



Public Body Reporting Under the West Virginia Freedom of Information Act

Office of the West Virginia Secretary of State

Freedom of Information Act Guidance



The Freedom of Information Act (FOIA) was enacted to provide full and complete information to the public about the workings and actions of government officials and employees

Its provisions must be **liberally construed** to carry out that purpose.



Governing Laws

- W. Va. Code § 29B-1-1 *et seq.*
- Code of State Rules § 153-52

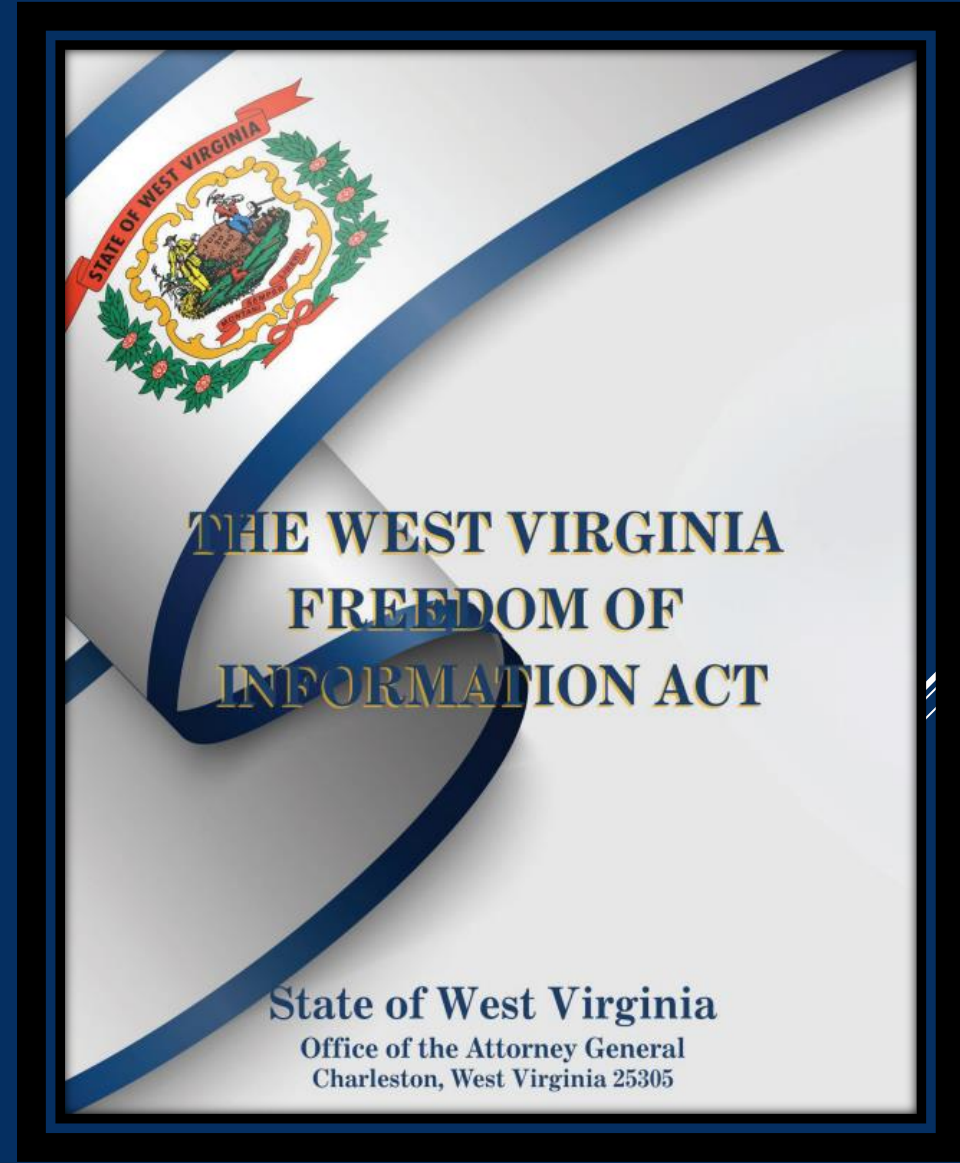
Freedom of Information Act Guidance



- Consult in-house counsel
- WV Attorney General's FOIA Handbook

<https://ago.wv.gov/media/37745/download?inline>

NOTE: the WV Secretary of State *is not* an authority on FOIA and only manages the online database.





Initial Considerations

When posed with a FOIA request, there are three initial considerations to determine if disclosure of a record is required under the Act. These are:

1. Is the entity a **public body** as defined by FOIA?
2. Is the record in question a **public record** as defined by FOIA? Is it in **writing**?
3. Is there a specific **statutory exemption** from the provisions of FOIA or in the statutes relating to the public body?



“Public Body” Defined

W. Va. Code § 29B-1-2(4):

A "public body" includes

- All officers, agencies, and departments of the State's executive, legislative and judicial branches of government;
- All counties, school districts, and municipalities; and
- Any other body created or primarily funded by the State or local authority.



“Public Record” Defined

W. Va. Code § 29B-1-2(5):

A “public record” includes “any writing containing information prepared or received by a public body, the content or context of which, judged either by content or context, relates to the conduct of the public's business.”

