



## **Model Public Records Request Regulations For the U.S. Capitol Police**

### **For more information, contact:**

Ginger McCall, Legal Director, [ginger@demandprogress.org](mailto:ginger@demandprogress.org)  
Daniel Schuman, Policy Director, [daniel@demandprogress.org](mailto:daniel@demandprogress.org)

## Introduction

In 2019, Congress requested the United States Capitol Police (USCP) create a process through which members of the public can request USCP records.<sup>1</sup> The agency was instructed to “develop a policy and procedure for the sharing of information that follows the spirit of the Freedom of Information Act.” (FOIA)<sup>2</sup>

Because the USCP has yet to put forth such a policy, we have crafted a “Model Public Records Regulations” for the USCP that we hope the agency will adopt as its regulations. The Model Public Records Regulations are based largely on the public records regulations promulgated by the Government Accountability Office (GAO)<sup>3</sup> and the Library of Congress (LOC).<sup>4</sup> Both of these agencies, though not subject to FOIA, have regulations that largely follow FOIA’s spirit and process. The GAO and LOC public records regulations include FOIA-like provisions for the submission of a written records request, agency deadlines for response, allowable withholdings, fees, public interest fee reductions, and an internal appeals process.<sup>5</sup> We have included those provisions with slight revisions for clarity and to bring our model regulations in line with some of the Freedom of Information Act’s more recent updates.

In the interest of fostering transparency and public knowledge, we have also included a list of records that USCP should routinely publish online. The FOIA includes proactive disclosure requirements and so do these model regulations. Proactive disclosure ensures that the public has regular access to the most important and informative records and anticipates likely public requests. This reduces the burden on both the agency and the public by allowing access without having to make (or process) a public records request.

It is our hope that these Model Public Records Regulations, should they be adopted by the Capitol Police, will create greater transparency and accountability for USCP, allowing Congress and the public to have a better understanding of the agency’s functions and a better assessment of its effectiveness. In addition, these regulations will provide a baseline for the Capitol Police Department as it works to fulfill Congress’s directive to create its own public records request process.

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<sup>1</sup> H. Rept. 116-447 - Legislative Branch Appropriations Bill, 2021

<https://www.congress.gov/congressional-report/116th-congress/house-report/447>

<sup>2</sup> *Id.*

<sup>3</sup> Available at:

<https://www.govinfo.gov/content/pkg/CFR-2012-title4-vol1/xml/CFR-2012-title4-vol1-part81.xml>

<sup>4</sup> Available at: <https://www.law.cornell.edu/cfr/text/36/part-703/subpart-A>

<sup>5</sup> *See id.*

## U.S. Capitol Police Model Public Records Regulations

### § \_\_ Purpose and scope.

(a) This part implements the policy of the United States Capitol Police (USCP) with respect to the public availability of USCP records, except as set forth in paragraph (b) of this section. While USCP is not subject to the Freedom of Information Act (5 U.S.C. 552), USCP's disclosure policy follows the spirit of the Act consistent with its duties and functions and responsibility to the Congress. Application of the FOIA to USCP is not to be inferred from the provisions of these regulations.

(b) Subject to limitations set out in this Regulation, USCP records shall be available as hereinafter provided and shall be furnished as promptly as possible to any member of the public at appropriate places and times and for a reasonable fee, as provided below.

(c) It is the policy of USCP not to provide records from its files that originate outside of USCP or the US Capitol Police Board or members of the Capitol Police Board to persons who may not be entitled to obtain the records from the originator. In such instances, requesters will be referred to the person or organization that originated the records.

(d) The administration of these regulations shall be the responsibility of the USCP Public Records Officer, [ADDRESS], and to that end, the Public Records Officer may promulgate such supplemental rules or guidelines as may be necessary. The public shall be given a reasonable opportunity to comment on proposed rules. Proposed rules will be published for public comment at least 90 days in advance of adoption and final rules published online.

(e) When construing the meaning of terms within these regulations, the USCP will look to relevant rulings of the Supreme Court, the DC Circuit Court, and the DC District Courts as persuasive precedent.

