



# **U.S. Department of Housing and Urban Development**

## **FOIA POLICY - Proactive Disclosures January 2023**

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## 1. Introduction

The Department of Housing and Urban Development (“HUD” or “the Department”) is committed to ensuring an open Government. In the face of doubt, openness should prevail. The Freedom of Information Act (FOIA)<sup>1</sup> reflects this fundamental commitment to ensuring an open Government. In 2009, President Obama issued a memorandum declaring, among other things, that “[t]he presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public.”<sup>2</sup> President Obama then directed then Attorney General Eric Holder to issue guidance to implement the goals outlined in the memo.<sup>3</sup> The Department of Justice (DOJ), in turn, issued those guidelines, announcing that “agencies should readily and systematically post information online in advance of any public request. Providing more information online reduces the need for individualized requests and may help reduce existing backlogs.”<sup>4</sup> Then in March of 2022, Attorney General Merrick Garland reemphasized the importance of Proactive Disclosure in his Freedom of Information Act Guidelines memorandum.<sup>5</sup> HUD’s Proactive Disclosure Policy reaffirms the Department’s commitment to accountability and transparency and provides basic instructions and responsibilities for the proactive disclosure of information.

## 2. Scope

This Policy describes HUD employees’ proactive disclosure responsibilities under 5 U.S.C. § 552(a)(1)-(a)(2) and 24 CFR § 15.101, including the responsibility to identify and post any records that can be proactively disclosed without a request for records under FOIA.

## 3. Authority

All HUD employees and contractors are obligated to proactively disclose records under federal statutes and regulations, including:

- a. 5 U.S.C. § 552(a)(1)-(a)(2)
- b. The E-Government Act of 2002 (Public Law 107-347)
- c. 24 CFR § 15.101

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<sup>1</sup> 5 U.S.C. § 552.

<sup>2</sup> Barack Obama, Memorandum: Freedom of Information Act, <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/presidential-foia.pdf>

<sup>3</sup> *Id.*

<sup>4</sup> Attorney General, Memorandum: The Freedom of Information Act, <https://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf>

<sup>5</sup> Attorney General, Memorandum: Freedom of Information Act Guidelines, <https://www.justice.gov/ag/page/file/1483516/download>

Although all HUD employees and contractors share proactive disclosure responsibilities, Departmental Proactive Disclosure Officers (“PDOs”) are responsible for taking affirmative and innovative steps in achieving transparency by actively seeking out, identifying, and posting records that are required to be proactively disclosed.

## 4. FOIA Proactive Disclosure Requirement

A record is proactively disclosed when it is made publicly available without waiting for a FOIA request. The FOIA contains two distinct provisions that require proactive disclosure of nonexempt records or information: subsection (a)(1) and subsection (a)(2).<sup>6</sup> The nine FOIA exemptions will continue to apply to any records required to be proactively disclosed and prior to being proactively disclosed, records will be redacted as appropriate.<sup>7</sup>

Broadly stated, the proactive disclosure objectives are: (1) to allow access to agency documents that memorialize agency actions that affect the public and (2) to preempt the need for FOIA requests to the extent possible.

### Subsection (a)(1)—Federal Register Publication

Pursuant to 5 U.S.C. § 552(a)(1), certain records concerning information about the agency and its functions must be published in the Federal Register. Publication of these materials is meant "to enable the public 'readily to gain access to the information necessary to deal effectively and upon equal footing with the Federal agencies.'"<sup>8</sup>

Records that must be published in the Federal Register include:

- A. descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions;
- B. statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;
- C. rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

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<sup>6</sup> 5 U.S.C. § 552(a)(1)-(a)(2).

<sup>7</sup> 5 U.S.C. § 552(b).

<sup>8</sup> Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act 4 (June 1967) (quoting S. Rep. No. 88-1219, at 3 (1964)).

- D. substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency;
- E. and each amendment, revision, or repeal of the above four categories.

#### Subsection (a)(2)—Public Inspection in an Electronic Format

Pursuant to 5 U.S.C. § 552(a)(2), federal agencies are required to "make available for public inspection in an electronic format" four specific categories of records:

- A. final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- B. those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;
- C. administrative staff manuals and instructions to staff that affect a member of the public; and
- D. Copies of all records which have been released in response to a request and "that because of the nature of their subject matter, the agency determines have become, or are likely to become, the subject of subsequent requests for substantially the same records; or . . . that have been requested 3 or more times."

