



PUBLIC DISCLOSURE REQUIREMENTS: FAQs FOR NONPROFITS

Tax-exempt organizations must make their federal exemption applications and annual informational tax returns available for inspection by the public upon request.

We have compiled this collection of frequently asked questions and answers regarding nonprofit public disclosure requirements.

We hope you will find this resource to be a useful preliminary guide for determining what documents and information must be disclosed and the process of public disclosure.



This guide is intended to serve as a general reference regarding public disclosure requirements. This guide's coverage of this area not exhaustive and is necessarily incomplete. In addition, this area may be subject to changes in the relevant code or published guidance. Although this guide may provide information concerning potential legal issues, it is not a substitute for legal advice from qualified counsel. This guide is not created or designed to address the unique facts or circumstances that may arise in any specific instance, and you should not and are not authorized to rely on it as a source of legal advice. It is understood that neither the provision of information to you through this guide, nor your reviewing that information, will establish any attorney-client relationship between you and Public Counsel, or any other person or entity, including but not limited to Public Counsel's counsel. Anyone seeking legal advice or assistance should contact an appropriate attorney in the relevant jurisdiction.

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1. What documents do I have to disclose?

An exact copy of the following documents must be provided upon request:

- **IRS exemption application.** This refers to your submitted Form 1023, 1024, or 1024-A, as well as any supporting documentation included with your application. It also includes letters the IRS sent concerning your application.
- **Annual tax returns for the last three-year period ("annual information return").** In the nonprofit context, annual returns refer to the Form 990, 990-EZ, or 990-PF. The three-year period is calculated using the due date of the return (including any extension of time for filing). A request for your "annual information return" refers to your annual tax returns for the last three-year period unless the requestor specifically narrows the request.
- **[If applicable] Returns related to unrelated business income tax filed after August 17, 2006.** This applies only to 501(c)(3) charities that filed Forms 990-T. If requested, these forms and any

extensions, schedules, attachments, or supporting documents that relate to the imposition of tax on the unrelated business income of the charity should be disclosed. A request for your Form 990-T refers to all such forms filed after August 17, 2006, unless the requestor specifically narrows the request.

2. What documents do I NOT have to disclose?

You do not have to disclose anything that was not requested. For example, if someone specifically requests “your most recent tax return”, you only need to disclose your most recent Form 990 (and any schedules, attachments, or supporting documents), not your exemption application or your returns for the previous two years.

There are also specific documents that are carved out of the public disclosure requirements for nonprofits. The most notable carve outs are listed below:

- **Portions of Schedule B of a Form 990.** Public charities are not required to reveal information about their contributors, which includes their names, addresses or any other potentially identifying information. As a result, public charities can omit portions of Schedule B in its Forms 990 when disclosing annual returns. While public charities can and should redact the identifying information of their contributors, private foundations cannot omit contributor information.
- **Certain attachments to a Form 990-T.** The IRS has made a list of documents that, when attached to a 501(c)(3) organization’s Form 990-T, are not required to be made available for public inspection: <https://www.irs.gov/charities-non-profits/charitable-organizations/public-inspection-of-attachments-to-a-501c3-organizations-form-990-t-exempt-organization-business-income-tax-return>.
- **Unfavorable rulings.** For example, an earlier denial of tax-exempt status would not need to be disclosed.
- **Certain intellectual property.** Trade secrets, patents, processes, styles of work and national defense material are protected from public disclosure requirements.
- **Annual information returns beyond the last three-year period.**

For more information about which documents are required to be disclosed and which are not, review IRS guidance here: <https://www.irs.gov/charities-non-profits/public-disclosure-and-availability-of-exempt-organizations-returns-and-applications-documents-subject-to-public-disclosure>.

3. How quickly do I need to provide disclosure of requested documents?

If someone requests copies in person, you must provide copies on the same business day unless compliance is an unreasonable hardship.

If a person requests copies in writing (such as by courier, mail, fax or email), you must provide copies within 30 days of receiving the request. If you adopt an advance payment policy, you must notify the requesting person of your policy within 7 days of receiving the request and provide the copies within 30 days after receipt of payment.