Several white diagonal lines of varying lengths and thicknesses are positioned in the bottom right corner of the slide, creating a modern, abstract graphic element.

“Writing” Defined



W. Va. Code § 29B-1-2(6):

A “writing” includes “any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.”

FOIA is not Discovery



FOIA is not a mechanism for forcing a public body to answer questions or generate materials.

There are no requirement to create documents under FOIA.

However, FOIA does require a public body to conduct good-faith efforts to identify responsive public records, review for exemptions, redact portions that are exempt, and turn over the records to the requestor.

Documents in Possession or Control of Public Body



Whether a public body created a public record is irrelevant under FOIA.

If a public body has any responsive public records (1) in its possession, or (2) under its control, the public body must disclose the records.

- *Daily Gazette Co. Inc. v. Withrow*, 177 W.Va. 110, 350 S.E.2d 738 (1986)



Exemptions

FOIA lists several categories of exemptions of certain public records that are not required to be disclosed.

However, the exemptions are to be “liberally construed” and courts favor redaction and disclosure over complete rejection.

See W. Va. Code § 29B-1-4 for all exemptions.

Enforcement, Violations, and Fees



W. Va. Code § 29B-1-5:

- (1) Any person denied under FOIA may file a civil action in circuit court for injunctive or declaratory relief.
- (2) Any public body found to be in noncompliance may be punished as being in contempt of court.

W. Va. Code § 29B-1-6:

Any public body who willfully violates FOIA faces a fine between \$200 and \$1,000 and jail up to 20 twenty days.

W. Va. Code § 29B-1-7:

Public bodies in violation of FOIA may be required to pay attorney fees and court costs.



Public Body Reporting Requirements

Public Body Reporting Requirements



W. Va. Code § 29B-1-3a(a):

Each public body in receipt of a FOIA request shall report:

1. The nature of the request;
2. The nature of the public body's response;
3. The time-frame that was necessary to comply in full with the request; and
4. The amount of reimbursement charged to the requester for the freedom of information request.

Provided, That the public body shall not provide to the Secretary of State the public records that were the subject of the FOIA request.

Who Manages the FOIA Database?



W. Va. Code § 29B-1-3(f):

The Secretary of State shall maintain an electronic data base of notices of requests as required by [W. Va. Code § 29B-1-3a].

The database shall be made available to the public via the Internet and shall list each freedom of information request received and the outcome of the request.

The Secretary of State shall provide on the website a form for use by a public body to report the results of the freedom of information request, providing the nature of the request and the public body's response thereto, whether the request was granted, and if not, the exemption asserted under section four of this article to deny the request.

Deadline to Report Completed Requests



Completed FOIA requests must be reported in the Database **by the 10th of every month.**

Pending requests are not to be reported until the request is completed (*i.e.* the requested records or a denial letter are provided to the requestor). Once pending requests are complete, the public body shall report the required information in the Database by the deadline.

Example:

FOIA request received by public body on January 1.

Records are sent/request is completed on February 1.

Public body must report completed request by no later than March 10.



Instructions for New Users of Public Bodies

1. Create a FOIA Database account at <https://erls.wvsos.gov/>;
2. Wait for email confirmation;
3. In the confirmation email, click the link to finalize the account;
4. Login to the database, complete and upload the FOIA Database Access Form in the database;
5. Wait for authorization email; and
6. Enter FOIA information into Database.

Accessing the FOIA Database



There are 2 ways to access the FOIA Database:

