is accompanied by records found by the agency to be responsive to the request.<sup>6</sup>

When an agency issues an adverse determination and properly notifies the requester, the requester must file an administrative appeal to properly exhaust remedies before going to court.<sup>7</sup> Importantly, even if an agency makes a determination on a FOIA request after the statutory time period has expired, the requester still must appeal before filing suit.<sup>8</sup>

## **B. Issues to be addressed in the administrative appeal**

An administrative appeal, which can be a letter to the agency's designated appeals unit, should raise all of the requester's concerns about the agency's response to the FOIA request.<sup>9</sup> The letter should specifically state the basis for the appeal and provide evidence, as well as cite relevant case law. The appeal letter may challenge some or all of the following:

- *Adequacy of the agency's search.* This issue may arise when an agency informs the requester that there were no records found. If the existence of responsive documents is evidenced elsewhere, it will be useful to include such evidence in the appeal. For example, a FOIA request to U.S. Customs and Border Protection (CBP) for a client's proof of admission may yield no records found, but ICE included information about the client's admission in the Notice to Appear.
- *Redactions based on FOIA's exemptions.*<sup>10</sup>
- *Denial of a request for expedite.* Requesters may seek to have their requests expedited if they meet certain conditions.<sup>11</sup> While a denial of a request to expedite may be administratively appealed, U.S. Department of Homeland Security (DHS) regulations state that requesters are not required to administratively appeal an adverse determination for expedited processing before seeking court review.<sup>12</sup>
- *Denial of a fee waiver request.*

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<sup>5</sup> 5 U.S.C. § 552(a)(6)(A)(i). The determination letter must convey the agency's determination and the reasons for it, notify the requester of the availability of the agency's FOIA Public Liaison, and advise the requester of their right to appeal within no less than 90 days and the right to seek dispute resolution services from the FOIA Public Liaison or from the Office of Government Information Services. *See also* Office of Information Policy, U.S. Dep't of Justice, *Implementation Checklist and Sample Language for OIP Guidance on New Requirements for FOIA Response Letters and Notices Extending the FOIA's Time Limits Due to Unusual Circumstances*, July 23, 2021, <https://www.justice.gov/oip/oip-guidance/implementation-checklist-and-sample-language-for-new-requirements-for-foia-response-letters>.

<sup>6</sup> *See* 5 U.S.C. § 552(a)(6)(A)(i). The statute does not require the agency to produce the records requested within this time frame; it only requires the agency to notify the requester of its determination whether or not it will comply with the request. 5 U.S.C. § 552(a)(3)(A) dictates that records must be made "promptly available" after a requester properly submits a request.

<sup>7</sup> *Rosenberg v. U.S. Dep't of Immigr. & Customs Enf't*, 956 F. Supp. 2d 32, 38 (D.D.C. 2013).

<sup>8</sup> *See Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 63 (D.C. Cir. 1990).

<sup>9</sup> *Rosenberg*, 956 F. Supp. 2d at 40.

<sup>10</sup> 5 U.S.C. §§ 552(b)(1) – (7).

<sup>11</sup> 6 C.F.R. § 5.5(e)(1).

<sup>12</sup> 6 C.F.R. § 5.8(e). Regulations governing the U.S. Department of Justice, and thus the immigration courts, do not say whether a denial of a request to expedite a FOIA request needs to be administratively appealed before seeking federal court review.

An appeal must be submitted within the time period set forth in the agency’s regulations. DHS and its subagencies require that an appeal be submitted within 90 working days after the date of the component’s response.<sup>13</sup> The U.S. Department of Justice regulations, which apply to the Executive Office for Immigration Review, requires requesters to submit an appeal of an adverse FOIA decision within 90 calendar days after the date of the response.<sup>14</sup> An appeal of a denial of a FOIA request to the U.S. Department of State must be filed within 60 calendar days.<sup>15</sup>

Instructions on how to file an administrative appeal usually are included in the agency’s determination letter. Information also is available on agencies’ websites.<sup>16</sup> If the appeal is filed by mail, requesters should opt to receive confirmation of receipt from the mail carrier.

After the agency responds to the appeal, the requester has properly exhausted and may proceed to federal court. Practitioners then have a six-year statute of limitations to file a lawsuit.<sup>17</sup> This six-year period begins when the administrative process is over.

Under certain circumstances, requesters are not required to file an administrative appeal. If the agency fails to issue the required determination letter within the time limits set by the FOIA, a requester may file a lawsuit without taking further administrative action.<sup>18</sup>

Whether to file the lawsuit as soon as the law permits or to give the agency more time to respond is a strategic decision. Giving the agency additional time may make the requester appear more reasonable to the court, especially considering that courts in some instances are deferential to agencies’ arguments regarding limited resources to comply with the statute.<sup>19</sup> On the other hand, it may be in your client’s best interest to file suit as soon as possible if the records are needed soon and there is no indication the agency plans to timely respond.

### **C. Who is the requester and who is the plaintiff?**

The plaintiff in a potential FOIA lawsuit is the requester. Because attorneys can submit FOIA requests to immigration agencies in different ways, the requester may differ depending on the method used.

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<sup>13</sup> 6 C.F.R. § 5.8(a)(1).

<sup>14</sup> 28 C.F.R. § 16.8(a).

<sup>15</sup> 22 C.F.R. § 171.13(a).

<sup>16</sup> U.S. Citizenship and Immigration Services, Request Records through the Freedom of Information Act or Privacy Act, <https://www.uscis.gov/records/request-records-through-the-freedom-of-information-act-or-privacy-act> (last visited June 9, 2023); Immigration and Customs Enforcement, Freedom of Information Act (FOIA), Administrative Appeals, <https://www.ice.gov/foia> (last visited June 9, 2023); U.S. Customs and Border Protection, Freedom of Information (FOIA) Frequently Asked Questions, How do I submit a FOIA appeal?, <https://www.cbp.gov/site-policy-notices/foia/faq-foia> (last visited June 9, 2023); Executive Office for Immigration Review, How To Submit a FOIA Request, <https://www.justice.gov/eoir/foia-submit-a-request> (last visited June 9, 2023) (follow “If I am not satisfied with your response, can I appeal my request?”).

<sup>17</sup> See *Spannaus v. DOJ*, 824 F.2d 52, 55-56 (D.C. Cir. 1987) (applying the general federal statute of limitations, 28 U.S.C. § 2401(a), to FOIA actions).

