



DETENTION  
WATCH NETWORK

NATIONAL  
IMMIGRANT  
JUSTICE CENTER

A HEARTLAND ALLIANCE PROGRAM

## **State and Local Records Request Resources & Template**

### *What are open records requests?*

Open records and freedom of information laws give the public the right to access government documents. The right to access documents in the possession of **federal** government agencies is governed by the federal Freedom of Information Act (FOIA). Each state also has its own open records or freedom of information law. These laws vary widely among states but are largely modeled on the federal FOIA, providing the right to access documents in the possession of **state and local** government agencies.

This resource is focused on **state and local records requests** as they relate to **obtaining records around immigration detention facility contracts and conditions**. For resources and advice on filing a federal FOIA request see the resource list at the end of this document.

### *Who can request access to government documents?*

The federal FOIA permits “any person” to request access to agency records, and most state laws are similarly broad. **This means any member of the public can file an open records or freedom of information request with a government agency to ask for documents related to any topic they are interested in.**

However, **some state laws require requesters to be residents of - or otherwise be connected to - the state.** For example, [Virginia](#) requires requesters to be Virginia citizens (or be representatives of media circulating in Virginia) and allows government agencies to require the requester to provide a Virginia address when submitting an open records request.<sup>1</sup>

### *How are open records requests helpful in anti-detention fights?*

For years, people in detention, their loved ones, and their communities have been organizing around the country to shut down detention centers, shrink the number of people in detention, and stop ICE expansion in their towns and cities. Documents obtained through open records requests have informed and supported these local fights. For example, advocates have used federal, state, and local records requests to obtain contracts for U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) detention facilities. We may be able to tell from these detention center contracts what the term of the contract is, when it will be up for renewal, and who the decision makers are, which can assist with targeting local advocacy. Advocates have also obtained communications between private companies and federal, state and

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<sup>1</sup> VA FOIA § 2.2-3704 (Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.).

local officials that illuminate the way that ICE structures its detention center contracts to avoid federal procurement law (requirements that the federal agencies must follow when making contracts for goods and services, including detention center services) and maximize profits for local governments and private prison companies; documents revealing conditions and abuse inside facilities; and documents proving that the [ICE inspection scheme is a sham](#), which have strengthened anti-expansion efforts.

When a county or city is involved in negotiations with DHS for a detention facility, we can often get the detention contract and other documents related to a facility more quickly from the local government entity(ies) than through a federal FOIA request from DHS. The timelines for response under state open records acts are typically much shorter than for FOIA. There also may be internal communications at the state or local level that do not involve ICE directly and that you can only get from the local government - for example, records of the reasons a locality decided to engage with ICE, how the negotiations began, and/or the current state of a contract or negotiation. It can be important to obtain these records to understand the full picture of what is happening around a particular facility.

### *How to file a state or local records request*

To file a records request to obtain documents from a state or local government agency:

- 1. Review the open records or freedom of information law for your state.** NFOIC provides state freedom of information resources [here](#), where you can find links to each state's freedom of information laws. **Open records and freedom of information laws vary widely from state to state, and some are much more restrictive or specific than others, so it is critical that you review the law for your particular state.**

Your state may also have open meetings laws, which require government agencies to make meetings open to the public and related notices, agendas, and minutes publicly available. This could be helpful, for example, if you are interested in obtaining the minutes from a meeting during which a county board of commissioners approved an extension of an intergovernmental service agreement (IGSA) with ICE for a detention center. NFOIC also provides links to each state's open meetings laws in [their resources](#).

When reviewing the open records laws for your state, be sure to note:

- What agencies are subject to the disclosure requirements (typically all government agencies) and what counts as a "public record"
- Whether the agency may request any payment from you for the costs of searching for, retrieving, redacting, and/or producing documents, and whether there are fee waivers or other exceptions to those charges
- The deadline for the agency to respond to an open record request - for example, in Georgia, agencies must respond to a records request (either with documents or a description of the records available and a timeline for providing them) within three business days of receipt.<sup>2</sup> If the statute provides that the agency must

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<sup>2</sup> O.C.G.A. § 50-18-71.

respond “within a reasonable period of time,” we recommend providing a specific, reasonable timeline by which you request the production.