### § \_\_ Definitions.

As used in this part:

(a) *Records* includes all books, papers, manuals, maps, photographs, reports, and other documentary materials, regardless of physical form or characteristics, including electronically created or maintained materials, under the control of USCP and used, created, referenced, or disseminated in connection with the transaction of public business. As used in this part, the term "records" is limited to an existing record under USCP's control and does not include compiling or procuring records.

(b) *Identifiable* means a reasonably specific description of a particular record sought, such as the date of the record, subject matter, agency or person involved, which will permit location or retrieval of the record.

(c) *Records available to the public* means records that may be examined or copied or copies of which may be obtained, in accordance with these regulations, by the public or representatives of the press regardless of interest and without specific justification.

(d) *Disclose or disclosure* means making available for examination or copying, or furnishing a copy.

(e) *Person* includes an individual, partnership, corporation, association, or public or private organization other than a Federal agency.

(f) *Compelling need* means that a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or the records are needed urgently, with respect to a request made by a person primarily engaged in disseminating information, for the requester to inform the public concerning actual or alleged Federal Government activity.

## **§ \_\_\_\_ Requests for identifiable records.**

(a) A request for a reasonably identifiable record of USCP must be submitted in writing to the Public Records Officer. You may request records under this part by email to [address], in writing addressed to [address], via facsimile to [number], or using the web-based portal located at [URL]. Requests should be marked "Public Records Request."

(b) A request should reasonably describe the records sought with sufficient specificity, and to the extent feasible, include names, dates, and subject matter, in order to permit the Public Records Officer to locate the records with a reasonable amount of effort.

(c) A request should specify the preferred form or format (including electronic formats) for the records you seek. USCP will accommodate the request if the record is readily available in that form or format. When a requester does not specify the form or format of the response, USCP will provide responsive records in the form or format most convenient to USCP.

(d) A request should provide contact information, such as requester's phone number, email address, and mailing address, to assist USCP in communicating with the requester, clarifying the request (if necessary), and providing access to released records. The requester should indicate their preferred method of contact.

(e) If the Public Records Officer cannot locate responsive records based on the requester's written description, USCP will notify the requester and advise that further identifying information is necessary before USCP can fulfill the request. USCP will provide the requester at least 30 days to respond to a request for clarification or additional information. If the requester has not responded to this request after 30 days have passed,

USCP may deny the request for not reasonably describing the records sought and will provide the requester with the opportunity to appeal that denial under the procedures in [Section \_\_\_\_].

(f) The Public Records Officer will make a determination within 20 business days of receipt. This determination will include decisions regarding fee reductions/waiver, expedited processing, whether documents will be released in full, in part, or withheld, and what exemptions will be applied.

(g) USCP will give priority to requests for expedited processing before all other requests in cases in which the person requesting the records demonstrates a compelling need. A demonstration of compelling need shall be made by a statement certified by the requester to be true and correct to the best of the requester's knowledge and belief.

(h) In the event of an objection or uncertainty as to the propriety of providing the requester with the record sought, every effort will be made to resolve such problems as quickly as possible, including consultation with appropriate USCP elements. If it is determined that the record should be withheld, the Public Records Officer shall inform the requester in writing that the request has been denied, shall identify the material withheld, and shall explain the basis for the denial (including any exemptions applied).

## **§ \_\_ Appeals**

(a) A person whose request is denied in whole or part may administratively appeal the denial within 60 calendar days after the date of the denial by submitting a letter or email to the [USCP Office of General Counsel/the USCP Inspector General] at [ADDRESS], [EMAIL ADDRESS], explaining why the denial of the request was unwarranted.

(b) A written appeal should state facts and may cite legal or other authorities in support of the request.

(c) [General Counsel/Inspector General] will review the appellant's appeal and make a determination *de novo* whether the action of the component was proper and in accordance with these regulations within 20 business days.

(1) If that official's decision affirms, in whole or in part, the Public Records Officer's determination, the letter will contain a statement of the reasons for the affirmance, including any exemption(s) applied.