<sup>18</sup> 5 U.S.C. § 552(a)(6)(C); see also *Judicial Watch, Inc. v. U.S. Dep’t of Homeland Sec.*, 895 F.3d 770, 775–76 (D.C. Cir. 2018).

<sup>19</sup> See, e.g., *Electronic Frontier Foundation v. Dep’t of Justice*, 563 F. Supp. 2d 188, 194–95 (D.D.C. 2008); but see *Nightingale v. U.S. Citizenship & Immigr. Services*, 507 F. Supp. 3d 1193, 1206–07 (N.D. Cal. 2020).

If practitioners choose to list a client as requester and subject of the record in the FOIA request, the named client may be the appropriate plaintiff in the ensuing litigation. In these cases, practitioners may list their own information as a Third-Party requester.<sup>20</sup> Some practitioners opt to be the requester to ensure, for example, certain client information is not submitted to an immigration agency.<sup>21</sup> A practitioner who is the primary requester, rather than a Third-Party requester, can be the plaintiff in a FOIA lawsuit.

Who the named plaintiff is may impact where a FOIA lawsuit can be filed (as explained in subsection *E*) or whether an attorney can seek attorneys' fees. Some courts have said that attorney's fees for legal work by any individual, including attorneys, who successfully represents themselves *pro se* in a FOIA lawsuit are barred.<sup>22</sup> As such, an attorney who is listed as the FOIA requester and proceeds to represent themselves in the FOIA litigation may be putting at risk their eligibility for attorney's fees. Organizations, however, remain eligible for attorney's fees even when they represent themselves in litigation.<sup>23</sup>

#### **D. The agencies are the defendants**

The agency that is the subject of the request is the defendant in a FOIA lawsuit. For example, an attorney who submits a FOIA request to USCIS for a client's A-file should name USCIS as the defendant in the lawsuit.

If an attorney files FOIA requests with different agencies on behalf of the same client, the attorney can name more than one agency as a defendant in the lawsuit. This also applies in situations where an attorney files FOIA requests with different agencies and the subject matter—information about a particular immigration policy, for example—is similar. In that situation, an attorney also can name the different agencies as defendants in the same suit.

Naming multiple agencies as defendants can also apply when one DHS component refers a FOIA request, in whole or in part, to another component. In most cases, the agency that initially receives the FOIA request is responsible for processing the request.<sup>24</sup> However, if an agency refers documents to another agency, the “responsibility for responding to the request” rests with the agency to which the documents were referred.<sup>25</sup> Therefore, if practitioners want to pursue records that were referred from one agency to another, the agency to which the request was referred also may need to be listed as a defendant.

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<sup>20</sup> For example, practitioners requesting their clients' A-file via the USCIS FOIA portal, i.e. FIRST, need to submit information about the “Subject of Record,” including identity documents and proof of consent to release the information.

<sup>21</sup> For a more thorough discussion of the requirements of submitting a FOIA request as a Third-Party Requester, including information required for identity verification, see Trina Realmuto et al., *Nightingale v. USCIS and FOIA Requests for Immigration Case Files (A-Files)*, April 17, 2023, [https://www.americanimmigrationcouncil.org/sites/default/files/practice\\_advisory/23.04.17\\_nightingale\\_foia\\_4th\\_update\\_final.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/23.04.17_nightingale_foia_4th_update_final.pdf).

<sup>22</sup> See *Nat'l Sec. Counselors v. Central Intelligence Agency*, 811 F.3d 22, 24 (D.C. Cir. 2016); *Gahagan v. U.S. Citizenship & Immigr. Servs.*, 911 F.3d 298, 305 (5th Cir. 2018) (“pro se attorneys are ineligible for fee awards under FOIA”).

<sup>23</sup> *Baker & Hostetler LLP v. U.S. Dep't of Commerce*, 473 F.3d 312, 315 (D.C. Cir. 2006).

<sup>24</sup> *Keys v. Dep't of Homeland Security*, 570 F. Supp. 2d 59, 69-70 (D.D.C. 2008).

<sup>25</sup> 6 C.F.R. § 5.4(d)(3).

## E. Where do you file the lawsuit?

An attorney has some discretion in determining where to file a FOIA lawsuit in federal court.<sup>26</sup> A FOIA lawsuit can be filed in:

- *The district where the complainant (the plaintiff) resides.* If the requester was the client, who is now the plaintiff, the lawsuit can be filed where the client lives.
- *The district where the complainant has a principal place of business.* This option is more likely applicable in situations where the attorney served as the requester and is now the plaintiff, especially if the attorney's office is in one district and the client lives in another.
- *The district in which the agency records are situated.*
- *The District of Columbia.*<sup>27</sup>

Attorneys should research the applicable law of the different districts to determine the best venue for the lawsuit. Attorneys also should familiarize themselves with the local rules of the district court where filing is an option. If an attorney is not admitted to the U.S. district court where they want to file the complaint, an attorney must comply with a particular court's requirements for admission prior to filing.

## III. Drafting the complaint

The complaint is the initial pleading you file in federal court. Before filing the complaint, attorneys should review the [Federal Rules of Civil Procedure](#) as well as the local rules of the district court where the complaint will be filed. The federal court's local rules contain relevant information such as how to format the complaint and what information to include in the caption.<sup>28</sup> **Appendix A** provides a sample complaint.

### A. The body of the complaint

- *Introduction.* The complaint should begin with a brief introduction describing the nature of the complaint and the need for timely access to the records requested. If the FOIA request is for documents relating to policies or data, the introduction provides an opportunity to contextualize the request.
- *Jurisdiction.* A second section should include a paragraph explaining why the court has jurisdiction over the matter and the defendant. Actions filed pursuant to FOIA should cite the FOIA's jurisdiction provision, 5 U.S.C. § 552(a)(4)(B). Additionally, the complaint may cite 28 U.S.C. § 1331, federal question jurisdiction.

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<sup>26</sup> 5 U.S.C. § 552(a)(4)(B).

<sup>27</sup> *Id.* In FOIA litigation, 5 U.S.C. § 552(a)(4) both directs litigants as to where the lawsuit can be filed and specifies which courts have jurisdiction over a FOIA case.

<sup>28</sup> For example, *Local Rules for the U.S. District Court for the District of Columbia*, U.S. Dist. Ct., D.C., <https://www.dcd.uscourts.gov/court-info/local-rules-and-orders/local-rules> (last visited May 30, 2023).

