

Freedom of Information Act (FOIA) Reference Guide

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I. Introduction

The Freedom of Information Act (FOIA), which can be found in section 552 of Title 5 of the United States Code, was enacted in 1966 and generally provides that any person has the right to request access to federal agency records. All agencies of the Executive Branch of the United States Government are required to disclose records upon receiving a written request for them, except for those records (or portions of them) that are protected from disclosure by the nine exemptions and three exclusions of the FOIA. This right of access is enforceable in court, and it is supported at the administrative agency level by the [President's FOIA Memorandum](#) (January 21, 2009) and the [Attorney General's FOIA Memorandum](#) (March 19, 2009).

The FOIA does not, however, provide access to records held by Congress or the federal courts, by state or local government agencies, or by private businesses or individuals. All states have their own statutes governing public access to state and local government records; state agencies should be consulted for further information about them. An electronic compilation of the state laws is publicly available at the [National Freedom of Information Coalition](#).

Examples

An example of a request for records appropriately made at the state level (rather than with the U.S. Department of Transportation) would be requests for information from your local department of transportation, department of motor vehicles, or motor vehicle administration. Links to each state's department of transportation can be found on the [Federal Highway Administration's website](#).

This Reference Guide is designed to familiarize you with the specific procedures for making a FOIA request to the U.S. Department of Transportation. The process is not complicated or time consuming. Following the guidance below will make it more likely that you will receive the information that you are seeking in the shortest amount of time possible. This Reference Guide also includes descriptions of the types of records maintained by different parts of the Department, some of which are readily available through means other than the FOIA, including through the World Wide Web.

Initially, it is important to understand that there is no central office in the government that processes FOIA requests for all federal agencies. Each agency responds to requests for its own records. Therefore, before sending a request to the U.S. Department of Transportation you should determine whether we are likely to have the records you are seeking. Each agency should have its own FOIA reference guide, so if the records you are interested in are kept by another agency you may wish to request a copy of that agency's guide from its FOIA office or view it on that agency's FOIA site on the World Wide Web. [Click here for a link to the FOIA websites for other federal agencies](#).

FOIA Officers

The FOIA statute requires each agency to designate a Chief FOIA Officer -- a high-level official who monitors FOIA implementation throughout the agency, as well as FOIA Public Liaison(s) to assist FOIA requesters with inquiries about the FOIA process in general and their FOIA requests in particular. The Department of Transportation has designated a Chief FOIA Officer and FOIA Public Liaisons throughout the Department.

The formal rules for the making of FOIA requests to the Department of Transportation are set forth in Part 7 of Volume 49 of the *Code of Federal Regulations*. This multiple-volume set is available in all law libraries and federal

depository libraries. A copy of the portions of Part 7 pertaining to making FOIA requests may be obtained from the FOIA Requester Service Center for the Department of Transportation's Office of the Secretary (contact information can be found here). These regulations also can be accessed on the Department of Transportation's FOIA site on the World Wide Web under "[Department of Transportation FOIA Regulations.](#)" However, in most cases, this Reference Guide should provide you with all the basic information that you will need.

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II. Access to Certain Records Without a FOIA Request

All agencies are required by statute to make certain types of records, created by the agency on or after November 1, 1996, available electronically. If you have access to the World Wide Web, you will not need to make a FOIA request to obtain access to these records. These records include:

1. Final opinions and orders made in the adjudication of cases;
2. Final statements of policy and interpretations which have not been published in the *Federal Register*;
3. Administrative staff manuals and instructions to staff that affect members of the public;
4. Copies of records that have been the subject of a FOIA request and that also (A) are the subject of sufficient public interest or curiosity that the agency believes that other persons are likely to request (or already have requested) them or (B) have been requested three or more times; and
5. The agency's annual FOIA reports -- which include such information as the number of FOIA requests received by the agency, the amount of time taken to process requests, the total amount of fees collected by the agency, information regarding the backlog of pending requests, and other information about the agency's handling of FOIA requests.