(2) If that official reverses or modifies the Public Records Officer's determination, in whole or in part, the requester will be notified in writing that additional information has been released to them or that their request will be reprocessed in accordance with that decision.

(d) All appeal decisions by the [General Counsel/Inspector General] will be published online at [URL]. They shall be published in tabular form that includes the date of determination, the subject matter, the result, a link to the opinion, and any other appropriate information. While prior decisions by the [GC/IG] are not binding, they should be treated as persuasive precedent.

(1) A first person requester will be notified in writing (by letter or electronically) before an appeal decision regarding a first person request is posted online.

(2) First person requesters have 14 days from the date of the written communication referenced in subpart (1) above to notify USCP in writing (by letter or electronically) that they do not wish to have their appeal decision posted online.

## **§ \_\_\_ Records which may be exempt from disclosure.**

(a) The public disclosure of USCP records contemplated by this part does not apply to records, or parts thereof, within any of the categories listed below. Unless precluded by law, the USCP may nevertheless release records within these categories.

(1) *Records specifically required by an Executive Order to be kept secret in the interest of national defense or foreign policy.* An example of this category is a record classified under Executive Order 12958, Classified National Security Information.

(2) *Records related solely to the internal personnel rules and practices of an agency.* This category includes, in addition to internal matters of personnel administration, internal rules and practices which cannot be disclosed without prejudice to the effective performance of an agency function. Examples within the purview of this exemption are guidelines and procedures for auditors, investigators, or examiners, and records concerning an agency's security practices or procedures. For the purposes of construing the phrase "security practices or procedures" as used in these regulations, the USCP shall look to the Freedom of Information Act (5 U.S.C. § 552) and court precedent as discussed in Section \_\_\_(e) and not rely upon the definition of "security information" as codified at 2 USC § 1979. Furthermore, this exemption does not apply to investigational protocols, procedures, rules, policies, or similar guidance for personnel investigations related to alleged uses of excessive force, sexual misconduct, theft, whistleblower retaliation, false arrest, and deliberate indifference to serious medical needs or a substantial risk of harm to a person in custody.

(3) *Records specifically exempted from disclosure by statute* provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) *Records containing trade secrets and commercial or financial information obtained from a person that are privileged or confidential.* Such information is confidential if it is customarily and actually treated as private by the owner, the information is provided to the government under a written assurance of privacy by the government, and the disclosure of the information is likely to cause substantial harm to the competitive position of the person from whom the information was obtained. This exemption may include, but is not limited to, business sales statistics, inventories, customer lists, scientific or manufacturing processes or development information.

(5) *Inter-agency or intra-agency memoranda, letters, or other materials that are customarily subject to protection as privileged in a court or other proceedings, such as information protected by the doctor-patient, attorney-work product, or lawyer-client privilege, or deliberative process privilege.* For example, this exemption includes internal communications such as USCP or other agency draft reports, and those portions of internal drafts, memoranda and workpapers containing opinions, recommendations, advice, or evaluative remarks of USCP employees. This exemption seeks to avoid the inhibiting of internal communications, and the premature disclosure of documents which would be detrimental to an agency decision making. Once USCP has relied on a draft, memoranda, or workpaper to guide the USCP's decision-making, the material will no longer be considered deliberative.

(6) *Personnel and medical files and similar files the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.* This exemption excludes from disclosure all personnel and medical files, and all private or personal information contained in other files, which, if disclosed to the public, would amount to a clearly unwarranted invasion of the privacy of any person. An example of such other files within the exemption would be files compiled to evaluate candidates for security clearance. This exemption does not apply to records of law enforcement officer personnel investigations related to alleged uses of excessive force, sexual misconduct, theft, whistleblower retaliation, false arrest, and deliberate indifference to serious medical needs or a substantial risk of harm to a person in custody.

(7) *Records or information compiled for law enforcement purposes, but only to*

the extent that the production of such law enforcement records or information —

(A) could reasonably be expected to interfere with enforcement proceedings,

(B) would deprive a person of a right to a fair trial or an impartial adjudication,

(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy of a member of the public,

(D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(F) could reasonably be expected to endanger the life or physical safety of any individual.