- *Venue.* A section explaining why the particular court is the proper place to file the FOIA lawsuit should be included either separately or in the jurisdiction section. 5 U.S.C. § 552(a)(4)(B).
- *Parties.* A different section should include a brief description of the parties to the lawsuit. The description of each defendant should state that the agency fits the definition of “agency” under 5 U.S.C. § 552(f)(1).
- *Facts.* The next section should be a succinct description of the facts leading up to the lawsuit. This section should describe in detail the communications with the agency relating to the FOIA request, including the initial date the request was submitted, the date the agency acknowledged receipt of the request, and any further communication with the agency, including a description of emails or phone calls with the agency. The statement should explicitly detail the agency’s delayed responses or failure to respond. A description of the client’s immigration history is not necessary because the court will only be deciding whether the agency violated the FOIA. However, a brief description may be useful to help the court understand the need for the records.

#### **B. Use of exhibits**

Exhibits that corroborate the facts of the complaint can help the court but are not required. Examples of useful exhibits include the initial FOIA request, key correspondence between the requester and the agency; the agency’s determination on the FOIA request, even if it is a partial determination such as the denial of a fee waiver or expedite request; any appeal by the requester; and the agency’s response to an appeal. Attorneys should not include an agency’s extensive document production as exhibits. Exhibits should be cited in the “facts” section of the complaint.

Each exhibit should be separated by a page labeled “Exhibit A,” Exhibit B,” etc. and filed electronically along with the complaint. *See infra* § IV.

#### **C. Claims under FOIA**

The next section of the complaint should describe the specific ways in which the agency violated the FOIA. Each legal claim should include a brief description of how the agency violated the FOIA and cite the specific FOIA provisions. Each claim is a “Count” or a “Cause of Action” in the complaint, and each claim should be organized in its own subsection. The claim depends on how the agency responded to the request. Some claims include, but are not limited to, the following:

- *Agency’s failure to respond to the FOIA request.* 5 U.S.C. § 552(a)(6)(A)(i). This claim stems from the agency’s failure to meet the deadlines that Congress established.
- *The agency conducted an inadequate search.* 5 U.S.C. § 552(a)(3)(C). This claim is appropriate where the agency did not conduct a reasonable search; failing, for example, to produce any documents because the agency states “no records” responsive to the request were found; failing to search the appropriate offices; or failing to request records



from agency officials likely to have responsive records in their possession. Even if the agency has not yet produced documents, it is helpful to preserve this claim.

- *The agency improperly withheld records.* 5 U.S.C. § 552(a)(3)(A). This claim should specify that the agency failed to “promptly” produce requested records and improperly withheld records under one or more FOIA exemptions.<sup>29</sup>
- *The agency failed to produce segregable information.* 5 U.S.C. § 552(a)(8)(A)(ii). This claim is appropriate when an agency withholds disclosure of a document and should have disclosed parts of the document that are not exempt under the law. For example, courts have held that while the assessment produced by an asylum officer after an asylum interview is exempt from disclosure under FOIA, certain facts relied upon by the officer to decide the case are not, and thus the facts should be “segregated” from the information withheld and disclosed by the agency.<sup>30</sup>
- *Improper denial of a fee waiver.* 5 U.S.C. § 552(a)(4)(A)(iii). This claim is appropriate when the requester seeks to challenge an agency’s fee waiver denial.

#### **D. Prayer for relief**

In this section of the complaint, the plaintiff describes the remedies sought from the agency defendant(s). Plaintiffs typically seek injunctive relief, asking the court to take certain actions with respect to the records sought in the case. Additionally, plaintiffs may ask for declaratory relief, asking the court to declare that the agency violated the FOIA. A plaintiff might include the following types of relief in a FOIA complaint:

- *Declare that the agency violated the FOIA.* In this section, plaintiff should request that the court declare which specific provisions of the FOIA were violated. For example, if the complaint claims the agency failed to adequately respond to the plaintiff’s FOIA request, plaintiff should seek a declaration from the court stating the agency violated 5 U.S.C. § 552(a)(6)(A)(i). The declaratory relief sought should be directly related to the alleged FOIA violations.
- *Order the agency to take certain action.* This relief is a request for a court to order a defendant to take certain actions to remedy the agency’s failures under FOIA. The order might direct the agency to conduct a search, to produce responsive documents, or to disclose improperly redacted sections. This type of relief sought should be directly related to the alleged violations under FOIA.

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<sup>29</sup> For a thorough discussion of when exemptions to the FOIA apply, see American Immigration Council, Practice Advisory, *Freedom of Information Act and Immigration Agencies* § III (updated May 2021), [https://www.americanimmigrationcouncil.org/sites/default/files/practice\\_advisory/practice\\_advisory\\_foia\\_for\\_immigration\\_lawyers\\_2023.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/practice_advisory_foia_for_immigration_lawyers_2023.pdf).

<sup>30</sup> *Gatore v. U.S. Dep’t of Homeland Sec.*, 327 F. Supp. 3d 76, 89 (D.D.C. 2018), *aff’d per curiam as to denial of class certification*, No. 21-5148, 2023 WL 2576176 (D.C. Cir. Mar. 21, 2023).



- *Attorneys' fees.* The FOIA specifically allows a plaintiff to recover attorneys' fees if the plaintiff has "substantially prevailed."<sup>31</sup> To substantially prevail under FOIA, a requester must obtain relief through a judicial order, an enforceable written agreement or consent decree, or "a voluntary or unilateral change in position by the agency."<sup>32</sup> In order to show that a plaintiff's lawsuit caused the agency to change its position, the plaintiff must show that the lawsuit was the catalyst behind the agency's decision to release records.<sup>33</sup> Thus, where an agency voluntarily decides to release previously withheld records in response to a lawsuit, a plaintiff may be eligible for fees. Some courts have found an attorney is not entitled to fees if the attorney also is the plaintiff/requester in the lawsuit and appears pro se in district court.<sup>34</sup>

## **E. Formatting**

Properly formatting the complaint is an important step and helps ensure the court does not reject it. Formatting rules usually can be found in the local rules of each U.S. district court. Attorneys should pay close attention to the rules, including what information to include in the caption, how to number the paragraphs, line spacing, and the use of footnotes.