#### HUD Regulations

In addition to the above, HUD has additional regulatory requirements relating to the proactive disclosure of Department records.<sup>9</sup> Records that must be proactively disclosed pursuant to HUD's regulations include:

- a. Final opinions and orders.
- b. Public access to high-value, machine readable datasets via <https://www.data.gov>.
- c. Statements of policy and interpretation, including:
  - (1) HUD's Client and Information Policy Systems (HUDCLIPS);

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<sup>9</sup> 24 CFR § 15.101

- (2) Housing policy;
  - (3) Public and Indian Housing policy and regulations;
  - (4) Public and Indian Housing policy and guidance (PHA Plans); and
  - (5) Community Planning and Development policy and guidance.
- d. Administrative staff manuals.
- e. HUD's online library.
- f. Fair housing information.
- g. Copies of all records, regardless of form or format that have been released to any person under 24 CFR § 15.105; and
  - (1) Because of the nature of their subject matter, the agency determines that the records have become or are likely to become the subject of subsequent requests for substantially the same records; or
  - (2) Have been requested three or more times.
- h. Report for the preceding fiscal year submitted to the U.S. Attorney General and the Director of the Office of Government Information Services (OGIS) as required by 5 U.S.C. 552(e) and the raw statistical data used in each report. This report will be made available:
  - (1) Without charge, license, or registration requirement;
  - (2) In an aggregated, searchable format; and
  - (3) In a format that may be downloaded in bulk.
- i. Frequently requested materials including:
  - (1) Highest-scoring funding grant applications.
  - (2) Purchase charge cardholders.
  - (3) FHA refunds.
  - (4) FHA-approved lenders.
  - (5) Homes for sale.
  - (6) How to buy a HUD home.
  - (7) How to apply for public housing and Section 8 housing.
  - (8) Housing for the elderly.
  - (9) Housing for individuals with disabilities.
  - (10) HUD contracting home page.
  - (11) FHA mortgage insurance programs.
  - (12) HUD handbooks.
  - (13) HUD programs.
  - (14) HUD telephone directory.
  - (15) HUD homes listing.
  - (16) HUD's organization.
  - (17) Multifamily housing data.
  - (18) Public housing authority contact information.
  - (19) Weekly listing of multifamily properties for sale.

- (20) Catalog of Federal Domestic Assistance (CFDA) materials.
- (21) Grants.
- (22) FOIA request logs.

## **I. HUD Electronic Reading Room and FOIA Library**

To comply with the electronic availability requirement, HUD publishes records required to be proactively disclosed in its Electronic Reading Room and FOIA Library. HUD's Electronic Reading Room and FOIA Library can be found at the following link:

[https://www.hud.gov/program\\_offices/administration/foia/readingroom](https://www.hud.gov/program_offices/administration/foia/readingroom).

HUD, at its discretion, may make other records publicly available and provide links to those records in the HUD Electronic Reading Room and FOIA Library.

DOJ has noted that an agency's FOIA website has become an essential means for satisfying FOIA obligations going so far as to note that the FOIA website support should be a primary mission of each agency's IT staff. Clarity to the website user is essential to the effectiveness of the site and DOJ emphasizes the importance of keeping websites accurate and up-to-date. Agencies should check both accuracy and viability of FOIA website links and text content on a regular basis. Records provided in FOIA Electronic Reading Rooms and FOIA Libraries should be organized from a citizen-centered perspective that allows for efficient and easy location of specific documents and DOJ suggests records be listed as separate links or headings. FOIA Electronic Reading Rooms and FOIA Libraries provide a centralized location for agency FOIA proactive disclosures while allowing agency flexibility in how records are posted.

## **II. Indexing Proactive Disclosures**

5 U.S.C. § 552(a)(2) also created two separate but overlapping indexing requirements.

First, agencies must "maintain and make available for public inspection in an electronic format current indexes providing identifying information for the public" of subsection (a)(2) records (i.e., records published in an electronic format). DOJ guidance provides these indexes should be current, reasonable, and complete and should assist users in easily finding information of interest. This may be satisfied by arranging records in Reading Room by topical or descriptive words, rather than by case name or numbering system, so that the public can readily locate material.

Second, agencies must also make available a general index of records processed under the frequently requested records category. DOJ guidance provides that the indexing requirement is generally satisfied by providing a distinct link to each document in this category.<sup>10</sup>

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If a program office would like more information on proactive disclosures, HUD FOIA Office is available to provide guidance concerning all aspects of the FOIA program at [FOIA@hud.gov](mailto:FOIA@hud.gov). By working together to promote public trust through government transparency, we enhance the integrity of HUD's FOIA program.

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<sup>10</sup> OIP Guidance: Guidance on Submitting Certification of Agency Compliance with FOIA's Reading Room Requirements (posted 2008, updated 8/22/2014) at <https://www.justice.gov/oip/blog/foia-post-2008-guidance-submitting-certification-agency-compliance-foias-reading-room>.