- When documents are exempt from production, or when an agency can redact or withhold documents from the public and the requirements for the agency to do so. This includes what details the agency must provide you in response to your request about the documents they are withholding. Some common exemptions/reasons that you may see for denials or redactions in response to state and local requests related to detention center documents are:
  - If your requests relate to contracts that are still in the process of being negotiated, **deliberative process exemptions** - exemptions for documents created in the process of “deliberating” over a contract or other agreement. For example, the [Virginia open records law](#) provides for a "working papers" exemption for documents “prepared by or for a public official” for their “personal or deliberative use.”<sup>3</sup>
  - If your requests relate to collaboration between ICE and police or other law enforcement agencies, **law enforcement exemptions** - exemptions for documents relating to ongoing law enforcement investigations or proceedings or that would disclose law enforcement techniques.<sup>4</sup>
  - If your requests relate to contracts with private companies, exemptions to withhold **commercial information or trade secrets**
- Any other rules or requirements that are relevant to your particular request

**2. Identify the agency or agencies who likely have the documents you are interested in.**

In the case of an ICE contract involving local officials (like an IGSA), this could be a county or city government agency, department, or board that negotiated and/or signed a detention facility contract; a sheriff’s department or other law enforcement agency that made an agreement with ICE; or another entity.

**Remember that private companies are not subject to open records laws, including the federal FOIA.** If your local government is contracting with a private prison company, you should make the request to the local government agency, not the company. You **can** still obtain records relating to the private contractor through this request to your local government agency, including communications between local government officials and the private contractor about an IGSA. If the responsive officials claim they cannot release communications that involve private companies, we recommend clarifying in your response that you are seeking records produced in the course of public affairs, which include communications with private companies about IGSA’s.

If the private company is contracting directly with ICE for a facility, however, you will not be able to obtain the contract through a state request.

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<sup>3</sup> VA FOIA § 2.2-3705.7 (Exclusions to application of chapter; records of specific public bodies and certain other limited exclusions).

<sup>4</sup> See, e.g., [D.C. Code § 2-534\(a\)\(3\)](#) (providing exemptions for “[i]nvestigatory records compiled for law enforcement purposes” to the extent that the production of the records would interfere with enforcement proceedings; disclose investigative techniques; and more).

3. **Review the open records or freedom of information requirements and submission information for the specific government agency/agencies.** In addition to the requirements laid out by each state's law, the government agency from which you are requesting documents will likely have its own structure for receiving requests. Typically, this is available on the agency's website. If not, you can contact an open records officer, clerk, or other contact for the agency to obtain the details. We recommend you note:

- How to submit an open records request to that particular agency - some agencies have open records portals, some have specially designated email addresses, and some may receive requests only by mail or fax.
- What cost(s) the agency may require for records requests
- Who the contact is for following up on open records requests for that agency

4. **Identify the kinds of records you will be requesting, and draft your request.** Before putting together your own request, we encourage you to first confirm through background research or conversations whether other organizations or individuals have requested similar records, so as to not repeat requests.

For requests related to immigration detention facility contracts - including new contract or contract extensions - and conditions, we suggest including requests for the following:

- The full, most recent contract with ICE for the facility and related communications, negotiations, and payments
- Records on the average daily population and monthly length of detention of people detained by ICE at the facility
- Complaints or grievances filed by people detained by ICE at the facility, and/or records on the most recent inspection(s) and/or ICE ERO Facility Significant Incident Summary (SIS) for the facility

If you want your requests to be time-bound, or if your state requires that requests be time-bound, you should include language to specify the scope. For example, you can say "please limit the scope of this request to records from January 1, 2019 to the present." Note that generally, public agencies and officers are not required to prepare new documents, including reports, summaries, or compilations that do not exist at the time of the request.

We have provided a general request template with suggested language below. As you can see from the template, your requests should be specific enough for the government agency to identify the records you are interested in - for example, identifying the contract and/or facility you are interested in, the entities you know are involved, and/or particular statistics or inspections you care about - and broad enough to catch all documents related to your specific ask. You, as the requester, are not expected to know exactly what documents exist. It is the government agency's responsibility to search their records and provide relevant documents in response to your request. **However, being as specific as you can be about the records you are requesting will likely save you time so the agency can pinpoint exactly what is responsive.**

Some agencies require requesters to identify **specific recipients for the requested records**. To be safe, you can include the **name of the agency/government official who you believe is in possession of the records** to your request.

We also recommend including language around certain logistics, such as:

- How you want to receive the information (paper or electronic)
- The statutory deadline for a response
- Request for specific justification, in writing, if they deny any part of the request, including any exemption(s) that authorizes denial
- Request for appeal procedures available
- Request to be notified of any fees before they fulfill the request and, if applicable, request a waiver of any fees related to the request. Most state laws have some form of a fee waiver for requesters filing requests that are not for commercial use, and/or if making the documents available are in the public interest. For example, you can explain how the requested documents and information will contribute to education of the public or other matters of public interest and/or, if you are affiliated with a nonprofit organization, how your nonprofit is engaged in public education and dissemination of information. Suggested language is included in the template, but **we recommend checking your state's open records law for state-specific provisions about fee waivers and citing your state's specific fee waiver language in your request**. There may also be specific rules around records requests and fee waivers for requests by the media.
- Any other specifics that your particular state requires for an open records request.