The Department of Transportation has a site on the World Wide Web, accessed at <https://www.transportation.gov/>, which contains a wealth of Department of Transportation-related information. This Web site also includes a link to www.usa.gov, where you will find links to the World Wide Web sites of all other federal executive branch agencies. Each U.S. Department of Transportation

component maintains its own home page, which contains a wide variety of substantive information for which a FOIA request is not required. Another good general source of information is all of the information that can be found under the "About DOT," "DOT Agencies," "Safety," and "News" sections of the Department of Transportation's home page.

The U.S. Department of Transportation maintains a [FOIA home page](#), which can be accessed from the Department's home page. This Web site includes the U.S. Department of Transportation's annual FOIA reports, a variety of reference materials, information on how to make a FOIA request, and copies of relevant statutes. Additionally, this Web site provides links to component FOIA home pages and electronic reading rooms that contain the records the FOIA requires to be made available automatically in electronic form.

The U.S. Department of Transportation also makes certain records -- such as general reports, statistics, and publications, available in paper form without requiring a formal FOIA request. Many potential FOIA requesters can save time by carefully reviewing what is already posted on the U.S. Department of Transportation's Web site before making a FOIA request.

Among these records are DOT's annual FOIA reports, which include extensive statistical information about FOIA requests to the U.S. Department of Transportation. Copies of the Department of Transportation's annual FOIA report may be obtained by calling the U.S. Department of Transportation's FOIA Requester Service Center located in the Office of the Secretary, in addition to being accessible electronically through the Department of Transportation's Web site. The Department also maintains a listing of its Major Information Systems, which can be accessed from the FOIA Home Page.

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III. Where to Make a FOIA Request

The U.S. Department of Transportation is organized into the Office of the Secretary for Transportation (OST), the Office of the Inspector General (OIG), and ten operating administrations. Within the Department of Transportation, each component processes its own records. Therefore, your request will receive the

quickest possible response if it is addressed directly to the component that you believe has the records you are seeking.

The functions of each component are summarized in the Department's regulations (Title 49 of the *Code of Federal Regulations*, Part 7). Each component's FOIA home page will provide you with specific instructions for where to send your request. You can reach each component's FOIA home page from the main DOT FOIA page at <https://www.transportation.gov/foia>. You may also call the component's [FOIA Requester Service Center](#) for information about submitting a FOIA request.

Because, over time, individual employees of the Department of Transportation may change job positions, it is not recommended that you address your request to a specific person. Rather, you should include the notation "Freedom of Information Act Request" on the front of your request envelope and also at the beginning of your request letter. In this way you will be sure that the responsible individual receives your request without delay.

If you believe that the Department of Transportation does maintain the record(s) you are seeking, but you are uncertain about which component has the record(s), you may send your request to: Departmental FOIA Office (C-60), 1200 New Jersey Avenue, SE., Room W94-122, Washington, DC 20590, Attention: FOIA Request. Personnel in that division will then forward your request to the [component\(s\) of the Department of Transportation](#) most likely to maintain the record(s) you are seeking.

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IV. How to Make a FOIA Request

A FOIA request can be made for any agency record. This does not mean, however, that the Department of Transportation will disclose all records sought. As noted above, there are statutory exemptions that authorize the withholding of information of a sensitive nature. When the Department of Transportation does withhold information from you, it ordinarily must specify which exemption of the FOIA permits the withholding. You should be aware that the FOIA does not require

agencies to do research for you, to analyze data, to answer written questions, or to create records in order to respond to a request.

Although, as discussed immediately below, certain information may be required from a FOIA requester, no special form is required by the Department of Transportation. Requests must be in writing, either handwritten or typed. Requests may be submitted by mail, fax, or e-mail to any component of the Department of Transportation.

Protecting Privacy

In order to protect your privacy as well as the privacy of others, whenever you request information about yourself you will be asked to provide either a notarized statement or a statement signed under penalty of perjury stating that you are the person that you say you are. You may fulfill this requirement by:

1. Having your signature on your request letter witnessed by a notary, or
2. Including the following statement immediately above the signature on your request letter: "I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]." If you request information about yourself and do not follow one of these procedures, your request cannot be processed. This requirement helps to ensure that private information about you will not be disclosed to anyone else.