Attorneys should review the local rules for instructions on how to sign the complaint and other documents. While all courts using electronic filing treat attorneys' use of their login and password as a signature, some courts like the U.S. District Court for the Northern District of California, suggest that attorneys indicate a document is signed by using the format "/S/ (name of person who signed the document)."<sup>35</sup>

## **IV. Filing the complaint**

### **A. PACER/Electronic Filing**

Once the complaint is finished, it will need to be filed in the U.S. district court in the appropriate venue. Attorneys not admitted to practice in the federal district court where the complaint will be filed need to apply for admission or file a motion to appear *pro hac vice*.<sup>36</sup>

- *Step 1:* Create a Public Access to Court Electronic Records system, or [PACER](#), account, to file documents electronically with the courts. You begin this process by choosing the "Attorney Filers" option. The [PACER User Manual](#) is a useful guide when registering for PACER and applying for admission to the district courts.

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<sup>31</sup> 5 U.S.C. § 552(a)(4)(E)(i).

<sup>32</sup> 5 U.S.C. § 552(a)(4)(E)(ii).

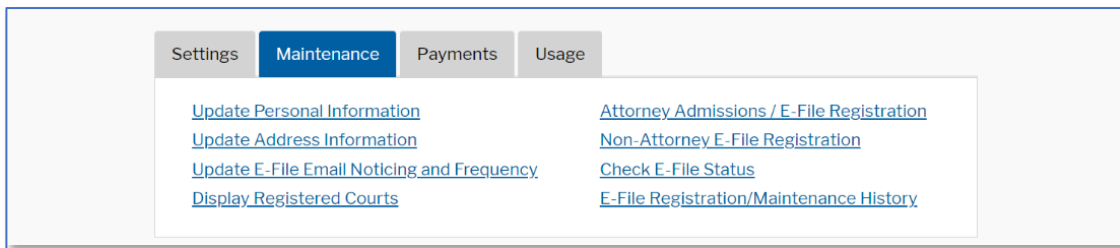
<sup>33</sup> See *Summers v. DOJ*, 569 F.3d 500, 502-503 (D.C. Cir. 2009).

<sup>34</sup> See *Kay v. Ehrler*, 499 U.S. 432, 438 (1991); see also *Gahagan v. U.S. Citizenship and Immigration Services*, 2017 WL 4003851 at 7 (E.D. La. 2017).

<sup>35</sup> U.S. District Court Northern District of California, *Signatures And E-Filed Documents*, <https://www.cand.uscourts.gov/cases-e-filing/cm-ecf/preparing-my-filing/signatures-on-e-filed-documents/> (last visited June 9, 2023).

<sup>36</sup> Practitioners must review the requirements for *pro hac vice* admission for the court in which they seek to file the motion.

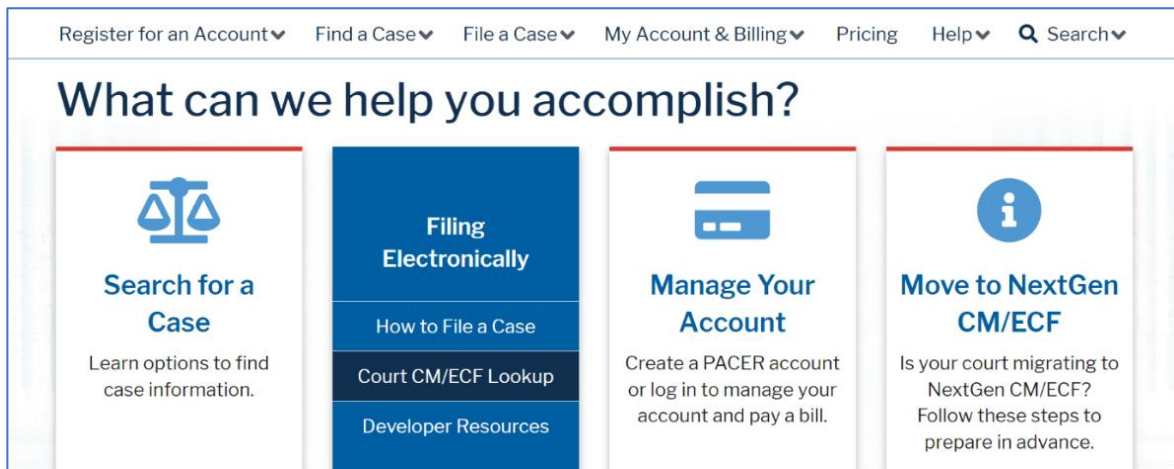
- *Step 2:* Review the admission requirements in the local rules for the federal district court where you wish to file the FOIA lawsuit. Pay particular attention to the required supporting documents as they may differ from one district court to another.
- *Step 3:* Begin the admission process in the federal district court where you wish to file the FOIA lawsuit. Attorneys can access the application for admission via PACER by going to the “Manage Your Account” section, click on the “Maintenance” tab, and click on “Attorney Admissions/E-File Registration.” Users then select the court where they need to register, and the court’s page contains the application and information about some of the requirements for admission. Some courts do not accept admission requests via PACER.<sup>37</sup> Users can upload supporting documents such as certificates of good standing or supporting affidavits and pay the attorney admission fee.



Once the application is complete, the system sends the application to the court, and the court confirms via email whether a user has been admitted.

## B. Filing the complaint

After completing the admissions process, users can log-in to PACER and access the site for the court where the complaint will be filed. The list of courts can be found on the home page, by selecting “Court CM/ECF Lookup” in the highlighted section below:



<sup>37</sup> Some courts do not accept admission requests via PACER. For example, United States District Court for the Eastern District of North Carolina, <https://www.nced.uscourts.gov/pdfs/forms/attorneyAdmissionApplicationMemo.pdf>.

After selecting the proper court, the filer clicks on the Login to CM/ECF Button. This step requires users to re-enter their PACER registration.

After logging-in, the court's website will appear with a menu containing several options. The example below is from the Southern District of New York. Other courts' webpages may differ slightly.



Users filing FOIA complaints should access the “Civil” menu and choose the option to “Open a Civil Case.” The CM/ECF system walks users through the process of entering information about the parties to the complaint. The steps generally include loading a PDF copy of the complaint and supporting documents into the system, paying the filing fee, and docketing the complaint.

Different district courts publish user manuals, [like the U.S. District Court for the District of Columbia](#), that walk attorneys through the filing process. Users also should review the website of the court where the complaint will be filed for step-by-step instructions.