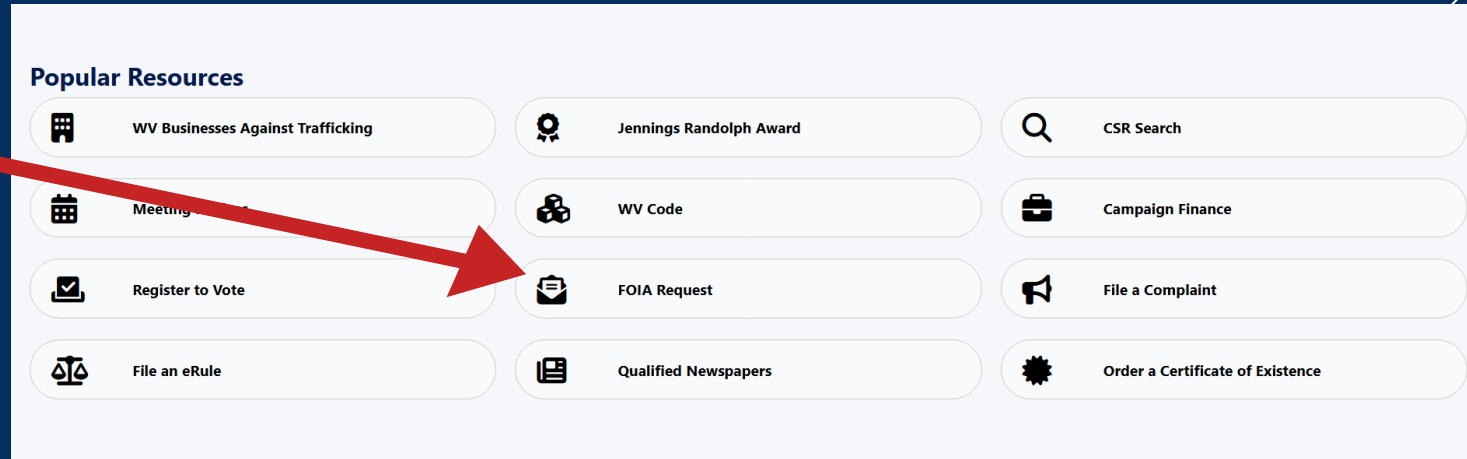
1. sos.wv.gov; or
2. erls.wvsos.gov

Option 1: from the SOS Homepage



Go to sos.wv.gov

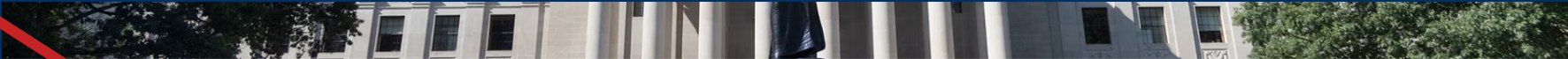
Click "FOIA Request" under
Popular Resources tab
on homepage



SOS.WV.GOV



Click “click here to log in to the FOIA Database as an agency user”



[Home](#)

Freedom of Information Act (FOIA) Request

The Freedom of Information Act permits inspection of public records created and maintained by public bodies. Public bodies include state agencies, county and municipal governments, offices, and boards, and some non-government bodies that are funded with government monies.

The Secretary of State maintains an online database where the public can view basic information about completed FOIA requests. However, the actual records responsive to each request are not hosted in the database.

All public bodies are required to report information about completed requests on every 10th day of each month after the request is complete.

If you represent a Public Body, [click here to log in to the FOIA Database as an agency user](#).

If you wish to set up an account to log FOIA entries on behalf of a Public Body, [create a new account here](#). Instructions for obtaining the proper authorization as a FOIA Database User can be found [in this guide](#).

[Search the FOIA Database](#)

[Request Public Records](#)

Option 2: go to erls.wvsos.gov



Go to <https://erls.wvsos.gov/>



The screenshot shows the homepage of the West Virginia Secretary of State Enterprise Registration & Licensing System. The header features the West Virginia Secretary of State seal on the left, the title "West Virginia Secretary of State Enterprise Registration & Licensing System" in the center, and a navigation menu on the right with links: "Search Charitable Organizations", "Search Notary Public", "Search Trademark/Service Mark", "Search Licensees", "Search FOIA Database", and "Document Validation". The main content area is divided into two sections. On the left is a large image of the West Virginia State Capitol building at night, illuminated and reflected in a body of water. On the right is a white login box with a grey header labeled "LOGIN". Inside the box, there are input fields for "Username:" and "Password:", a link for "Forgot your password?", a blue "Login" button, and a light blue "Create a new account" button.

erls.wvsos.gov



Enter Username and Password,
or click "Create a new account"

The screenshot shows the login page of the West Virginia Secretary of State Enterprise Registration & Licensing System. The page has a dark blue header with the state seal on the left and the title "West Virginia Secretary of State Enterprise Registration & Licensing System" in the center. Below the title is a navigation bar with links: "Search Charitable Organizations", "Search Notary Public", "Search Trademark/Service Mark", "Search Licensees", "Search FOIA Database", and "Document Validation". The main content area features a large image of the West Virginia State Capitol building at night. On the right side, there is a white login box with a "LOGIN" header. Inside the box, there are input fields for "Username:" (containing "dkersey") and "Password:" (containing masked characters). Below the password field is a link "Forgot your password?". At the bottom of the login box are two buttons: a blue "Login" button and a white "Create a new account" button. Two red arrows originate from the text above: one points to the "Username:" input field, and the other points to the "Create a new account" button.

Creating a FOIA Database Account



Enter required information,
then click "Submit"

 **West Virginia Secretary of State Enterprise Registration & Licensing System**

[Search Charitable Organizations](#) [Search Notary Public](#) [Search Trademark/Service Mark](#) [Search Licensees](#) [Search FOIA Database](#) [Document Validation](#)

- Must be at least 7 characters in length
- Must contain a combination of letters and numbers
- Must contain one or more numeric characters (0-9)
- Must contain one or more special characters

First Name: *	Deak	Middle Name:	
Last Name: *	Kersey		
Email Address: *	dkersey@wvsos.gov	Phone Number: *	304-558-6000
Address Line 1: *	State Capitol, Bldg. 1, Ste. 157-K	Address Line 2:	
Country: *	United States	ZipCode: *	25305
City: *	Charleston	State: *	West Virginia
Username: *	dkersey		
Password: *			
Confirm New Password: *			



Submit

[Back to Login](#)

Request Admin FOIA Permissions



Once logged into the FOIA Database, click "FOIA Requests" tab, then click "Request Admin FOIA Permissions"

A screenshot of the FOIA Database interface. The browser address bar shows "https://erls.wvsos.gov/OnlineDashboard/Index". The page has a dark blue header with a navigation menu. A red arrow points from the text above to the "Request Admin FOIA Permissions" link in the "FOIA Requests" dropdown menu. The main content area is divided into two sections: "IN PROGRESS FILINGS" and "INBOX".