(b) Any reasonably segregable portion of a record shall be provided to anyone requesting such records after deletion of the portions which are exempt under this section. A portion of a record shall be considered reasonably segregable when segregation can produce an intelligible record which is not distorted out of context, does not contradict the record being withheld, and can reasonably provide all relevant information.

(c) Presumption of openness

(1) Before relying on any of the above enumerated exemptions to withhold information, USCP will apply a presumption of openness and only withhold requested information if:

(i) Disclosure is prohibited by law; or

(ii) USCP reasonably foresees that disclosure will harm an interest protected by one of the statutory exemptions. In conducting this foreseeable harm analysis, USCP will clearly identify and document the harm that would occur with disclosure.

- (2)
  - (i) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and
  - (ii) take reasonable steps necessary to segregate and release nonexempt information.

## **§ \_\_\_ Fees and charges.**

(a) No fee or charge will be made for:

- (1) Records provided under this part when the direct costs involve less than one hour of search time and 50 pages of documents.
- (2) Staff-hours spent in resolving any legal or policy questions pertaining to the request.
- (3) Copies of pertinent records furnished to a party having a direct and immediate interest in a matter pending before USCP, when necessary or relevant to the performance of a USCP function.

(b) The fees and charges described below will be assessed for the direct costs of search, review, and reproduction of records available to the public under this part.

- (1) The cost for reproduction per page shall be 5 cents.
- (2) The cost for production of a document in electronic form - for example, a CD or DVD - shall be limited to the actual purchase price for said item.
- (3) The cost for a certification of authenticity shall be \$10 for each certificate.
- (4) Manual search and review for records by office personnel will be assessed at \$12, \$25, or \$45 per hour, depending on the rate of pay of the individual actually conducting the search or review, and the complexity of the search.
- (5) Other direct costs related to the request may be charged for such items as computer searches.
- (6) Except as noted immediately below, requesters generally will be charged only for document duplication. However, there may be times when a search charge will be added, for example, if records are not described with enough specificity to enable them to be located within one hour. Requesters seeking

records for commercial use will be charged for document duplication, search, and review costs. Additionally, representatives of the news media, in support of a news gathering or dissemination function, and education or noncommercial scientific institutions not seeking records for commercial use will be charged only for document duplication, unless such request requires extraordinary search or review.

(c) The Public Records Officer may waive or reduce the fees under this section upon a determination that disclosure of the records requested is in the public interest, is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester. Persons seeking a waiver or fee reduction may be required to submit a statement setting forth the intended purpose for which the records are requested, indicate how disclosure will primarily benefit the public and, in appropriate cases, explain why the volume of records requested is necessary. Determinations pursuant to this paragraph are solely within the discretion of USCP.

(d) Fees and charges shall be paid by check, money order, or credit card or electronic transfer/debit (if available) payable to the U.S. Capitol Police.

(e) The Public Records Officer shall notify a requester and may require an advance deposit where the anticipated fees will exceed \$50.

## **§ \_\_ Publication.**

(a) In the interest of transparency<sup>6</sup>, from the date of publication of these regulations moving forward, we will publish the following records on our website at [URL]

(1) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) On the first day of each quarter, copies of all records, regardless of form or format, that have been released to any person under these regulations. This requirement will be waived for first person requests where the requester has indicated in writing (by letter or electronically) within 14 days after the

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<sup>6</sup> See generally, The Joint Explanatory Statement accompanying the Legislative Branch Appropriations Act of 2021, included in Division I, directs the USCP to develop a process for routinely sharing information with the public about the activities of the USCP in conducting its mission. <https://docs.house.gov/billsthisweek/20201221/BILLS-116RCP68-JES-DIVISION-I.pdf#page=13>. See also p. 22 of H. Rept. XXX, whereby the committee encourages the USCP to to develop a policy and procedure for the sharing of information that follows the spirit of the Freedom of Information Act. This is repeated in H. Rept. 117-80 on p. 26. <https://www.congress.gov/117/crpt/hrpt80/CRPT-117hrpt80.pdf#page=25>

response is issued that they do not wish for their response to be publicly posted.