### C. What other documents need to be filed?

Several additional documents must be filed with the complaint.

- *Civil Cover Sheet*. This document identifies the type of case being filed. See Sample Civil Cover Sheet at **Appendix B**. For FOIA lawsuits, attorneys should ensure that:
  - The “Basis of Jurisdiction” is marked as **U.S. Government Defendant**.
  - The “Nature of Suit” is marked as **Freedom of Information Act** in the “Other Statutes.”<sup>38</sup>
  - The “Origin” section is marked as **Original Jurisdiction**.
  - The “U.S. Civil Statute” field contains a cite to the FOIA statute, 5 U.S.C. § 552.
  - The “Brief description of cause” field contains a one sentence description of the case.
- *Notice of Appearance*. The Notice or Entry of Appearance is a brief document stating that an attorney will represent the parties in the proceedings before the U.S. district court. In a case where multiple attorneys represent the plaintiff or plaintiffs, a Notice of Appearance should be filed for each attorney. **Appendix C** provides a sample of a Notice of Appearance.

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<sup>38</sup> If “Freedom of Information Act” is not an available option on the civil cover sheet, you may manually indicate that the suit is a FOIA suit.

- *Disclosure of Corporate Affiliations and Financial Interests.* This document only must be filed in cases where a corporation is a party in the proceedings, which is rarely the case in immigration FOIA litigation. **Appendix D** is a sample of this type of document. The statement should list any parent, subsidiary, affiliate, or company that owns ten percent or more of the stock of the plaintiff corporation.
- *Summonses.* The summonses notify the defendants that a lawsuit has been filed against them. A summons also informs defendants of the allotted time to file an answer to the complaint. Because the FOIA provides a specific timeline to answer the complaint, the U.S. District Court for the District of Columbia, for example, has a summons form specific to FOIA lawsuits. **Appendix E** provides a sample summons.
  - A summons must be individually prepared with the address of each defendant. Attorneys should pay close attention to the agencies’ addresses used in the summonses, as some agency components have designated specific addresses for receiving copies of complaints filed against the agency.
  - Summonses must be filed with the court via the CM/ECF system.

Some courts publish templates of these forms that practitioners also can use as samples.<sup>39</sup>

#### **D. Next steps**

Immediately after filing, the CM/ECF system sends emails confirming the electronic filing to the email address provided at the time of filing. These notifications include the case number created by the court for future reference. The court also may contact filers to inform them of any errors with the filing and how to correct them. Attorneys must review these notifications immediately to correct any filing deficiencies because failure to correct them within the time allowed by the court may result in the dismissal of the case.

The CM/ECF system also will notify the parties when other litigation documents are filed. The system also will notify the parties of orders assigning a magistrate judge, notifications of initial hearings and reports due in anticipation of such court dates, among other notifications. Attorneys should pay close attention to these email notifications.

The CM/ECF notifications received after the summonses are filed will include links to the summonses signed by the Clerk of Court.

**To finalize the filing, attorneys must send, or serve, a copy of the signed summonses, a complete copy of the complaint, and other documents filed with the court to:**

- **Each defendant.**

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<sup>39</sup> Attorneys should visit the webpage for the court where the complaint will be filed for a list of available templates. For example, the U.S. District Court for the District of Columbia’s forms may be found at <https://www.dcd.uscourts.gov/new-case-forms>; form templates for the U.S. District Court for the Southern District of New York may be accessed at <https://www.nysd.uscourts.gov/forms> (search “Forms Required to Start an Action”).

- **The U.S. Attorney’s office for the district where the action is filed.** Attorneys must research the U.S. Attorneys’ website for the district where the lawsuit is filed for the correct address.
- **The Attorney General of the United States.**<sup>40</sup>

This mailing must be completed via registered or certified mail.<sup>41</sup> Attorneys should keep proof of such certified mailing. Additionally, the mailing must be completed within 90 days of filing the complaint. Defendants’ receipt of the complaint starts the time allowed for the agency to answer the complaint.<sup>42</sup> Attorneys should review the requirements for serving the summonses found in Federal Rule of Civil Procedure 4 for more detail.

After filers send the summonses and complaint following the requirements of Rule 4, attorneys must electronically file an Affidavit of Service or Proof of Service with court through the CM/ECF. Generally, the Proof of Service includes the date the attorney mailed the summonses and complaint, the addresses where the documents were mailed, and the method of service. Attorneys should review the local rules to research the required content. **Appendix F** provides a sample Affidavit of Service.

#### **E. The agency’s answer to the complaint**

Unless the parties agree to an extension of the time required to answer the complaint, the defendant agency must file an answer. The answer is the document that will admit or deny the allegations in the complaint. Thus, it is not unusual for the government’s answer to deny allegations the agency violated the FOIA that are easily verifiable. The answer may provide plaintiff’s attorney with a sense of how the agency will argue against granting the requested relief. In limited cases, if the case is resolved prior to the date the answer is due, the U.S. Attorney’s Office may seek to be relieved of its duty to answer the complaint.

### **V. Obtaining records in litigation**

#### **A. The initial negotiations**

After completing service of the complaint on the defendants, the process of obtaining the records begins. This process may require some negotiation and strategic thinking to compel the agency to provide responsive records in a timely manner even after filing suit.

Defendants will be represented by the U.S. Attorney’s Office in the district where the lawsuit was filed. Thus, an Assistant U.S. Attorney (AUSA) may reach out after the lawsuit is filed to discuss the specifics of the FOIA request and how to resolve the lawsuit. The AUSA serves as an intermediary between the plaintiff and the agency. If the AUSA has not reached out to plaintiff’s

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<sup>40</sup> For more detailed information about the service process, see Trina Realmuto and Emma Winger, *Whom to Sue and Whom to Serve in Immigration-Related District Court Litigation*, Sept. 14, 2022, [https://www.americanimmigrationcouncil.org/sites/default/files/practice\\_advisory/whom\\_to\\_sue\\_and\\_whom\\_to\\_serve\\_in\\_immigration-related\\_district\\_court\\_litigation\\_0.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/whom_to_sue_and_whom_to_serve_in_immigration-related_district_court_litigation_0.pdf).

<sup>41</sup> Fed. R. Civ. P. 4(i).