Be Specific

In making your request you should be as specific as possible with regard to names, titles, dates, places, events, subjects, recipients, the component(s) likely to maintain that record, etc. If known, you should include any file designations or descriptions for the records that you want. You do not have to give a requested record's name or title, but the more specific you are about the records or types of records that you want, the more likely it will be that the Department of Transportation will be able to locate those records. Additionally, you should be aware that Department of Transportation components ordinarily will use the date upon which they begin a record search as the "cut-off" date for determining the records that are responsive to a FOIA request.

When a Department of Transportation component receives your FOIA request, it ordinarily will send you a letter acknowledging the request and assigning it an initial request number for continuity and tracking purposes. If you do not provide

the necessary information, the component will advise you of what additional information is required before further processing your request.

Under certain circumstances you may be entitled to receive more information under the Privacy Act of 1974 (a separate federal statute) than under the FOIA. Under the FOIA, generally anyone can request access to any agency record. Privacy Act requests are more limited and can be made only by (a) U.S. citizens or aliens lawfully admitted for permanent U.S. residence, (b) who are seeking information about themselves, (c) which is in a system of records maintained under their names or other personal identifiers. Even if a request does not mention the Privacy Act, however, the Department of Transportation automatically treats requests as being made under *both* the FOIA *and* the Privacy Act whenever it is appropriate to do so. In this way, requesters receive the maximum amount of information available to them under the law.

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V. Response Times

Under the statute, all federal agencies are required to respond to a FOIA request within 20 business days, excluding Saturdays, Sundays, and legal holidays. This time period does not begin until the request is actually received by the FOIA office of the component of the Department of Transportation that maintains the records sought. An agency is not required to send out the releasable documents by the last business day; it can send you a letter informing you of its decision and then send you the documents within a reasonable time afterward.

Some components of the Department of Transportation receive hundreds, or in the case of FAA, thousands, of requests each year. Many of these requests require a line-by-line review of hundreds or even thousands of pages of documents. Although the Department of Transportation makes every effort to respond to FOIA requests as quickly as possible, in some cases it simply cannot do so within the specified time period. This may be due either to the size of the request or to the fact that the component has a backlog of previously received requests that are awaiting processing. Some components use "multi-track" processing queues to deal with their heavy FOIA workloads.

Time Extensions

Under the FOIA, a component may extend the response time for an additional 10 business days when:

1. The component needs to collect responsive records from field offices;
2. The request involves a "voluminous" amount of records that must be located, compiled, and reviewed; or
3. The component needs to consult with another agency or other components of the Department of Transportation that have a substantial interest in the responsive information.

When such a time extension is needed, the component will notify you of this in writing and offer you the opportunity to modify or limit your request.

Alternatively, you may agree to a different timetable for the processing of your request. You may also seek assistance from the FOIA Public Liaison or seek dispute resolution services from the Office of Government Information Services.

When a determination on your request is not made within the applicable time period and you have not agreed to a different response timetable, you may file suit in federal court to pursue a response. If, however, the court concludes that you have unreasonably refused to limit your request or to accept an alternate timetable for response, the court may find that the component's failure to comply within the statutory time period is justified. The court may excuse the lack of a timely response if the component demonstrates that it has a backlog of requests that were received before yours, that it processes its requests on a first-come/first-served basis, and that it is making reasonable progress in reducing its backlog of pending FOIA requests. In such cases, the court may postpone its consideration of your lawsuit until the agency reaches your request in its processing backlog.

Checking Status

Alternatively, FOIA requesters also may contact an agency's FOIA Requester Service Center(s) to check on the status of their FOIA requests. As mentioned above, the Department of Transportation has established such a center for each of its components, with a FOIA Public Liaison named for each, whom FOIA requesters may contact by telephone if they are dissatisfied with the response of the component's FOIA Requester Service Center. FOIA requesters are strongly encouraged to make use of these services that are now available to them.

