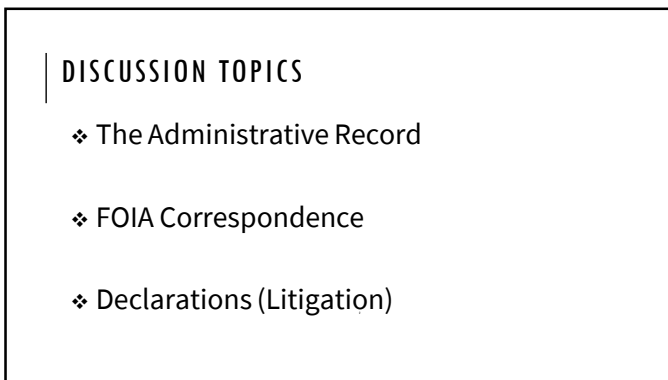




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WHY KEEP A THOROUGH ADMINISTRATIVE RECORD?

- Documents the when, why, how, what, and who of the request processing
- Crucial if administrative appeal and/or litigation
- Guards against memory loss, staff departures
- Provides accurate information to a potential future declarant
- Especially important to document adverse determinations

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WHAT TO SAVE

Ideally, everything that reflects timing, actions, and decisions

- Request
- Amendments or clarifications to the request
- Acknowledgement
- Adverse determinations
- Search details and cutoff date
- Internal and external correspondence or notes about communications with POCs, record custodians, SMEs, agency counsel, business submitters, other agencies, etc.
- Responses (interim and final)
- Records (clean/original, redlined, and redacted)

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INTERNAL PROCESSING NOTES

Memorialize everything!

- Save copies of emails that concern the processing of a request
- Use "notes" or similar section in the FOIA case management system
 - ❑ Administrative actions (e.g. related requests, tracking number changes)
 - ❑ Phone calls (e.g. with requester, record custodian, SME, etc.)
 - ❑ Meetings (e.g. with search component, OGC, etc.)
 - ❑ Internal decisions (e.g. determining official, NR records, etc.)
- Use text files in the request folder to include procedural notes - date & action!
- Use a spreadsheet or other log to track the processing steps for a request

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FOIA CORRESPONDENCE

- Essential Correspondence
- Other Key Correspondence

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*What documents would you draft in processing a
FOIA request from cradle to grave?*

Which of these would be essential?

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ESSENTIAL CORRESPONDENCE

1. Acknowledgment
2. Initial Intake Determinations
 - ✓ Expedited Processing
 - ✓ Fee Waivers
 - ✓ Preferred Fee Category
3. Unusual Circumstances
4. Fee Estimates (if fees to be charged)
5. Response Letters

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THE ACKNOWLEDGMENT

1. Tracking number
2. Date received
3. Estimated date of completion or relevant processing time (20 days, unusual circumstances)
4. Point of contact for status inquiries

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INITIAL INTAKE DETERMINATIONS

1. Expedited processing
2. Fee waiver
3. Preferred fee category

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"UNUSUAL CIRCUMSTANCES" NOTIFICATION (>10 DAYS)

1. Provide requester with opportunity to **narrow scope** of request
2. Make **FOIA Public Liaison** available to aid the requester, and
3. Notify requester of right to seek dispute resolution services from the **Office of Government Information Services (OGIS)**.
4. Provide the contact information for the FOIA professional handling the request (optional)

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- When possible, provide a fee estimate at the outset. Otherwise, as soon as possible before a response is due.
- You can toll processing as often as necessary to clarify fee issues!
- Challenges to estimated or assessed fees or to denials of fee waivers are subject to administrative appeal.
- Exhaustion of administrative remedies is required before a fee issue is ripe for judicial review.

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[illegible][illegible][illegible][illegible][illegible]

16[illegible]17

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RESPONSE LETTERS — REQUIRED

- The determination(s) and the reasons for it
- Availability of the agency's FOIA Public Liaison
- Name and title of the determining official

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RESPONSE LETTERS — REQUIRED (CONT'D)

For **adverse determinations**:

- Estimate **volume** of records withheld
 - Redacted records must indicate the exemption applied
- That agency considered the **foreseeable harm** in disclosure
- Provide **appeal rights** with no less than 90 days from the date of the determination to file the appeal
- Provide notice of the right of the requester to seek **dispute resolution** services from the **FOIA Public Liaison** or from **OGIS**.

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RESPONSE LETTERS — OPTIONAL

- Request description
- Amendment or clarification
- Procedural history
- Component that searched or where inquiry was made
- Describe the search (systems, repositories, methods, parameters, cutoff dates, etc.)
- Address each requested item and specify the determination for each part
- Fee assessment
- FOIA Requester Service Center contact information
- FOIA Analyst's contact information for questions
- If an interim response:
 - That the request continues being processed
 - Appeal rights or deferral or appeal rights information

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[illegible][illegible][illegible]

[Requester's Name]
[Tracking No.]

[Name]
[Title]
[Office Name]
[Agency Name]

Enclosure(s) - Responsive Records (see page(s))

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OTHER KEY CORRESPONDENCE

- Request amendments or clarifications
- Consultations and referrals
- Submitter notices (E.O. 12600)
- Internal clearances
- Record custodian/SME emails re search parameters, agency records, sensitivities

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DECLARATIONS

- What is a declaration?
- Structure of a declaration
- Best practices

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WHAT IS A DECLARATION?

- A **dated, written statement** in support of a legal matter
- Subscribed to as true **under penalty of perjury** – not notarized
- Establish the entire **factual record** in a FOIA case
- Crucial in FOIA litigation because FOIA cases are decided on summary judgment
- **Tailored** to the issue(s) being challenged (e.g. fees, search, withholdings, responsiveness, “agency record”, segregation)

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STRUCTURE OF A DECLARATION

- Identify the declarant
- Provide administrative history/relevant correspondence
- Describe the search
- Describe withholdings, exemptions applied, and foreseeable harm
- Address segregation of non-exempt information

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DOJ'S BEST PRACTICES FOR A STRONG DECLARATION

- Based on a robust administrative record (created during processing)
- Made in good-faith
- Non-conclusory (i.e. provides supporting evidence)
- Non-argumentative → objective
- Clear and easy to understand
- Thorough → don't assume your “audience” knows the agency's records systems or practices

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