<sup>42</sup> Fed. R. Civ. P. 4(m).

attorney in advance of deadlines set by the court, it may be necessary for plaintiff's attorney to contact the U.S. Attorney's Office of the district where the lawsuit was filed.

Conversations with the AUSA may involve:

- Clarification of the request if the agency isn't sure what documents the requester seeks;
- A request to narrow the scope of the documents sought; or
- A request to limit the agency's search to specific offices, agency custodians, or by limiting the time range of the records sought.

These initial conversations also provide an opportunity to obtain additional information from the agency about the types of documents that the agency possesses and how they are stored.

If search parameters can be agreed upon by both parties, the AUSA will inform plaintiff's attorney how responsive documents will be produced. When a FOIA request seeks documents relating to agency policies or trainings, or agency officials' communications, the search may yield a large number of pages. In these cases, the AUSA likely will seek to have a certain number of pages produced to the requester each month until the production of all responsive documents is complete. The production will be completed more quickly if the request is for specific documents.

Some courts will schedule an initial conference for the parties to discuss the case with the court. Courts also may schedule the filing of a statement by the parties to be filed before the initial conference to provide the court with certain information about the case. If the parties reach an agreement regarding search parameters and a schedule for producing responsive documents, the parties may request the court delay the initial conference.

Despite a postponement of the initial conference, the court may require the parties to file periodic case statements informing the court of the progress made by the agency in producing responsive records. These statements, which are often required to be filed jointly by the parties, provide attorneys an opportunity to inform the court of potential issues that may arise. These case statements, or status reports, may be particularly useful after document production begins.

For example, attorneys may wish to inform the court that the documents received by plaintiff suggest the agency has not searched properly or that the agency incorrectly applied a FOIA exemption and redacted a document, in whole or in part, that should have been disclosed. However, some communication and negotiation with the AUSA will be required so that both parties can agree on the content of the joint statement. Attorneys should research the content and format of joint status reports preferred by the judge assigned to the case.

## **B. What if the parties can't resolve all the issues?**

If some of the issues the plaintiff identified in the complaint have not been resolved after initial negotiations, the case will proceed to the next stage in litigation. FOIA places the burden on the agency to demonstrate the reasons why it failed to disclose the records sought by the plaintiff.<sup>43</sup> Courts generally give some leeway to agencies in meeting this burden, finding that an agency's

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<sup>43</sup> *Dep't of Just. v. Tax Analysts*, 492 U.S. 136, 142 n.3 (1989).

search needs to be adequate rather than perfect, and that “mere speculation” about missing documents does not mean a search is inadequate.<sup>44</sup>

Similarly, a logical or plausible explanation for withholding records that may fall under a FOIA exemption may be sufficient.<sup>45</sup> But, in the context of agencies’ non-disclosure decisions, courts require agencies to provide support for exemptions detailed enough to enable the court to conduct de novo review.<sup>46</sup>

FOIA cases that are not resolved through negotiations are resolved by the court after filing Motions for Summary Judgment. Summary judgment is appropriate when “there is no genuine dispute as to any material fact.”<sup>47</sup> It is common for FOIA lawsuits to have no factual disputes, but hinge on a controversy over the agency’s compliance with the requirements of FOIA. Typically, if issues remain after the agency completes production of documents responsive to plaintiff requests, the parties agree to a briefing schedule setting forth the date the agency will file its motion for summary judgment and the date plaintiff will file a motion in response. Plaintiff’s motion often will be titled “Motion in Opposition to Defendant’s Motion for Summary Judgment and Cross-Motion for Summary Judgment.” The parties’ summary judgment motions are accompanied by a memorandum of law indicating to the court the reasons why it should rule in favor of the moving party.

In support of its motion, the agency typically files a Vaughn Index, a declaration by an agency FOIA official, and an affidavit showing no genuine issue as to a material fact remains. The Vaugh Index lists the documents withheld and should provide a clear explanation of why the agency applied exemptions to redact documents or portions of documents.<sup>48</sup> A dispute may arise if the Vaugh Index fails to provide a sufficiently clear explanation of why the agency withheld each document or part of a document. Agencies usually resist filing a Vaughn Index until the parties have reached an impasse and move to file motions for summary judgment. The declaration from a government official describes the search for documents conducted by the agency and why the search for responsive documents was sufficient.

Plaintiff’s motion in response will oppose the government’s request for summary judgment and ask the court to grant summary judgment in Plaintiff’s favor. Plaintiff’s motion will include arguments that it has prevailed on its legal arguments and the government should produce certain documents. The arguments often also describe how the agency’s Vaughn Index and the declaration are deficient, like when an index provided by the agency does not contain enough information to permit a court to determine whether a privilege applies to a redaction.<sup>49</sup> The motion does not have to ask for relief on all of the claims included in the complaint and may be more specific with respect to the documents the plaintiff seeks. Defendants will file a reply in response to Plaintiff’s opposition motion.

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<sup>44</sup> See *Parker v. U.S. Immigr. and Customs Enf’t*, 238 F. Supp. 3d 89, 102-03 (D.D.Cir. 2017).

<sup>45</sup> *Am. Immigr. Council v. United States Customs & Border Patrol*, 590 F. Supp. 3d 306, 318 (D.D.C. 2022) (quoting *Judicial Watch, Inc. v. United States DOD*, 715 F.3d 937, 941 (D.C. Cir. 2013) (internal citations omitted)).

<sup>46</sup> *Id.* (quoting *Tokar v. United States DOJ*, 304 F. Supp. 3d 81, 89 (D.D.C. 2018) (cleaned up)).

<sup>47</sup> Fed. R. Civ. P. 56(a).

<sup>48</sup> *Hinton v. Dep’t of Just.*, 844 F.2d 126, 129 (3d Cir. 1988).

<sup>49</sup> See *New Orleans Workers’ Ctr. for Racial Just. v. United States Immigr. & Customs Enf’t*, 373 F. Supp. 3d 16, 51 (D.D.C. 2019) (quoting *Hunton & Williams LLP v. EPA*, 248 F.Supp.3d 220, 241 (D.D.C. 2017) (citation omitted)).



Winning a summary judgment motion means that the agency must disclose the documents at issue. However, negotiations and processing may continue if the summary judgment decision does not apply to certain parts of the complaint or orders the agency to take other action such as providing a more detailed Vaughn Index.