(3) An index of the records published under paragraph (4) above, including the date released, the name of the requester, a summary of the subject matter, a link to the record(s), and any other relevant information.

(4) Capitol Police Regulations and Guidance

(i) those statements of policy and interpretations which have been adopted by the agency and are not published in the Congressional Record;

(ii) administrative staff manuals and instructions to staff that affect a member of the public;

(iii) U.S. Capitol Police Regulations

(iv) U.S. Capitol Grounds Traffic Regulations<sup>7</sup>

(v) Capitol Police acquisition regulations that deviate from the Federal Acquisition Regulations<sup>8</sup>

(vi) Capitol Police Public Records Request Regulations

(5) Records of The Capitol Police Board

(i) U.S. Capitol Police Board Meeting Agendas and Summaries

(ii) U.S. Capitol Police Strategic Plans

(iii) U.S. Capitol Police Board Directives

(iv) U.S. Capitol Police Standard Operating Procedures

(v) U.S. Capitol Police Human Capital Strategic Plans<sup>9</sup>

(6) The Capitol Police Inspector General

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<sup>7</sup> These are already public at

[https://www.uscp.gov/sites/uscapitolpolice.house.gov/files/wysiwyg\\_uploaded/US%20Capitol%20Grounds%20Traffic%20Regulations\\_Amended%20February%202019.pdf](https://www.uscp.gov/sites/uscapitolpolice.house.gov/files/wysiwyg_uploaded/US%20Capitol%20Grounds%20Traffic%20Regulations_Amended%20February%202019.pdf)

<sup>8</sup> The USCP references business opportunities and encourages individuals to contact the agency, but does not provide guidance on its acquisition regulations. See <https://www.uscp.gov/contact-us/doing-business-uscp>

<sup>9</sup> This is already published online at

[https://www.uscp.gov/sites/uscapitolpolice.house.gov/files/wysiwyg\\_uploaded/USCP%20Human%20Capital%20Strategic%20Plan%20for%202021-2025.pdf](https://www.uscp.gov/sites/uscapitolpolice.house.gov/files/wysiwyg_uploaded/USCP%20Human%20Capital%20Strategic%20Plan%20for%202021-2025.pdf)

(i) Final Reports issued by the U.S. Capitol Police Inspector General<sup>10</sup>

(7) Budgets, Reports, and Testimony

(i) U.S. Capitol Police Annual Reports to Congress

(ii) Testimony Submitted by the U.S. Capitol Police to Congress<sup>11</sup>

(iii) U.S. Capitol Police Congressional Budget Justifications<sup>12</sup>

(iv) U.S. Capitol Police Semi-Annual Statements of Disbursements<sup>13</sup>

(8) Law Enforcement

(i) A Complete Record of Arrests by the U.S. Capitol Police<sup>14</sup>

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<sup>10</sup> The vast majority of federal inspectors general are required to publish their IG reports online pursuant to the Inspector General Empowerment Act of 2016. In addition, the vast majority of federal Inspectors General also publish their reports at oversight.gov, a website run by CIGIE. (See generally <https://docs.house.gov/meetings/AP/AP24/20190402/109212/HHRG-116-AP24-Wstate-JonesR-20190402.pdf>) The majority of legislative branch IGs publish their reports online. The House Legislative Branch Appropriations subcommittee requested the USCP IG review which IG reports from the last three years could be made publicly available. See H. Rept. 116-447, p. 22.

<https://www.congress.gov/116/crpt/hrpt447/CRPT-116hrpt447.pdf#page=22> In addition, the Committee on House Administration has been releasing some “flash” IG reports over the course of the last year. That request was expanded in H. Rept. 117-80 on p. 26, where the committee instructs the USCP to institute procedures to make reports publicly available wherever practicable and begin publishing the reports on its website. <https://www.congress.gov/117/crpt/hrpt80/CRPT-117hrpt80.pdf#page=26>

<sup>11</sup> Legislative branch agencies routinely publish testimony they submit to congress.