West Virginia Secretary of S...

West Virginia Code 2019 WVSOS Legislative List CSR Legislative Tracking Legislature W. Va. Code Westlaw WV Secretary of State ERLS Admin

Dashboard Search Notary Public Trademark/Service Mark Charities Licensing Apostilles/ Authentications **FOIA Requests** FAQs

MY DASHBOARD **Request Admin FOIA Permissions** LOGOUT

IN PROGRESS FILINGS

Filing Category:

Date	Type	Filing Type	Status	Actions
------	------	-------------	--------	---------

INBOX

Correspondence: 0 Receipts: 0 Cart: 0

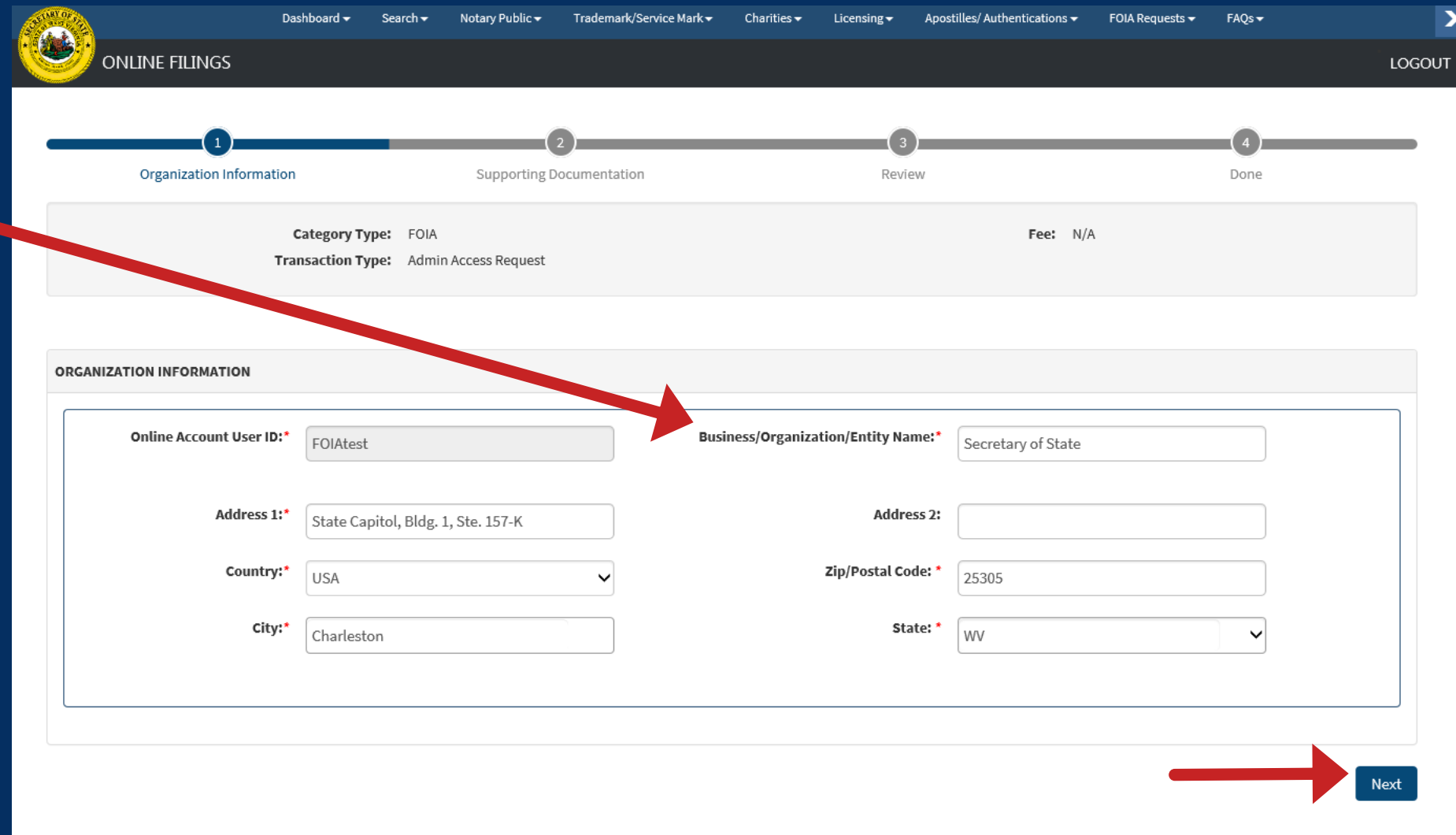
Request Admin FOIA Permissions



Enter public body information, then click "Next"

The "Business/Organization/Entity Name" **must** be your public body's name or official abbreviation

E.g.
"Secretary of State" or
"WVSOS"