## **VI. Conclusion**

FOIA litigation is an important step in requiring immigration agencies to comply with the law and holding immigration agencies accountable. An attorney who fights to obtain immigration records about their client will place their client on more equal footing in proceedings before immigration agencies. In addition, attorneys who pursue FOIA requests and FOIA litigation to obtain information about immigration policies and procedures improve transparency for all those impacted by our immigration system.

**APPENDIX A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE [NAME OF THE COURT JURISDICTION]**

[NAME OF THE PARTY],

*Plaintiff,*

v.

[NAME OF THE AGENCY],

*Defendant.*

Case No. \_\_\_\_\_

**COMPLAINT UNDER  
THE FREEDOM OF  
INFORMATION ACT  
FOR DECLARATORY  
AND INJUNCTIVE  
RELIEF**

**INTRODUCTION**

Plaintiff [Name of the Plaintiff] (“Plaintiff” or “Mr./Ms. \_\_\_\_\_”) submitted a Freedom of Information Act (“FOIA”) request to Defendant [name of the agency] (“Defendant” or “\_\_\_\_\_”) on [date of Request] for records concerning his immigration history. Defendant has failed to make a determination on the FOIA request and failed to disclose the requested documents within the time prescribed by FOIA. Therefore, Plaintiff now files this action for injunctive and other appropriate relief under the Freedom of Information Act, 5 U.S.C. § 552.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 5 U.S.C. §§ 552(a)(4)(B), (6)(C)(i) and 28 U.S.C. § 1331.
2. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) because Plaintiff resides in this district.

**PARTIES**

3. Plaintiff  [Plaintiff's name]  submitted a FOIA request to  [agency]  through his lawyers on  [date of request] . He is a resident of  [city of residency] .
  
4. Defendant  [name of subagency]  is a component agency of the Department of Homeland Security (“DHS”) and an agency of the United States under 5 U.S.C. § 552(f)(1). Among other duties,  [subagency]  is responsible for \_\_\_\_\_  
\_\_\_\_\_  
 [Subagency]  has responsive records in its possession, custody, and control. Defendant is charged with the duty to provide public access to records in its possession consistent with the requirements of FOIA.

**STATEMENT OF FACTS**

5. On  [date of request] , Plaintiff, through his lawyers, filed a FOIA request (“Request” or “FOIA Request”) with  [subagency]  for records relating to his immigration history. The FOIA Request complied with USCIS’s FOIA requirements and is attached as Exhibit A.
  
6. In an email dated \_\_\_\_\_,  [subagency]  confirmed receipt of Plaintiff’s FOIA Request and assigned the Request a control number,  [confirmation number] .<sup>1</sup> The agency’s confirmation of receipt is attached as Exhibit B.
  
7. In its receipt notice,  [subagency]  invoked the “unusual circumstances” exception, permitting  [subagency]  a ten-day extension for responding to the Request, pursuant to 5 U.S.C. § 552(a)(6)(B).
  
8. As of this date,  [subagency]  has failed to respond to Plaintiff’s request.

9. Under FOIA, an agency is required to make an initial “determination” with regard to a request within twenty business days of its receipt. *See* 5 U.S.C. § 552(a)(6)(A)(i).
10. If there are “unusual circumstances,” as defined by statute, an agency may extend the time to make its determination by no more than ten working days. *See* 5 U.S.C. § 552(a)(6)(B)(i).
11. Under FOIA, a person making a request is deemed to have exhausted his administrative remedies if the agency fails to comply with the applicable time limit provisions set forth in the statute. *See* 5 U.S.C. § 552(a)(6)(C)(i).
12. \_\_\_\_\_ [subagency] \_\_\_\_\_ thus far has failed to produce any responsive agency records to Plaintiff and the statutory period for an agency response has expired. USCIS similarly has failed to communicate the scope of the documents it intends to produce and its reasons for withholding any documents.

## **CAUSES OF ACTION**

### **COUNT ONE**

#### **Violation of the Freedom of Information Act, 5 U.S.C. § 552 for Failure to Respond Within the Time Required**

13. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.
14. Under the FOIA, Defendants were required to respond to Plaintiff’s FOIA request and to notify Plaintiff of the agency’s determination within thirty working days after receiving the request. 5 U.S.C. § 552(a)(6)(A), (6)(B).
15. Defendants’ failure to make the requisite determination and to communicate it to the Plaintiff within the time allowed by the statute violates the FOIA. 5 U.S.C. § 552(a)(6)(A)(i).

**COUNT TWO**  
**Violation of the Freedom of Information Act, 5 U.S.C. § 552**  
**for Failure to Conduct an Adequate Search**

16. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.
17. Defendants have violated their obligation under the FOIA by failing to make a reasonable effort to search for records responsive to Plaintiff's request. 5 U.S.C. § 552(a)(3)(C).

**COUNT THREE**  
**Violation of the Freedom of Information Act, 5 U.S.C. § 552;**  
**Wrongful Withholding of Records**

18. Plaintiff repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.
19. Defendants are wrongly withholding agency records by failing to produce non-exempt records responsive to Plaintiff's FOIA request and by failing to segregate and produce non-exempt records responsive to Plaintiff's FOIA request.
20. Defendants are obligated under 5 U.S.C. § 552(a)(3)(A) to promptly produce records responsive to the Plaintiff's FOIA request.
21. Plaintiff has a legal right to obtain such records, and no legal basis exists for Defendants' failure to disclose them.
22. Defendants' failure to disclose all responsive records violates their statutory obligations to make requested records promptly available to the public. 5 U.S.C. § 552(a).

**RELIEF REQUESTED**

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Assume jurisdiction in this matter and maintain jurisdiction until Defendant complies with FOIA and every order of this Court;
2. Declare that Defendant's failure to make a timely determination with regard to Plaintiff's

Request violates FOIA, 5 U.S.C. §§ 552(a)(6)(A)(i) and (B);

3. Order Defendant to expeditiously conduct an adequate search for all records responsive to Plaintiff's FOIA Request in accordance with 5 U.S.C. § 552(a)(3)(C);
4. Declare that Defendant's failure to promptly disclose the records responsive to Plaintiff's Request violates FOIA, 5 U.S.C. § 552(a)(3)(A);
5. Order Defendant to expeditiously disclose all responsive, non-exempt records and enjoin Defendant from improperly withholding records;
6. Award Plaintiff his attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
7. Grant such other relief as the Court may deem just, equitable, and appropriate.

