

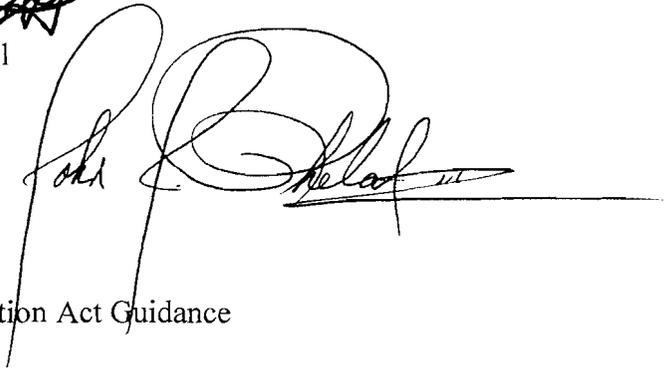


APR 15 2009

MEMORANDUM FOR Secretarial Officers
Heads of Operating Units

FROM: Barbara S. Fredericks 
Assistant General Counsel
for Administration

John J. Phelan, III
Director for Management
and Organization



SUBJECT: New Freedom of Information Act Guidance

On January 21, 2009, President Obama issued a memorandum instructing the heads of executive branch departments and agencies that requests for information submitted under the Freedom of Information Act (FOIA) should be promptly processed with the presumption that, "in the face of doubt, openness prevails." The President also made departments and agencies responsible for anticipating public interest in certain records and proactively making them available to the public without the necessity of submitting requests under FOIA. In accordance with the President's memorandum, Attorney General Eric Holder issued guidelines on March 19, 2009 for adopting these principles.

Presumption of Openness under FOIA

The Attorney General's guidelines strongly encourage agencies to make discretionary disclosures of information. All records responsive to FOIA requests now must be reviewed from the perspective of disclosing the maximum amount of information possible under FOIA. Discretionary disclosures must be made whenever possible and exemptions asserted only after a determination has been made that there would be foreseeable harm to government or private interests, or that disclosure is prohibited by law.

In order to ensure compliance with the Administration's policy, we have amended the form used to assign FOIA requests for action to require that the senior official responsible for processing a request certify that a foreseeable harm analysis has been applied to responsive documents. This revised form (attached), which must be used beginning immediately, should be transmitted from your FOIA Officer to all offices within your operating unit with instructions on the new standard of review to which it refers.

Proactive and Prompt Release of Records

To ensure compliance with the President's commitment to creating an unprecedented level of openness and transparency in government, agencies must review all records – whether or not

they have been requested under FOIA – and rapidly disclose them in formats that the public can readily find and use. The President has directed that agencies put records, including information about their operations and decisions, online and solicit public feedback to identify information that will be of greatest use to the public. There should be a general presumption that records will be made public and that they will be posted on agency websites.

The approach to be taken within your operating unit should be discussed internally and a strategy for effectively complying with this new requirement should be developed.

Implementation across Commerce

By May 7, 2009, FOIA Officers at the operating unit level must provide Brenda Dolan, Departmental FOIA Officer, with information on how these principles will be implemented. This should include:

- a copy of the memorandum sent throughout your operating unit, describing and transmitting the revised form used for assigning FOIA requests for action, and
- a description, in writing, of the steps your operating unit is taking to proactively make the broadest range of information possible publicly available as well as copies of all announcements distributed within your operating unit relating to this topic.

Commerce FOIA officers will convene a FOIA roundtable meeting the week of May 11, 2009 to discuss these matters and share suggestions for implementing the Justice Department's guidance. Attendance by at least one person from each FOIA office is mandatory.

Thank you for your focus and assistance with this initiative. Please do not hesitate to contact either of us with any question which you may have.

cc: Chief Financial Officers
Heads of Administration
FOIA Officers

Attachment

DATE

MEMORANDUM FOR: *NAME*
 FOIA Officer or Contact
 (FOIA Officer or Contact's office)

FROM: Brenda Dolan (*Substitute the name of your FOIA Officer*)
 Departmental FOIA Officer (*Substitute your FOIA Officer's title*)
 Office of Management and Organization (*Substitute the name of*
 your organization)

SUBJECT: FOIA Request from XXXXX (*Insert FOIA requester's name here*)
 CRRIF 09-XXX (*Insert Agency FOIA Tracking Number Here*)

I am forwarding a copy of the attached FOIA request for your immediate attention. Please produce two sets of photo copies (retain your original) of all documents that may be responsive to the request. This would include, in addition to final documents, drafts, notes, informal records, and electronic records. You must search every place that could reasonably be expected to have responsive documents.

Please make sure that you identify any documents or portions of documents that originated with another office, agency or bureau that need to be referred for disclosure determinations.

One set of copies (not original documents) should be produced without additional annotation; on the second set, please identify whether you believe the document, or any portion of it, should be withheld from disclosure because it is not an agency record, outside the scope of the request, privileged, confidential, an invasion of personal privacy, or for any other legitimate reason recognized by FOIA. You must include the FOIA exemption next to any information you identify as protected from disclosure. The office that originated a document must make disclosure determinations for that document.

The cut-off date for the search is _____ . You must begin the search immediately on this date. Documents created after this date are not responsive to the request. If the search is delayed for any reason, please notify me immediately, but no later than 24 hours from the date listed.

Attached is a list of FOIA exemptions for your use in making disclosure determinations. Please contact me if you have questions.

In order to be responsive to this request in a timely manner, please respond by **C.O.B. October XX, 2009. Provide your results to Brenda Dolan, Departmental FOIA Officer, Room 5327 HCHB. (*Substitute the name of your FOIA officer here.*)**

When providing your response, please attach written documentation of:

1) Which office(s) originated the documents.

2) Who made disclosure determinations, showing that the originating office is the office that made the disclosure determinations.

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE. Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at *(insert telephone number and e-mail address)*.

Please sign this sheet of paper and check **all** of the appropriate boxes.

- Transmitted herewith are all documents in the possession of my office which are responsive and can be released in entirety.
- Transmitted herewith are all documents within the possession of my office which are responsive and we have found reason to partially withhold, copies were made and exemptions were noted.
- Transmitted herewith are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.
- Transmitted herewith are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.
- My office has found no responsive documents.
- All disclosure determinations have been made by the Commerce Office that originated or has control of the documents.
- A foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law.

- Interim response Final response

Signature (Senior Official)

Date

Attachments:

Copy of FOIA request

List of FOIA exemptions