The screenshot shows the "ONLINE FILINGS" page for the State of West Virginia. The page has a navigation bar with links: Dashboard, Search, Notary Public, Trademark/Service Mark, Charities, Licensing, Apostilles/ Authentications, FOIA Requests, and FAQs. A "LOGOUT" link is also present. Below the navigation bar is a progress bar with four steps: 1. Organization Information, 2. Supporting Documentation, 3. Review, and 4. Done. The current step is 1. The form is titled "ORGANIZATION INFORMATION". It contains several fields: "Online Account User ID" (FOIAtest), "Business/Organization/Entity Name" (Secretary of State), "Address 1" (State Capitol, Bldg. 1, Ste. 157-K), "Address 2" (empty), "Country" (USA), "City" (Charleston), "Zip/Postal Code" (25305), and "State" (WV). A red arrow points from the "Business/Organization/Entity Name" field to the "Next" button at the bottom right.

Dashboard Search Notary Public Trademark/Service Mark Charities Licensing Apostilles/ Authentications FOIA Requests FAQs

ONLINE FILINGS

LOGOUT

1 Organization Information 2 Supporting Documentation 3 Review 4 Done

Category Type: FOIA Fee: N/A

Transaction Type: Admin Access Request

ORGANIZATION INFORMATION

Online Account User ID: FOIAtest

Business/Organization/Entity Name: Secretary of State

Address 1: State Capitol, Bldg. 1, Ste. 157-K

Address 2:

Country: USA

City: Charleston

Zip/Postal Code: 25305

State: WV

Next

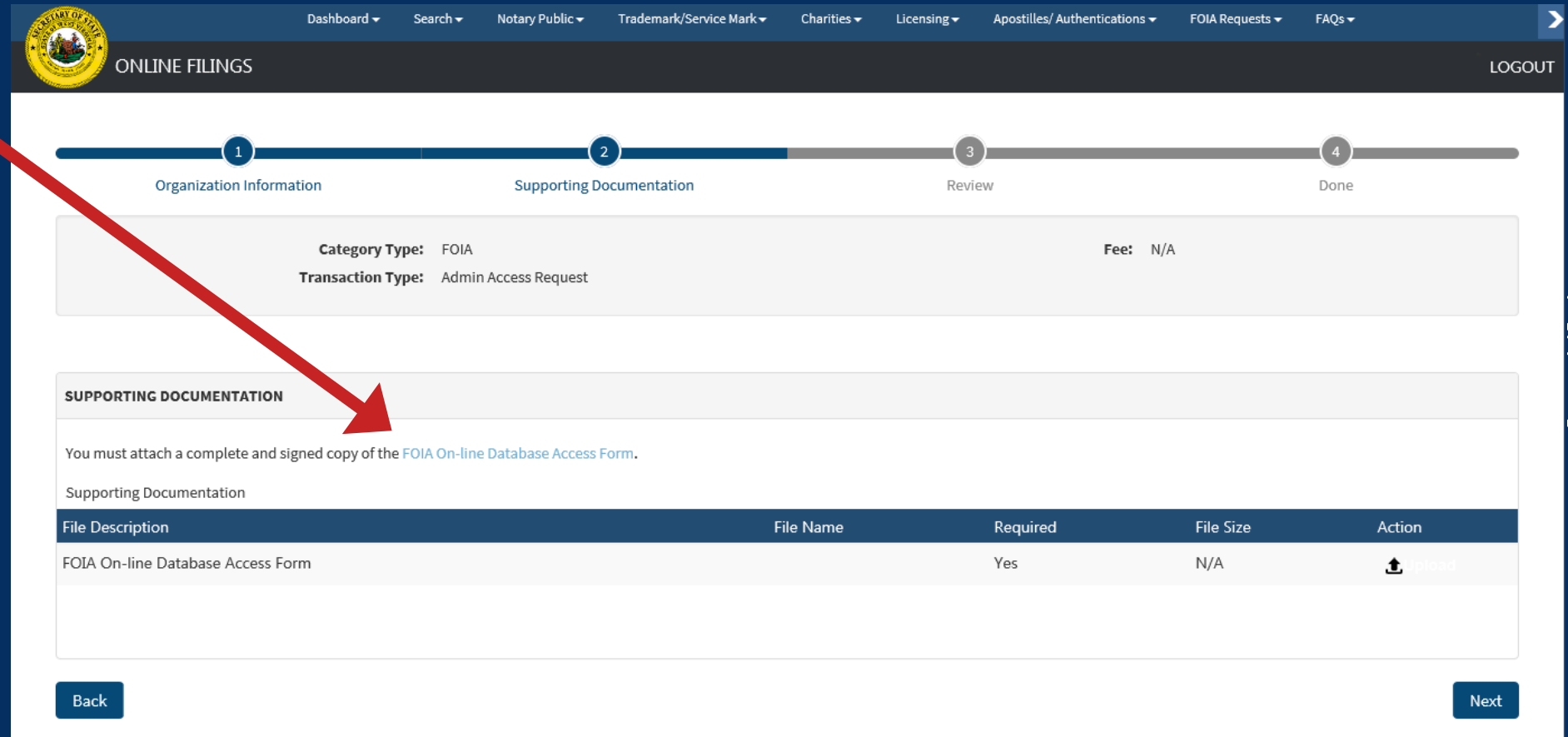
FOIA Database Access Form



Download the
“FOIA Database
Access Form”

Print and
complete the
form.

