

SUPPORTING WHISTLEBLOWERS WITH FOIA



The Freedom of Information Act (FOIA) requires federal agencies to provide the public with access to federal information. Congressional offices may have a vested interest in supporting a whistleblower's FOIA request for oversight purposes or in furtherance of casework responsibilities. Whistleblowers may seek Congress' support to advance their FOIA requests in a variety of circumstances. For example, federal and private sector employees must submit a FOIA request to obtain the case files for their whistleblower disclosure and retaliation complaints. They may also utilize FOIA to obtain evidence in support of their disclosures — such as a record they can no longer access.

This guidance document identifies a range of strategies to inform Congress' involvement in whistleblower FOIA requests. It reflects lessons learned from whistleblower support organizations.

STRATEGY ASSESSMENT

There are myriad ways for congressional offices to support a whistleblower in advancing their FOIA request, from checking on the status of the request to bypassing the FOIA process and directly requesting the documents. When assessing the appropriate strategy, incorporate overarching best practices for working with whistleblowers.

To manage expectations, understand your office's potential level of involvement before making commitments. Prior to acting, strategize with the whistleblower (and ideally their attorney) to prevent unintended harm. For example, what level of confidentiality do they want to maintain?

In some instances, the whistleblower may have no qualms with the agency knowing that they are working with Congress, and your office's oversight of the process may provide the push they need to get their request through the backlog. (Use a Privacy Act waiver when directly facilitating with FOIA requests.) In other circumstances, the whistleblower may want their communications with your office to remain confidential.

If a source feels their FOIA request for evidence is being stonewalled, your office may consider requesting

responsive documents from the agency directly. If the source wants to remain confidential, strategize with them around the framing of the request to avoid pinpointing unique evidence or knowledge that could inadvertently identify them. Your office may start by submitting a broader "ask" that is likely to sweep in the relevant records, and then coordinate follow-up with the whistleblower behind the scenes. As a rule, agencies prioritize requests by committee leadership.

Despite an office's best efforts, it is not always possible to shield a whistleblower's identity and creative alternative approaches may be required. For instance, your office could employ the Congressional Research Service (CRS) to obtain relevant data or other germane information from the agency. CRS does not identify the requesting office and can serve as a buffer.

Your office and/or the whistleblower could also engage the Office of Government Information Services (OGIS), which Congress established as a FOIA resource for the public and the government. OGIS may be positioned to intervene when there are lengthy delays or to help advance straightforward document requests. Your office's potential involvement with OGIS should still account for the whistleblower's desired level of confidentiality.

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GUIDANCE FOR THE WHISTLEBLOWER

Congress can play a key role guiding whistleblowers on how to navigate the FOIA process. The reality is, akin to congressional staff, FOIA officers are often overextended and have a backlog of requests. Additional pointers for the whistleblower include:

- **Prior to filing the request, consider whether it qualifies for expedited processing** (e.g., imminent threat to life or safety, an urgency to inform the public concerning actual or alleged federal government activity, loss of substantial due process rights).
- **Avoid overly broad requests**, which may result in unnecessary delays, and list the desired records in order of priority.
- **Once assigned a FOIA officer, establish a rapport and maintain a line of communication.** For instance, the requester may “negotiate” with the FOIA officer to receive documents on a rolling basis as they become available. Or the FOIA officer may suggest revising a request so it can be processed in the simple queue, and thus allow for a timelier response (FOIA offices often process “simple” and “complex” requests separately, and the complex queues can be many times longer).
- **Express appreciation and exercise patience;** the FOIA officer is the bridge to the records.
- **Consider collaborating with an organization that supports your cause.** A public interest group or a nonprofit whistleblower support group may be able to submit the FOIA request or offer legal aid to appeal an adverse determination.



In addition, congressional offices may ask the whistleblower baseline questions to assess their circumstances and better inform potential follow-up. Suggested questions include:

- What support are you seeking from our office for your FOIA request?
- What level of confidentiality do you want to maintain while working with our office on this matter?
- When did you file your FOIA request?
- What records did you request?
- Did you request expedited processing? (If so, did you receive a determination within 10 business days and what was the determination?)
- Did you receive an acknowledgement from the agency within 20 business days?
- Was your request placed in the simple or complex processing queue?
- Have you asked for an estimated completion date? If so, did they provide one and what is it?

ADDITIONAL RESOURCES

Office of the Whistleblower Ombuds: [Template Whistleblower Privacy Act and HIPAA Release](#) (HouseNet)

Office of the Whistleblower Ombuds: [How to Partner with Whistleblowers on Oversight](#)

Office of the Whistleblower Ombuds: [Whistleblower Support Organizations and Legal Resources](#)

Office of Government Information Services: [FOIA Resources](#)

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