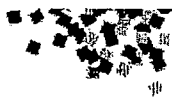


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10/29/2001 03:35 PM

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Subject: New FOIA Policy & Procedures

----- Forwarded by Sandra Evans/WDC/OIG/DOI on 10/29/2001 03:35 PM -----

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Subject: New FOIA Policy & Procedures

**BUREAU/OFFICE FOIA OFFICERS:**

As you are aware, on October 12, 2001, the Attorney General issued this Administration's new FOIA policy which differs in several important respects from the policy issued by former Attorney General Janet Reno. The new FOIA policy articulated in the Ashcroft memorandum supersedes the prior policy that documents should be released even if exempt, unless a foreseeable harm would occur from the release. While the new policy does not actively encourage discretionary disclosures, it does recognize the agencies' ability to make discretionary disclosures. The FOIA Officers discussed the new policy and DOI's procedures for implementing it at a meeting on October 24.

Under the new FOIA procedures, when considering whether to make a discretionary release, a bureau/office must review the facts and information in the documents and carefully consider the institutional (the Government), commercial (business entities), and personal privacy (individuals) interests that might be impacted by disclosure of the information. **The bureau must consult with its Designated FOIA Attorney and obtain his/her surname before making a discretionary release of information.** In the past, bureaus only had to consult with their attorneys (see Chapter 5.2 of the Departmental FOIA Handbook (383 DM 15)).

An exempted record may be released to a requester when, in the bureau's judgment, the interests which underlie the exemptions (discussed above) would not be jeopardized, unless disclosure is restricted by statute or Executive order. Disclosure of documents protected under exemptions 1, 3, 4, and frequently 6 and 7(C), will be restricted by a statute or Executive order--such documents are not subject to discretionary release. In making decisions regarding disclosure, bureaus/offices should carefully consider the values and interests underlying the exemptions. Before withholding documents, bureaus/offices must consult with their FOIA Attorneys to ensure that they have both a sound factual and legal footing for withholding the documents. Under the new policy, DOJ has advised it will defend withholdings of documents unless they lack a **sound legal basis** for the withholding. (The Ashcroft memorandum and DOJ guidance may be found at <http://www.usdoj.gov/oip/foiapost/2001foiapost19.htm> ).

**Also, under the Attorney General's new policy, bureaus/offices once again may use the "low 2" exemption providing the information being withheld meets the criteria in Chapter 5.4B(1) of the Departmental FOIA Handbook.**

These procedures are effective immediately. The Attorney General's new FOIA policy will be incorporated in an IRM Bulletin in the near future. Please ensure that all employees involved with processing FOIA requests are aware of the new policy and these procedures. This will ensure that information is not released that could jeopardize our national security and the effectiveness of our law enforcement activities, and that the sensitive business and personal privacy information we maintain is protected.

If you have any questions, please consult your designated FOIA attorney. When he/she is not available, feel free to contact Bob Moll by telephone at (202) 208-5316, or by email at [Bob\\_Moll@ios.doi.gov](mailto:Bob_Moll@ios.doi.gov), or me at (202) 208-5342 or [Alexandra\\_Mallus@ios.doi.gov](mailto:Alexandra_Mallus@ios.doi.gov).

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