VI. Expedited Processing

Under certain conditions you may be entitled to have your request processed on an expedited basis. However, you should realize that whenever a FOIA request is expedited for a particular requester, taking that action results in an additional delay for previous requesters who have been waiting for a response. Therefore, in an effort to treat all requesters equitably, the Department of Transportation ordinarily will process an initial FOIA request or an administrative appeal of a request's denial ahead of others only in cases in which there will be a threat to someone's life or physical safety, or where an individual will suffer the loss of substantial due process rights if the records are not processed on an expedited bases. In most cases, a request will not be expedited merely on the basis that the requester is facing a court deadline in a judicial proceeding. In both criminal prosecutions and civil litigation there is a document-disclosure process known as "discovery," which gives the parties certain rights to obtain relevant information apart from the FOIA. These discovery rights usually are sufficient to protect the requester's due process rights.

The FOIA also requires that requests be processed on an expedited basis if made by a person primarily engaged in disseminating information to the public and the information is urgently needed to inform the public concerning some actual or alleged government activity. Requests are not expedited under this provision merely on the basis that the requester is a representative of the news media. Similarly, the Department of Transportation also expedites requests when the subject is of widespread and exceptional media interest and the information sought involves possible questions about the government's integrity which affect public confidence.

A request for expedited processing must be accompanied by a statement setting forth the reasons why your request should be expedited. You should certify that the reasons you have given are true and correct. The component will be required to notify you of its decision about whether to grant expedited processing within no more than 10 calendar days after receiving your letter. If the component denies your request for expedited processing, you will be advised of your right to submit an administrative appeal of that denial, which will be handled expeditiously. (For

information about filing administrative appeals, see Section X of this Reference Guide.) You also will be notified of your right to seek dispute mediation services from the Office of Government Information Services.

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VII. Fees

There is no initial fee to file a FOIA request; in fact, in the majority of requests made to the Department of Transportation, no fees are ever charged. By law, however, an agency is entitled to charge certain fees depending on the particular category of FOIA requester that you fall into.

For the purposes of fees only, the FOIA divides requesters into three categories.

- In the first category, *commercial requesters* may be charged fees for searching for records, "processing" the records (i.e., reviewing them to determine the possible applicability of FOIA exemptions), and photocopying them.
- In the second category, on the other hand, *educational or noncommercial scientific institutions* and *representatives of the news media* are charged only for photocopying expenses, after the first one hundred pages of copies.
- Requesters in the third category, i.e., all other requesters, are charged only for record searches and photocopying -- and there is no charge for the first two hours of search time or for the first one hundred pages of photocopies or their cost equivalent. The Department of Transportation currently charges ten cents per page for photocopying. In all cases, if the total fee does not exceed a minimum amount, currently \$20.00, the Department of Transportation will not charge any fee at all.

If a component fails to respond to your FOIA request within the applicable time period, the component cannot charge you search fees (for requesters in the first and third categories above), or duplication fees (for requesters in the second category above) unless more than 5,000 pages are necessary to respond to the request and the component has extended the time for response as described in the section **Time Extensions**.

You may always include in your request letter a specific statement limiting the amount that you are willing to pay in fees. If you do not do so, the Department of

Transportation will assume that you are willing to pay fees of up to a certain amount, currently \$25.00. If a component estimates that the total fees for processing your request will exceed \$25.00, it will notify you in writing of the estimate and offer you an opportunity to narrow your request in order to reduce the fees. If you continue to want all of the records involved, you will be asked to express your commitment to pay the estimated fees and the processing of your request will be suspended until you agree to do so.

You ordinarily will not be required to actually pay the fees until the records have been processed and are ready to be sent to you. If, however, you have failed to pay fees within thirty days of billing in the past, or if the estimated fees exceed \$250, you may be required to pay the estimated fees in advance -- that is, before the records even are processed. If you agree to pay fees and then fail to do so within 30 days of billing, you may be charged interest on your overdue balance and the Department of Transportation will not proceed with any further requests from you until payment in full has been made. If you agree to pay fees for searching for records, be aware that you may be required to pay such fees even if the search does not locate any responsive records or, if records are located, even if they are withheld as entirely exempt.