If the new user is
not an agency
head, the user’s
supervisor must
sign the form.



The screenshot shows the "ONLINE FILINGS" interface for the State of West Virginia. The top navigation bar includes links for Dashboard, Search, Notary Public, Trademark/Service Mark, Charities, Licensing, Apostilles/ Authentications, FOIA Requests, and FAQs. A "LOGOUT" button is in the top right corner. Below the navigation bar is a progress bar with four steps: 1. Organization Information, 2. Supporting Documentation (current step), 3. Review, and 4. Done. The main content area displays the following information:

Category Type: FOIA
Transaction Type: Admin Access Request
Fee: N/A

SUPPORTING DOCUMENTATION

You must attach a complete and signed copy of the [FOIA On-line Database Access Form](#).

Supporting Documentation

File Description	File Name	Required	File Size	Action
FOIA On-line Database Access Form		Yes	N/A	Upload

At the bottom of the form are "Back" and "Next" buttons. A red arrow points from the text "Download the 'FOIA Database Access Form'" to the "FOIA On-line Database Access Form" entry in the table.

FOIA Database Access Form



Once the form is completed, click the Upload icon under "Action" to attach the completed form

The screenshot shows the "ONLINE FILINGS" interface for the "FOIA Database Access Form". The form is in the "Organization Information" step, indicated by a blue circle with the number "1". The "Category Type" is "FOIA Request" and the "Transaction Type" is "New". The "SUPPORTING DOCUMENTATION" section includes a note: "You must attach a complete and signed copy of the FOIA On-line Database Access Form". The "File Description" is "FOIA On-line Database Access Form". A "Choose File to Upload" dialog box is open, showing the file "FOIA_db_Access_Formtest" (117 KB) selected. A red arrow points to the "Open" button in the dialog. The background form has a "Back" button at the bottom left and a "Next" button at the bottom right. The "Action" section on the right has an "Upload" icon.



FOIA Database Access Form

A confirmation box will appear if the form is uploaded successfully

Category Type: FOIA		Fee: N/A
Transaction Type: Admin Access Request		
Signed copy of the FOIA On-line Database Access Form.		
File Name		Required
101620201525435738		Yes
		No

Alert
⚠ File uploaded Successfully.
OK

FOIA Database Access Form



Confirm the filename, then click "Next"

Dashboard ▾ Search ▾ Notary Public ▾ Trademark/Service Mark ▾ Charities ▾ Licensing ▾ Apostilles/ Authentications ▾ FOIA Requests ▾ FAQs ▾

ONLINE FILINGS

LOGOUT

1

2

3

4

Organization Information

Supporting Documentation

Review

Done

Category Type: FOIA

Transaction Type: Admin Access Request

Fee: N/A

SUPPORTING DOCUMENTATION

You must attach a complete and signed copy of the FOIA On-line Database Access Form.

Supporting Documentation

File Description	File Name	Required	File Size	Action
FOIA On-line Database Access Form	10162020152543573PM_FOIA_db_Access_Formtest.pdf	Yes	116 KB	 
Additional Documentation		No	N/A	

Back

Next

Admin FOIA Account Request Submission



Review the account information, then click "Submit"

If any information is incorrect, click "Back" and edit the information

1Organization Information

2Supporting Documentation

3Review

4Done

Category Type: FOIA
Transaction Type: Admin Access Request
Fee: N/A

ORGANIZATION INFORMATION

EDIT

Online Account User ID: FOIAtest

Business/Organization/Entity Name: Secretary of State

Address 1: State Capitol, Bldg. 1, Ste. 157-K

Address 2:

Country: USA

Zip/Postal Code: 25305

City: Charleston

State: WV

SUPPORTING DOCUMENTATION

EDIT

You must attach a complete and signed copy of the FOIA On-line Database Access Form.

Supporting Documentation

File Description	File Name	Required	File Size
FOIA On-line Database Access Form	10162020152543573PM_FOIA_db_Access_Formtest.pdf	Yes	116 KB
Additional Documentation		No	N/A