<sup>12</sup> The recently enacted Congressional Budget Justification Transparency Act, P.L. 117-40, requires federal agencies to publish their congressional budget justifications on a central website. <https://www.congress.gov/bill/117th-congress/senate-bill/272>. OMB Circular A-11 section 22.6 already required Executive branch agencies to publish that information on their own websites. The House of Representatives Appropriations Committee routinely publishes the congressional budget justifications as a bound volume as part of its hearings. And other legislative branch agencies routinely publish their congressional budget justifications online. See the Library of Congress, <https://www.loc.gov/about/reports-and-budgets/congressional-budget-justifications>, and the GAO, <https://www.gao.gov/topics/gao-mission-and-operations>.

<sup>13</sup> This is required to be publicly available pursuant to 2 U.S. Code § 1910. <https://www.law.cornell.edu/uscode/text/2/1910>.

<sup>14</sup> The U.S. Capitol Police has begun publishing some arrest records, see <https://www.uscp.gov/media-center/press-releases/united-states-capitol-police-weekly-arrest-summary-be-posted-uscpgov>. The House Appropriations Committee requested the USCP explore publishing this information in searchable, sortable, downloadable format that is cumulative in nature. See H. Rept. 116-447 p. 22. <https://www.congress.gov/116/crpt/hrpt447/CRPT-116hrpt447.pdf#page=22>. This request is reiterated in H. Rept. 117-80, on p. 24. <https://www.congress.gov/117/crpt/hrpt80/CRPT-117hrpt80.pdf#page=24>

(ii) Guidance or regulations governing the disclosure (or non-disclosure) of arrest information.<sup>15</sup>

(iii) All arrests made by Capitol Police, those which occur in partnership with the Capitol Police, or arrests by others related to Capitol security in the arrest summaries

(iv) Statistical information on threats against members of Congress, including whether the threats are found credible, whether they are prosecuted, and whether they result in convictions.

(v) Annual report containing USCP use of force data.

#### (9) Operations and Personnel

(i) U.S. Capitol Police Organizational Chart

(ii) U.S. Capitol Police Phone Book

(iii) A statistical summary of USCP employees, updated annually and published in a structured data format, that includes: a breakout of USCP positions sworn and civilian by rank and pay and subdivided by race and gender.

(iv) Annual Statistical Reports of the Office of Professional Responsibility<sup>16</sup>

(v) A list of allegations and punishments meted out to USCP employees, with a breakout by rank and diversity

#### (10) Other

(i) U.S. Capitol Police Press Releases<sup>17</sup>

(ii) Applications and Permits issued by the Capitol Police<sup>18</sup>

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<sup>15</sup> The description released by the USCP regarding what is and is not contained in the arrest records is unclear at best. The USCP should clearly state what is and is not included.

<sup>16</sup> This already is obtainable by request. See <https://www.uscp.gov/the-department/bureaus-and-offices>. Demand Progress has published this information <https://firstbranchforecast.com/2021/03/17/new-capitol-police-misconduct-complaint-report-obscures-more-than-it-reveals/>

<sup>17</sup> The USCP publishes some press releases on its website but it is unclear whether it is all of them. <https://www.uscp.gov/media-center/press-releases>

<sup>18</sup> USCP publishes a document concerning activities that require permits on capitol hill. <https://www.uscp.gov/visiting-capitol-hill/activities-requiring-permits>. USCP requires requesters to fill out this form.

(iii) Procurement opportunities and awards<sup>19</sup>

(iv) A current list of litigation in which the U.S. Capitol Police is a party and its disposition

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[https://www.uscp.gov/sites/uscapitolpolice.house.gov/files/wysiwyg\\_uploaded/Application%20for%20Conducting%20an%20Event%20on%20U.S.%20Capitol%20Grounds December%202019.pdf](https://www.uscp.gov/sites/uscapitolpolice.house.gov/files/wysiwyg_uploaded/Application%20for%20Conducting%20an%20Event%20on%20U.S.%20Capitol%20Grounds%20December%202019.pdf).

<sup>19</sup> Federal agencies publish procurement information online at sam.gov. <https://fbohome.sam.gov/>. Other legislative branch agencies, such as the Library of Congress, participate on the website.