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VIII. Fee Waivers

If you expect or are advised that a fee will be charged, you may request a waiver of those fees. However, fee waivers are limited to situations in which a requester can show that the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. Requests for fee waivers from individuals who are seeking records pertaining to themselves usually do not meet this standard because such disclosures usually will not result in any increase of the public's understanding of government operations and activities. In addition, a requester's inability to pay fees is not a legal basis for granting a fee waiver. (Note that the granting of a fee waiver, which is done on a general public-interest basis under the statute, is entirely separate and distinct from the limitations on fees that are discussed in the previous section.)

IX. Initial Request Determinations

Once the component has processed your request and any fee issues have been resolved, the component will send you a written initial determination. In the vast majority of cases, Department of Transportation components will include any documents that can be disclosed along with the determination letter, though in some cases the documents themselves may be sent within a reasonable time afterward. The FOIA provides access to all federal agency records (or portions of those records), except for those records that are withheld under any of nine exemptions or three exclusions (i.e., the reasons for which an agency may withhold records from a requester). The determination letter will advise you of whether any information is being withheld pursuant to one or more of the exemptions. When a page of a record is being withheld in its entirety, the component ordinarily specifies the number of pages being withheld or makes a reasonable effort to estimate the volume of the withheld information.

Exemptions

The exemptions authorize federal agencies to withhold information covering:

1. Classified national defense and foreign relations information;
2. Internal agency rules and practices;
3. Information that is prohibited from disclosure by another federal law;
4. Trade secrets and other confidential business information;
5. Inter-agency or intra-agency communications that are protected by legal privileges, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;
6. Information involving matters of personal privacy;
7. Records or information compiled for law enforcement purposes, to the extent that the production of those records
 - a. Could reasonably be expected to interfere with enforcement proceedings,
 - b. Would deprive a person of a right to a fair trial or an impartial adjudication,
 - c. Could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - d. Could reasonably be expected to disclose the identity of a confidential source,

- e. Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or
- f. Could reasonably be expected to endanger the life or physical safety of any individual;
- 8. Information relating to the supervision of financial institutions; and
- 9. Geological information on wells.

Federal agencies may not apply these exemptions, however, unless the agency reasonably foresees that the disclosure would harm an interest protected by the applicable exemption or the disclosure is prohibited by law.

The three exclusions, which are rarely used, pertain to especially sensitive law enforcement and national security matters.

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X. Administrative Appeals

You may file an administrative appeal if you are not satisfied with a Department of Transportation component's initial response. You might disagree with the component's withholding of information or you might believe that there are additional records responsive to your request that the component failed to locate. You also may file an administrative appeal if you have requested expedited processing or a fee waiver and the component has not granted that request.

You also may appeal a determination that what has been requested is not reasonably described, that a record does not exist or cannot be located, that a record is not readily reproducible in the form or format requested, that the requested information is not a record subject to the FOIA, or a determination regarding the charging of a fee. You should be advised of your right to file an appeal in the initial determination letter sent by the component or in a letter denying your request for expedited processing or a fee waiver. Your appeal must be received within 90 days after the date of the initial determination.

Appeals Officials

Each component has its own appeals official, and appeals must be sent to the component that provided you with the initial determination of which you are appealing. Both the front of the envelope and the appeal letter should contain the notation "Freedom of Information Act Appeal."

There is no specific form or particular language needed to file an administrative appeal. If possible, you should include the control number assigned to your initial request and a copy of the initial determination letter. Please do not attach copies of released documents unless they pertain to some specific point you are raising in your appeal. You may explain the reason or reasons why you disagree with the component's action, but a simple statement that you are appealing the decision ordinarily is sufficient. If, however, you are appealing because you believe there are additional records that have not been located in response to your request, you should specify why you think such records exist and, if possible, where you believe they might be located.

Review Process

When an administrative appeal is received, an attorney within that component will be involved in the appeal recommendation to the component's appeals official. If an operating administration determines that its initial action was appropriate, then a concurrence from an attorney in the Departmental Office of the General Counsel is required to concur in the decision. The attorney(s) ordinarily will have available all of the documents processed in connection with your request and will make an independent determination as to whether the component has properly processed your request.