Back

Submit

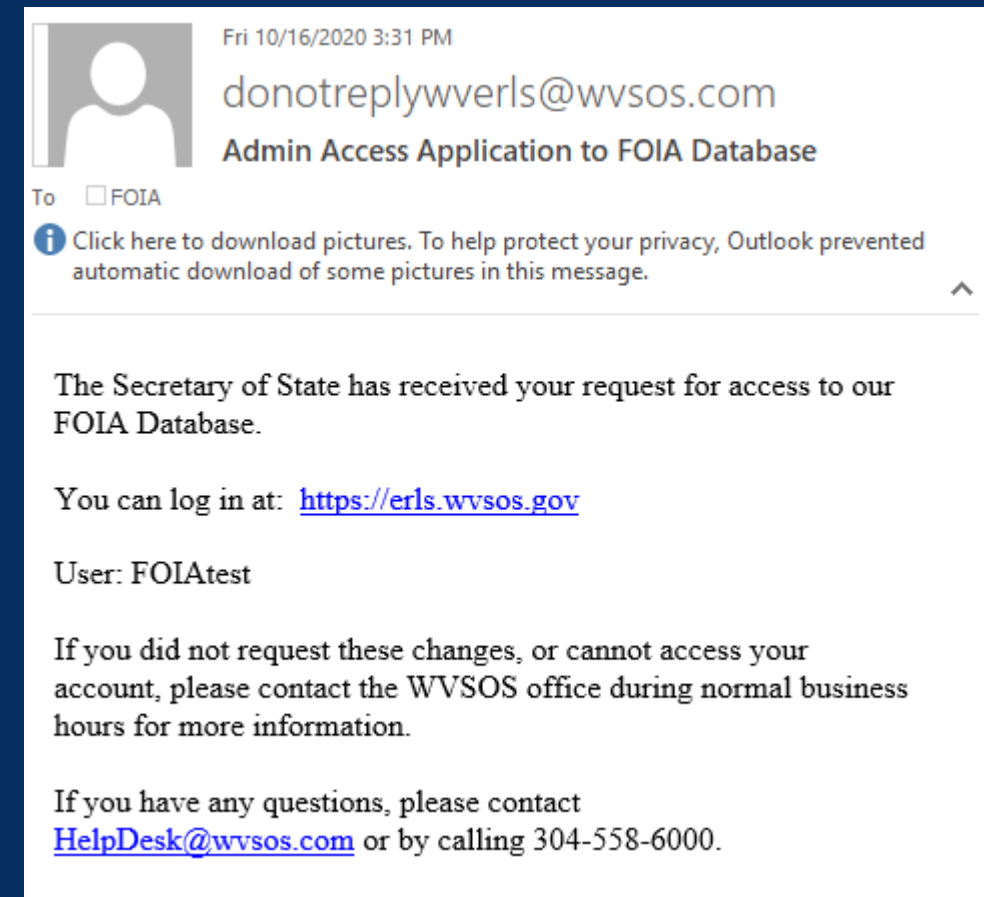
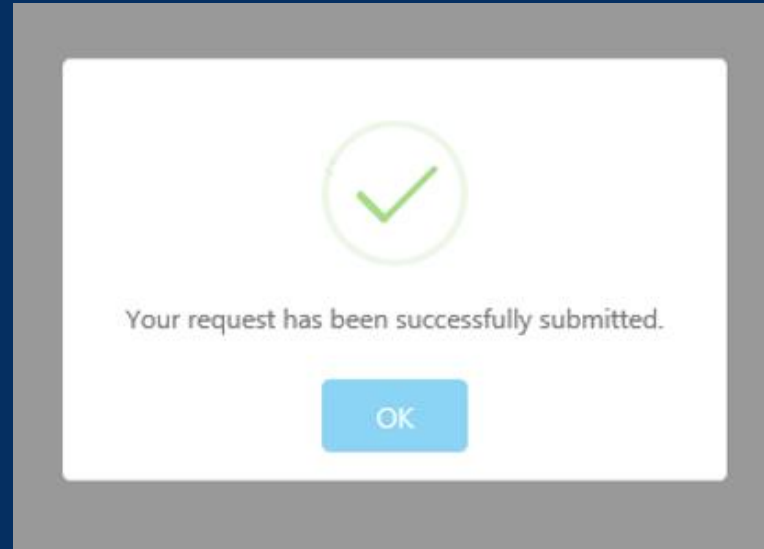
FOIA Account Request Confirmation



A confirmation box will appear on the database screen, and you will receive a confirmation email for your request

WVSOS will review the account request

Once an account is authorized, a confirmation email will be sent to the email on file