Dated:

Respectfully submitted,

/s/ [name of Attorney]

Name of Attorney

Address

Telephone Number

Email

*Attorney for Plaintiff*





|  |  |   |   |
|--|--|---|---|
| <input type="radio"/> <b>G. Habeas Corpus/ 2255</b><br><br>530 Habeas Corpus – General<br>510 Motion/Vacate Sentence<br>463 Habeas Corpus – Alien Detainee   | <input type="radio"/> <b>H. Employment Discrimination</b><br><br>442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)<br><br>*(If pro se, select this deck)*                                    | <input type="radio"/> <b>I. FOIA/Privacy Act</b><br><br>895 Freedom of Information Act<br>890 Other Statutory Actions (if Privacy Act)<br><br>*(If pro se, select this deck)*   | <input type="radio"/> <b>J. Student Loan</b><br><br>152 Recovery of Defaulted Student Loan (excluding veterans) |
| <input type="radio"/> <b>K. Labor/ERISA (non-employment)</b><br><br>710 Fair Labor Standards Act<br>720 Labor/Mgmt. Relations<br>740 Labor Railway Act<br>751 Family and Medical Leave Act<br>790 Other Labor Litigation<br>791 Empl. Ret. Inc. Security Act   | <input type="radio"/> <b>L. Other Civil Rights (non-employment)</b><br><br>441 Voting (if not Voting Rights Act)<br>443 Housing/Accommodations<br>440 Other Civil Rights<br>445 Americans w/Disabilities – Employment<br>446 Americans w/Disabilities – Other<br>448 Education | <input type="radio"/> <b>M. Contract</b><br><br>110 Insurance<br>120 Marine<br>130 Miller Act<br>140 Negotiable Instrument<br>150 Recovery of Overpayment & Enforcement of Judgment<br>153 Recovery of Overpayment of Veteran’s Benefits<br>160 Stockholder’s Suits<br>190 Other Contracts<br>195 Contract Product Liability<br>196 Franchise | <input type="radio"/> <b>N. Three-Judge Court</b><br><br>441 Civil Rights – Voting (if Voting Rights Act)       |
| <b>V. ORIGIN</b><br><input type="radio"/> 1 Original Proceeding <input type="radio"/> 2 Removed from State Court <input type="radio"/> 3 Remanded from Appellate Court <input type="radio"/> 4 Reinstated or Reopened <input type="radio"/> 5 Transferred from another district (specify) <input type="radio"/> 6 Multi-district Litigation <input type="radio"/> 7 Appeal to District Judge from Mag. Judge <input type="radio"/> 8 Multi-district Litigation – Direct File |  |   |   |
| <b>VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)</b>  |  |   |   |
| <b>VII. REQUESTED IN COMPLAINT</b>   | CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>   | <b>DEMAND \$</b><br><b>JURY DEMAND:</b>   | Check YES only if demanded in complaint<br><b>YES</b> <b>NO</b>   |
| <b>VIII. RELATED CASE(S) IF ANY</b>  | (See instruction)  | <b>YES</b> <b>NO</b>  | If yes, please complete related case form   |
| <b>DATE:</b> _____   | <b>SIGNATURE OF ATTORNEY OF RECORD</b> _____   |   |   |

**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
**Authority for Civil Cover Sheet**

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

**APPENDIX C**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

[NAME OF PLAINTIFF],

Plaintiffs,

v.

[NAME OF AGENCY/DEFENDANT],

Defendants.

Civil Action No.

**NOTICE OF APPEARANCE**

PLEASE TAKE NOTICE that I, *[name of attorney]*, hereby respectfully enter my appearance on behalf of Plaintiff *[name of the Plaintiff]* in the above-captioned action and request copies of all papers in this action be served upon me at the address stated below.

I certify that I am admitted to practice in this Court.

Dated:

Respectfully Submitted,

By: /s/ [name of attorney]

*[Name of Attorney]*

*[Attorney's Firm or Organization's Name]*

*[Attorney's Address]*

*[Attorney Telephone Number]*

*[Attorney Email]*

*Counsel for Plaintiffs*

**APPENDIX D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[NAME OF PLAINTIFF],

Plaintiff,

v.

[NAME OF AGENCY DEFENDANT],

Defendants.

Civil Action No.

**Corporate Disclosure Statement**

I, *[name of attorney]*, attorney for Plaintiff, certify that to the best of my knowledge and belief, pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, *[name of corporate plaintiff]* is a non-profit organization that does not have any parent corporations or issue stock and, consequently, there exists no publicly held corporation which owns 10% or more of stock.

Dated:

/s/ *[Name of Attorney]*  
*[Name of Attorney]*  
*[Firm or Organization's Name]*  
*[Attorney's Address]*  
*[Attorney Telephone Number]*  
*[Attorney Email]*

*Attorney for [Name of Corporate Plaintiff]*

APPENDIX E

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[NAME OF PLAINTIFF]

\_\_\_\_\_  
*Plaintiff*

v.

[NAME OF AGENCY DEFENDANT]

\_\_\_\_\_  
*Defendant*

)  
)  
)  
)  
)  
)  
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

*[Name of Plaintiff's attorney]*  
*[Name of Plaintiff attorney's firm or organization]*  
*[Attorney's Address]*

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**APPENDIX F**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

[NAME OF PLAINTIFF],

Plaintiff,

v.

[NAME OF AGENCY DEFENDANT],

Defendants.

Case No.

**AFFIDAVIT OF SERVICE**

I, *[name of attorney]*, hereby declare that, pursuant to Federal Rule of Civil Procedure 4(i), on *[date of mailing]*, I caused to be deposited in the United States mail a copy of the issued Summons, the Complaint with Exhibits *[list exhibit letters]* and Corporate Disclosure Statement in the above captioned case, postage prepaid, certified return receipt requested, addressed to the defendants, the Attorney General and the Civil Process Clerk for the U.S. Attorney for the *[district court where complaint was filed]* at the following addresses:

*[List addresses]*

Confirmation of delivery upon Defendants and receipt of these documents accompanies this affidavit, marked as Exhibit A.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_ *[month]*, \_\_\_\_\_ *[year]*.

s/ *[Name of Attorney]*

*[Name of Attorney]*

*[Attorney's Firm or Organization Name]*

*[Attorney's Address]*

*[Attorney Telephone Number]*

*[Attorney Email]*

*Attorney for Plaintiff*