You can find other sample requests for each state at [NFOIC's state resources site](#); previously filed detention-related [FOIA](#) and [state and local](#) requests by the National Immigrant Justice Center (NIJC); and a database of thousands of actual requests that have been filed on [MuckRock](#) for further guidance.

5. **Submit your request and make a plan to follow up.** Note the statutory deadline for the agency to respond (see step #1) and the contact to use to follow up (see step #3).

*Template with suggested language*

**\*\*Please note: this is suggested language, but you should tailor the request to your particular site fight or advocacy, including removing and/or adding specific requests\*\***

[Date]

[contact information  
Sheriff, County Commissioner, Town council]

Submitted via email to [email of recipient]

**Re: Request Under [State Access to Information or Public Records Act law] – Immigration Detention Contract**

Dear [contact of Sheriff, County Commissioners, Town Council, etc]:

This is a request for records under the [State law]. We hereby request:

- 1) The most recent contract, including any amendments and modifications, between [Sheriff, County Commissioners, Town Council], and U.S. Immigration and Customs Enforcement (ICE) [and/or U.S. Marshals if USMS rider contract] for the purpose of allowing ICE to utilize bed space in [name of jail or detention facility].
- 2) Communications, including electronic communications and attached documents, with ICE related to the contract between [Sheriff, County Commissioners, Town Council] and ICE [and/or U.S. Marshals] to detain individuals at [name of jail or detention facility]. This should include any communications or documents, including electronic communications and attached documents, relating to requests, approvals, or denials of waivers of contract provisions regarding the [name of jail or detention facility].
- 3) Billings, invoices, and records of payment made pursuant to the Inter-Governmental Agreement between the [Sheriff, County Commissioners, Town Council] and ICE [or U.S. Marshals], since [date] to detain individuals at [name of jail or detention facility].
- 4) Communications regarding the revenue and/or costs to [Sheriff, County Commissioners, Town Council] accruing from the use of [name of jail or detention facility] for immigration detention.
- 5) Records on the average daily population and average length of detention (by month) of people detained in ICE custody at [name of jail or detention facility].
- 6) Complaints or grievances filed by people detained in ICE custody at [name of jail or detention facility].
- 7) Records relating to the annual inspection of the [name of jail or detention facility] conducted on [date] by Nakamoto Group, Inc. for ICE. These records include the full annual inspection report and any documents or communications, including emails and accompanying attachments, relating to the [date] inspection whether created before, during, or after the inspection.
- 8) Records relating any other inspections of [name of jail or detention facility] conducted during [time period/year], including by the Office of the Inspector General (OIG). These records include the full annual inspection report and any documents or communications, including emails and accompanying attachments, relating to the [date] inspection whether created before, during, or after the inspection.
- 9) Records relating to the ICE ERO Facility Significant Incident Summary (SIS) produced in connection to the [date] inspection of the [name of jail or detention facility]. These

records include any documents or communications, including emails and accompany attachments, relating to the SIS report.

We request that responsive records be produced in an electronic format, preferably in a portable document format (PDF).

Should you deny our request, or any part of the request, please state in writing the basis for the denial, including the specific exemption claimed to authorize the denial under the [State law]. If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify us of the appeal procedures available to me under the law.

The [name of your organization] is a non-profit, which defends the rights of immigrants and disseminates information and reports to educate the public on immigration policy matters. If there are any fees for searching or copying these records, please inform us if the cost will exceed [\$ amount]. However, we also request a waiver of all fees for this request. Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of [the operations or activities of the government and/or other matters of public interest (modify as appropriate for your group)] and is not primarily in our commercial interest. [Here, if applicable, you can also identify yourself as a representative of the news media and state that your request is related to news gathering purposes.] If you decline to waive these fees, please notify us of the fees before fulfilling this request.

[State law] requires a response time of [X days], and I request a prompt response to this request. If you expect a delay beyond [X days] in responding to or in fulfilling this request, please contact [contact information] with information about when I might expect copies or the ability to inspect the requested records.

Sincerely,

[contact information]

#### *Recommended resources on filing a federal FOIA request*

- Freedom of information request [advice and templates](#) from the National Freedom of Information Coalition (NFOIC)
- [FOIA Basics for Activists](#) guide from the Center for Constitutional Rights (CCR)
- A [step-by-step guide](#) from the Immigrant Legal Resource Center (ILRC) on filing a FOIA request with the Department of Homeland Security (DHS)
- The [FOIA Wiki](#): provided by the [Reporters Committee for Freedom of the Press](#), with contributions from [The FOIA Project](#) at [TRAC](#), [MuckRock](#), [The National Security Archive](#), [FOIA Mapper](#), [Open the Government](#), and everyday users.