Under the FOIA, the appeals officials in the components are ordinarily required to make a determination on your administrative appeal within 20 business days. The Appeals Official may take one of several actions on your appeal. It may affirm the component's action in full, in which case it will identify which exemptions (if any) have been appropriately claimed or that the initial search was adequate and reasonable. Or it may affirm part of the component's action (identifying the applicable exemptions), but order the release of other information previously withheld. In other cases, the Appeals Official may determine that the initial response should be overturned, and all previously withheld records will be released. Finally, under some circumstances, the Appeals Official may return or "remand" the request to the FOIA office that made the initial determination for complete reprocessing, which may result in the release of some of all of the

previously withheld records. When a case is remanded, you will have an opportunity again to appeal to the appropriate Appeals Official after the component has reprocessed the records if at that time you remain dissatisfied with the component's action in any respect.

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XI. Resolving Disputes

As mentioned previously, each component has a FOIA Public Liaison who is a supervisory official to whom you may turn if you are dissatisfied with the services received from the component's FOIA Requester Service Center. The FOIA Public Liaison can assist you throughout the request process, from working with you and the component to arrange an alternative time frame for processing your request, to increasing understanding regarding the status of your request, to assisting you in resolving disputes. All of DOT's FOIA Public Liaisons are listed in Attachment B and their contact information is also available on each component's website.

In addition, the Office of Government Information Services, an office created within the National Archives and Records Administration, offers mediation services to FOIA requesters. They may be contacted in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

Email: ogis@nara.gov
Phone: 301-837-1996
Fax: 301-837-0348
Toll-free: 1-877-684-6448

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XII. Judicial Review

If you still believe that the Department of Transportation has not handled your FOIA request properly under the law after your appeal has been decided, you have the right to challenge the agency's action in a lawsuit filed in federal court. Before doing so, you ordinarily will be required first to have filed an administrative appeal and to have received a response. If the Department of Transportation fails to respond to either your initial request or your appeal within the time limits discussed above, however, you may file a lawsuit once the time limits have expired.

If you do bring a court action, you may file your lawsuit in a federal district court in any of the following places:

1. Where you reside
2. Where you have your principal place of business (if any)
3. In the District of Columbia, or
4. Where the records are located, if they are not located in the District of Columbia.

If you have received an administrative appeal determination, that final administrative response letter will advise you of your right to seek judicial review and will specify where you can do so. You have 6 years to file a lawsuit from the time your right to sue begins.

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XIII. Other Reference Materials

Other general sources of information about how to make a FOIA request include:

- ["Your Right to Federal Records."](#) This pamphlet is a joint publication of the General Services Administration and the Department of Justice. It is available for sale for one dollar per copy from the Federal Citizen Information Center, Department 320N, Pueblo, CO 81009 or (888) 878-3256. It also can be accessed on the Department of Transportation's FOIA site on the World Wide Web under "Useful Links."

- ["A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records."](#) This report is published by the Committee on Government Reform of the House of Representatives. It also can be accessed on the Department of Transportation's FOIA site on the World Wide Web under "Useful Links" and is available for sale at the U.S. Government Printing Office by calling (202) 512-1808.
- Also, a more general publication, the ["Consumer Action Handbook,"](#) describes which federal agencies are responsible for specific consumer problems and where to write for assistance on them. Single copies of this publication may be obtained for free by calling (888) 878-3256. This booklet also can be accessed on the General Services Administration's site on the World Wide Web at www.consumeraction.gov.
- The "United States Government Manual" also describes the activities of the Department of Transportation's components. The "United States Government Manual" is issued annually by the Government Printing Office and is available in most libraries. It may be purchased by writing to: Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. To obtain the current price you can call (202) 512-1800; you also may call that telephone number to place an order using one of several major credit cards. In addition, the "United States Government Manual" can be accessed from the Government Printing Office's World Wide Web site, www.gpoaccess.gov, under "Executive Resources."