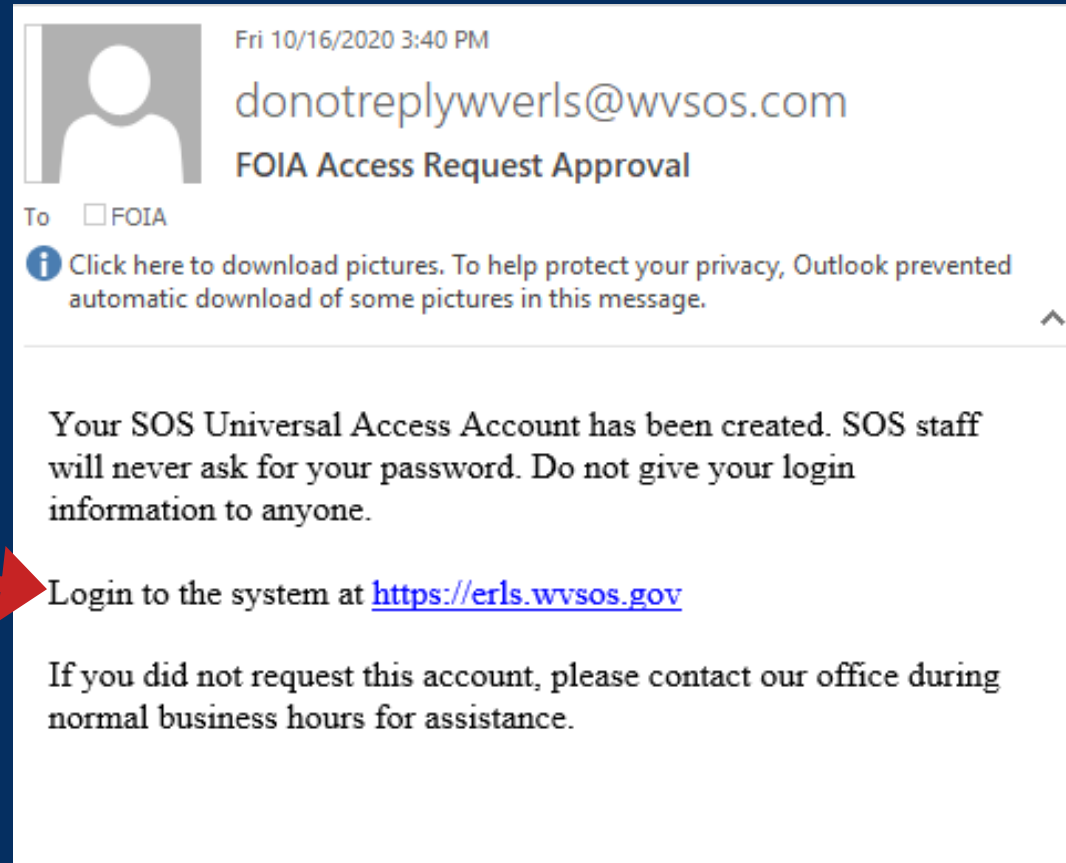


FOIA Account Confirmation Email



An email will be sent to email account associated with your Username

Click the link to login to the system





Login to FOIA Database

Enter your Username and Password, then click "Login"



The screenshot shows the login interface of the West Virginia Secretary of State Enterprise Registration & Licensing System. The header includes the state seal and navigation links. The main content area features a large image of the West Virginia State Capitol building at night. Overlaid on the right is a login form with fields for Username and Password, a "Forgot your password?" link, and "Login" and "Create a new account" buttons. A red arrow points to the "Login" button.

West Virginia Secretary of State Enterprise Registration & Licensing System

[Search Charitable Organizations](#) [Search Notary Public](#) [Search Trademark/Service Mark](#) [Search Licensees](#) [Search FOIA Database](#) [Document Validation](#)

LOGIN

Username:

Password:

[Forgot your password?](#)

Enter Information into FOIA Database



Click "FOIA Requests" tab, then
click "Add New Entry"

The screenshot shows the "MY DASHBOARD" for the West Virginia Secretary of State. The top navigation bar includes links for Dashboard, Search, Notary Public, Trademark/Service Mark, Charities, Licensing, Apostilles/ Authentications, FOIA Requests (highlighted), and FAQs. A red arrow points from the "FOIA Requests" tab to a dropdown menu containing "Add New Entry" and "Saved Entries". Below the navigation bar, the "IN PROGRESS FILINGS" section features a "Filing Category:" dropdown menu and a table with columns for Date, Type, Filing Type, Status, and Actions. The "INBOX" section on the right displays three icons: an envelope for "Correspondence: 0", a document for "Receipts: 0", and a shopping cart for "Cart: 0".

Dashboard ▾ Search ▾ Notary Public ▾ Trademark/Service Mark ▾ Charities ▾ Licensing ▾ Apostilles/ Authentications ▾ **FOIA Requests ▾** FAQs ▾

MY DASHBOARD

LOGOUT

IN PROGRESS FILINGS

Filing Category:

Date	Type	Filing Type	Status	Actions
------	------	-------------	--------	---------

INBOX

Correspondence: 0

Receipts: 0

Cart: 0

Enter Information into FOIA Database



Enter required information into the blank fields, then click "Save"

AGENCY INFORMATION

Agency:

REQUESTOR INFORMATION

First Name:

Middle Name:

Last Name:

Organization:

REQUEST ITEMS

Subject:

Details of Request:

Resolution:

Reason for Denial or Exemption:

Remove

REQUEST DETAILS

Request Date:

Completion Date:

Fee:

Cancel

Save

Enter Information into FOIA Database



Review the completed entry

Click "Edit" to correct information

Click "Create New" to create another entry

Click "Back to Dashboard" to return to the FOIA admin homepage

FOIA ENTRY DETAILS

Agency:	Secretary of State
Organization:	Williams Law Firm PLLC
First Name:	Dominique
Middle Name:	
Last Name:	Williams
Request Date:	10/01/2020
Completion Date:	10/08/2020
Entry Date:	10/16/2020
Fee:	\$0.00

Request Items

Subject Employee Payroll
Details Request for payroll records of employee Hans Freund from Jan 1, 2020 - present.
Resolution Granted in part
Response Personal information redacted pursuant to W. Va. Code 29B-1-4(a)(2).

[Back to Dashboard](#) [Edit](#) [+ Create New](#)



Public Body Reporting Under the West Virginia Freedom of Information Act

Office of the West Virginia Secretary of State