

Requesting Information Under the Freedom of Information Act for Deferred Action Applicants



On November 20, 2014, President Obama announced the Department of Homeland Security (DHS) will expand eligibility for Deferred Action for Childhood Arrivals (DACA) and create a new program for parents of U.S. citizens and lawful permanent residents—Deferred Action for Parental Accountability (DAPA). You cannot apply for these programs yet. In the meantime, you can start collecting relevant documents to prepare for the application process, including any immigration files and criminal records. In order to obtain these files, you will need to file a Freedom of Information Act—or “FOIA” —request.

What is a FOIA?

A Freedom of Information Act (FOIA) request is a written request in which you describe the information you want in as much detail as possible. For immigration purposes, you are entitled to request copies of your immigration file from any of the DHS agencies—U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP) or Immigration Customs Enforcement (ICE). DHS keeps an immigration file, known as an “A file”, on all immigrants with whom it comes into contact. When applying for a deferred action program, it is critical to the success of the applicant’s case to have a copy of their A file.

How can I make a FOIA request to DHS?

Form G-639 was created by DHS to assist in making a FOIA request to USCIS or ICE. ICE also accepts online requests at <http://www.ice.gov/foia/request>. Requests to CBP should be made using their online FOIA request service at <http://www.cbp.gov/site-policy-notice/foia>.

The G-639 form is available at <http://www.uscis.gov/g-639>.

If you do not have access to a printer, you may pick up a copy at any of our offices.[1]¹

TIP: Because each agency within DHS is responsible for responding to requests for its own records, it is important you determine which agency is likely to have the record(s) you are looking for and direct your request to that agency. To help you make this determination, USCIS provides a list of records/request types and the agency that is likely to keep those records. The list is available on the USCIS FOIA/PA

website: <http://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/how-file-foia-privacy-act-request/how-file-foiapa-request>

How can I make a FOIA request for any criminal records?

In addition to other requirements, to qualify for deferred action a person must not be convicted of a felony, a significant misdemeanor, or multiple misdemeanors, and not pose a threat to public safety or national security. Even without a conviction, arrests and dismissed charges may be taken into consideration in determining whether a person poses a “public safety” or national security threat. This is why it is important to review your complete criminal history, including juvenile adjudications, alongside a credentialed immigration law expert.

¹ Please visit <http://www.reid.senate.gov/contact> to locate the nearest office to you.

It is best to get records from three sources:

- **FBI report:** The procedures for obtaining such records is at: <http://www.fbi.gov/about-us/cjis/background-checks/>.
- **State records:** Each state has a different procedure to obtain criminal records. Make sure to get records from every state where you may have been arrested or convicted. In your application you should state the reason for requesting your records is a “background check”.

Copy of the record from the court where conviction took place: It is very important you do not just get a summary of the case, but the entire court file. You may have to call the court clerk first to get the requirements. In some places, these records may be online on a county or state website. If not online, there may be a fee to obtain a copy of the entire file and it could take some time.

Warning! If you believe you have an **outstanding warrant** for your arrest, it is best to take care of it before getting your criminal records. Contact a criminal defense attorney or your public defender’s office.

Who can submit a FOIA request?

Anyone can submit a request, regardless of your immigration status. If requesting information about yourself to DHS, you should include as much information as possible, including your full name, date of birth and A number. If you are an attorney or a third party requesting information on behalf of someone else (other than your minor child) you must attach a written consent from the person who is the subject of the records. It is recommended third parties use DHS Form G-28 (see http://www.cbp.gov/sites/default/files/documents/g_28_2.pdf) or submit a notarized consent from the individual.

Avoid Scams

Remember, you cannot apply for DACA or DAPA yet. If you need help filing an application or petition with USCIS, be sure to seek assistance from the right place and from people who are authorized to help. Going to the wrong place can delay your application or petition, cost you unnecessary fees, and possibly lead to removal proceedings.

This website can help you avoid immigration services scams: www.uscis.gov/avoid-scams

For more information on filing a FOIA request:

- USCIS: <http://www.uscis.gov/g-639>
- CBP: <https://foiaonline.regulations.gov/foia/action/public/request/publicPreCreate>
- ICE: <http://www.ice.gov/foia/request>
- AdminRelief.Org: www.adminrelief.org/resources/attachment.259804
- AdminRelief.Org: <http://www.adminrelief.org/resources/attachment.260478>