You do not need to provide disclosure of documents if the request is made by phone or any verbal means not in person.

4. What can I do if I do not have or cannot locate the requested documents?

You should have the documents listed in FAQ 1 stored at your principal office to ensure compliance with public disclosure requirements. Failure to produce these documents in a timely manner can lead to penalties (see FAQ 6). If you do not have your IRS exemption application, annual information returns or other required documents, you should obtain them as soon as possible. Requests for these documents can be made directly with IRS by using the below forms:

- **Form 4506-A:** This form is used to request annual information returns, such as Forms 990, 990-EZ, 990-PF, and 990-T. Note some of these documents may be immediately available for download online using the IRS Tax Exempt Organization Search tool: <https://apps.irs.gov/app/eos/>.
- **Form 4506-B:** This form is used to request your IRS exemption application.

Links to the above forms and relevant instruction sheets can be found on the IRS website at <https://www.irs.gov/forms-pubs/about-form-4506-a>.

To read more about recordkeeping requirements for nonprofits, you can refer to Public Counsel's publication entitled "Now That You're Incorporated" at <https://publiccounsel.org/wp-content/uploads/2022/08/Now-That-Youre-Incorporated-Memo.pdf>.

5. Can I charge a fee for these disclosures?

You can charge a reasonable fee for copying and the actual cost of postage. However, if you post your information online, you can simply refer requesters to your website, thereby avoiding the need to make copies, post copies and collect fees (see FAQ 7).

A reasonable fee for copying is defined as the amount charged by the IRS for providing copies under its FOIA fee schedule. As of the date of this publication, the FOIA schedule currently provides a charge of \$0.20 per page.

The FOIA fee schedule can be consulted here: <https://www.irs.gov/privacy-disclosure/freedom-of-information-act-foia-guidelines>. Note that tax-exempt organizations may disregard the portion of the schedule making the first 100 pages of copies free to non-commercial users. Tax-exempt organizations can charge for all copies.

Some organizations adopt an advance payment policy. In this situation, you must notify the requesting person of your policy within 7 days of receiving a written request, provided that request did not already include the required advance payment.

6. What are the penalties for failure to disclose?

Any person who has a duty to make the disclosure, but fails to comply on time without good cause, is subject to a penalty of \$20 per day for each requested return or application. There is a maximum penalty of \$10,000 for each failure to provide a copy of your annual return, but there is no maximum penalty for a failure to provide a copy of your exemption application.

The above penalties can follow after a complaint is made to the IRS Tax Exempt and Government Entities Division regarding your failure to disclose. More information about the complaint process can be found here: <https://www.irs.gov/charities-non-profits/irs-complaint-process-tax-exempt-organizations>.

7. Can I avoid making copies each time I receive a public disclosure request?

Yes! You do not have to provide copies in person or by mail if you make the documents listed in FAQ 1 widely available. According to current IRS guidance, a document is widely available if it is in readily accessible online (e.g., PDF), either on your own website or on a database of exempt organization documents maintained by another organization (e.g., Guidestar). The document must exactly reproduce the image of the original document and must be easy for a user to access, download, view, and print without paying a fee.

Despite the above exception, you are still required to provide in-person inspection of documents subject to public disclosure during regular business hours if requested.

8. What can I do if public disclosure requests become harassing?

Exempt organizations have protections against harassment campaigns. A harassment campaign exists when you receive a group of requests that are part of a single coordinated effort to disrupt your operations.

You may hold off complying with a request that you reasonably believe (based on the existing facts and circumstances) is part of a harassment campaign. In this situation, you must file an application with the district director of the key district (or such person as the Commissioner may designate) in which your principal office is located for a determination within 10 business days from the day you first suspend compliance. If you file a timely application based on a reasonable belief, you do not need to respond to the request until you receive a harassment campaign determination. In making this determination, the IRS considers (i) the existence of a harassment campaign; and (ii) whether compliance with the requests would not be in the public interest.

Additionally, you may disregard any requests by an individual or from a single address after complying with two requests per month or a total of four per year, regardless of whether or not you received a harassment campaign determination.