

# ROCKY MOUNTAIN RECORD



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NARA

## Freedom of Information Act (FOIA) Reform Bill Signed into Law By President Bush December 31, 2007

The first Freedom of Information Act (FOIA) reform bill in more than a decade became law on December 31, 2007. For four decades, FOIA has enabled journalists, businesses, public interest groups and ordinary citizens to obtain government information. FOIA is an example of a government program that serves the public by providing access to government documents and information. FOIA was originally passed in 1966 and became effective in 1967. The Act was amended in 1974, 1976, and 1986. The E-FOIA amendments were made in 1996. The present amendment was made possible by President George W. Bush signing into law the OPEN Government Act of 2007, which passed unanimously by both the House and the Senate late December 2007.

Not all of the changes are discussed in this brief overview. Agencies should utilize the resources annotated at the end of this article for additional information. In general, the change takes some steps towards streamlining the process and creating more agency accountability:

- The Act mandates tracking numbers for FOIA requests that take longer than 10 days to process.
- Agencies that fail to respond within FOIA's required 20-day limit will lose the ability to recoup research and copying costs from requesters.
- The amended Act indicates that any award will be paid from the agencies appropriated funds, NOT from the Claims and Judgments Fund

of the United States Treasury as is the current practice.

- FOIA mandates will also apply to government records held by private contractors.

The new law also requires agencies to report more accurately to Congress and the public on their FOIA programs and creates the "Office of Government Information Services" at NARA to mediate conflicts between agencies and requesters and review agency FOIA performance.

### ***How should a FOIA request be initiated?***

- Requests must be in writing. They may be mailed, faxed or submitted via e-mail.

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## Digital Preservation Conference June 4-6, 2008

The National Archives and Records Administration, New Mexico State Records Center and Archives, New Mexico State Library, University of New Mexico Libraries, New Mexico Department of Information Technology, Northern New Mexico ARMA Chapter and Rio Grande ARMA Chapter will host a digital preservation conference June 4-6 2008. This conference will address the issues and concerns for the long-term preservation of digital assets, both those "born

digital" as well as digitized objects. A list of presenters and topics will be available soon.

Register on-line at <http://nara.learn.com/recordsmanagement-training> or via e-mail at: [workshop.denver@nara.gov](mailto:workshop.denver@nara.gov).

Register by 05/23/08.

Pre-Conference Session, June 4th cost \$100.00

Main conference June 05-06/08 registration fee \$150.00.



## (Continued from page 1) FOIA Reform Bill

**Who may file a FOIA request?**

Any person may file a FOIA request. The term “any person” covers U.S. and foreign individuals and entities including: individuals, businesses, government (foreign, state or local), universities and not-for-profit organizations and any other entity you can think of. Two broad classes are excluded from “any person,” federal government entities and fugitives from justice.

**What constitutes an agency record for FOIA purposes?**

“Agency records” are those created or received in the course of conducting agency business, including paper, electronic or other physical forms. They include reports, letters, photographs, recordings, e-mails etc. A record must exist and be in the possession and control of the agency before it is considered for release.

**What is Expedited Processing?**

Expedited processing is a decision to take a request out of order because the requester has convinced that agency that they have an exceptional need or urgency reasonably expected to pose an imminent threat to life or safety, OR urgency to inform the public of an alleged or actual Federal government activity. The agency has 10 calendar days to decide the issue, and an adverse decision to the requesting party

can be appealed and followed by judicial review.

**Are agencies required to implement “multi-tracking processing”?**

This process is optional based on the complexity of incoming requests. Multi-tracking of requests provides for addressing multiple requests in the most expeditious fashion: First in — first out. Multi-tracking processes should allow requesters the opportunity to limit the scope of their requests so that their request(s) can be processed in the shorter queue.

**How would agency staff search for responsive records?**

Staff would search for “records,” not documents. Professional staff must conduct a search that is “reasonably calculated” to locate responsive records. The search must include electronic records — unless it would significantly interfere with agency programs. A cut-off date for searching should be given which is the date that processing begins.

**What does a “release of responsive records” entail?**

It requires release of “reasonably segregable” portions of otherwise withheld records. Inextricably intertwined records may be denied at the agencies discretion. Indicate redacted information at the appropriate place within the record. Use brackets, lined/black out, electronic redaction and

indicate the amount of material withheld in the response letter.

**Are there FOIA Fees?**

Yes. FOIA allows agencies to bill requesters based on whom they are and their intended use of the record requested. FOIA also allows for fee waivers and reductions. Section 5 U.S.C. 552(a) (4) vi) of the FOIA provides that FOIA fees are superseded by “fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.” In response to requests for access to NARA’s operational records, NARA charges requesters based on whom they are and their intended use of the record requested. For NARA’s accessioned records, there is a statutorily based fee schedule that allows the Archivist of the United States to set the level of fees for records transferred to the custody of the Archives.

Some Federal agencies have taken proactive steps toward the release of information likely to be of widespread interest and at the same time ease their own administrative processing burdens by reducing the need for requests to be made under FOIA. According to the Department of Justice (DOJ), “...one example of an agency that has an extensive affirmative disclosure program is the Department of the Air Force, which has two organiza-

tions at Maxwell Air Force Base in Alabama dedicated to compiling and making records publicly available. The Air Force Historical Research Agency maintains a collection of over seventy million pages that document the history of military aviation.” (to review the full article visit <http://www.usdoj.gov/oip/foia-updates/>)

Agencies should review their FOIA policies and procedures to ensure that they have a FOIA representative able to manage requests in a cost efficient timely manner and execute the recent changes.

Additional information on FOIA can be obtained by using your web browser or by using a search engine for the following: [www.archives.gov](http://www.archives.gov). Review the DOJ FOIA Reference Guide at [www.usdoj.gov](http://www.usdoj.gov). Link to the OPEN Government Act of 2007 at [www.whitehouse.gov/news/releases/2007/12/20071231-4](http://www.whitehouse.gov/news/releases/2007/12/20071231-4)

NARA has published a FOIA Reference Guide that describes the procedures for making FOIA requests to NARA. The Guide can be viewed at [www.archives.gov/foia/foia-guide.html](http://www.archives.gov/foia/foia-guide.html).

## Document Discoveries from The Archives



by Eric Bittner, Reference Archivist, National Archives Rocky Mountain Region

Carlsbad Caverns was "discovered" by a local ranch boy named James White, who explored some of the chambers as early as 1898. The caverns were surveyed and mapped by the General Land Office in 1923, and was designated as a National Monument that same year. It was upgraded to a National Park in 1930, and quickly became one of the most popular attractions in the Park Service.

Amelia Earhart visited the Caverns in August, 1931, and the occasion was noted in the superintendent's monthly narrative report. She had made

## Amelia Earhart visits Carlsbad Caverns National Park, New Mexico, August 1931 Superintendent's Narrative Report

the first transatlantic flight by a woman in 1928, and was dubbed as "Lady Lindy." She embarked on a national lecture tour, which increased her fame and visibility. By the time of her visit to Carlsbad, she was a national celebrity and a noted advocate of women's aviation.

The photo shows Earhart and park superintendent Thomas Boles. The text accompanying this photograph in the report states: "In regard to the recent additional distinction attained by Amelia Earhart Putnam by her solo flight across the Atlantic Ocean, I wish to remind the Washington Office that at the time of Miss Earhart's visit to the Carlsbad Caverns National Park some months ago she expressed a wish to be a member of our exploring party which will explore the Bottomless Pit. She was at once 'signed up' by Superinten-

dent Boles; and coiled wire ladders are even now in readiness for her next visit here."

No information exists in the records as to whether or not she made the return visit. Earhart had married her publicist George Putnam in February 1931, but as the report indicates was still using her maiden name.

*Document citation: Amelia Earhart and Thomas Boles Monthly Narrative Report, August 1931 Superintendent's Monthly Narrative Reports Correspondence Relating to National Parks, Monuments, and Recreational Areas, 1927-1953 Southwest Regional Office, Santa Fe, New Mexico Records of the National Park Service Record Group 79 National Archives and Records Administration—Rocky Mountain Region*



Photo Courtesy National Archives

### To Contact the Archives Division

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Hours of Operation: Monday—Friday 7:30am to 3:45pm

CLOSED ALL FEDERAL HOLIDAYS

## 2008 WORKSHOPS ROCKY MOUNTAIN REGION

NARA

**(Revised 3/10/08)**

Register for workshops and briefings through: <http://nara.learn.com/recordsmanagement-training>  
or request a registration form by e-mailing us at: [workshop.denver@nara.gov](mailto:workshop.denver@nara.gov) Call: (303) 407-5720 or Fax: (303)-407-5731

Date	Course Title	Location
March 25-26	(KA-3) Records Scheduling	Albuquerque, NM
March 27-28	(KA-4) Records Schedule Implementation	Albuquerque, NM
April 1-2	(KA-5) Asset and Risk Management	Albuquerque, NM
April 3	(KA-6) Records Management Program Development	Albuquerque, NM
April 15-16	(KA-3) Records Scheduling	Denver, CO
May 7-8	Electronic Records Management (ERM)	Albuquerque, NM
June 4-6	Digital Preservation Conference	Albuquerque, NM
June 11-12	Emergency Planning & Response for Vital Records & Essential Information	Denver, CO
June 18-19	(KA-2) Creating and Maintaining Agency Business Information	Pojoaque, NM
June 24	Basic Records Operations (BRO)	Rapid City, SD
June 25-26	Electronic Records Management (ERM)	Rapid City, SD
July 8-9	(KA-3) Records Scheduling	Pojoaque, NM
July 10-11	(KA-4) Records Schedule Implementation	Pojoaque, NM
July 22	Basic Records Operations (BRO)	Pojoaque, NM
July 23-24	Electronic Records Management (ERM)	Pojoaque, NM
August 19-20	(KA-5) Asset and Risk Management	Pojoaque, NM
August 21	(KA-6) Records Management Program Development	Pojoaque, NM