



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
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IN REPLY REFER TO

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29 Mar 01

From: Chief of Naval Operations
To: Distribution List

Subj: FOIA ISSUES/POLICY

Encl: (1) DOJ memo of 23 Mar 01, Further Efforts to Implement E-FOIA Provisions
(2) Introducing FOIA Post

1. Major emphasis is being placed on being E-FOIA compliant. In an effort to ensure compliance and keep you abreast of the current changes in FOIA, the following information is being disseminated to you for your action as well as dissemination to those activities that report to you. This document will be posted at foia.navy.mil under FOIA Resource Materials (FOIA Policy).

a. GAO Report: Progress in Implementing the 1996 Electronic Freedom of Information Act Amendments (GAQ-01-378): As I mentioned in my policy letter of 1 Mar 01 (which is downloadable from foia.navy.mil under FOIA Resource Materials), the General Accounting Office (GAO) evaluated E-FOIA compliance of 25 agencies. Their report (consisting of 54 pages) is now complete and it can be downloaded from www.gao.gov. To locate the report go to "Recent Reports and Testimony" and search for GAQ-01-378. Department of Justice's synopsis of the findings is provided at enclosure (1). Activities are encouraged to review their memo and the GAO report to assess their compliance with E-FOIA.

b. FOIA Button/Navigational Tool: In my policy memo of 1 Mar 01, I addressed the need for a FOIA button or other navigational tool so that a requester could locate your FOIA page. I wish to clarify that statement. Specifically, at a minimum echelon 2 and 3 activities and HQ USMC and its major commands should have a FOIA button placed on the front page of their activity's web site to enable easy identification of their FOIA program. Other activities are encouraged to have a FOIA button or navigational tool that leads the requester to their FOIA page. Please work closely with your web master to ensure compliance.

c. FOIA Update/FOIA Post: The Office of Information and Privacy, Department of Justice, has advised that they have replaced the "FOIA Update" with a new publication entitled "FOIA Post" which can be found on their web site (www.usdoj.gov/oip/foiapost/). The FOIA Post will serve as a primary means of

of FOIA policy dissemination and as an efficient vehicle for communicating FOIA-related information to agency FOIA personnel and others who are interested in the Act's administration. A major enhancement in FOIA Post will be its inclusion of all new FOIA decisions that are received by the Office of Information and Privacy. See enclosure (2) for more details.

d. (b)(3) Statutes: An updated list of (b)(3) statutes has been posted on our FOIA On-line web site under FOIA Resource Materials.

e. APB News Requests: Effective 23 Feb 01, DFOISR apprised APB News that DoD and its activities would administratively close all open FOIA requests from APBnews.com. Please comply.

2. Naval Messages/Documents Containing Personal-FOUO Information: Regrettably, we are seeing an increase in message traffic and other documents that are not properly marked and are being placed on both intranet and internet web sites in violation of the Privacy Act/Freedom of Information Act. To help in eliminating this problem, please apprise the appropriate personnel in your organization of the following:

a. Naval messages and other documents containing personal information (i.e., name, social security number, security clearance data, etc) or information that qualifies for withholding under the FOIA, other than classified information, must be marked For Official Use Only (FOUO).

b. Naval messages and other documents containing personal information/FOUO information should not be posted on an activity's web site for all to view. Rather, only those officials with a "need to know" should have access to this information.

c. Violation of this policy could result in both criminal and civil penalties.

3. Automation of Mailings: We are attempting to automate all mailings, as this saves both time and effort. Please e-mail to navyfoia@hq.navy.mil, the following information: name of FOIA coordinator and alternate, e-mail address for each, postal mailing address for each, and voice and fax telephone numbers for each. To ensure e-mails are received in a timely fashion, please work with your IT personnel to create a "generic" e-mail address for your FOIA program.



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By direction

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ENCLOSURE (1)



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

March 23, 2001

MEMORANDUM

TO: Principal FOIA Administrative and Legal
Contacts at All Federal Agencies

FROM: ~~RM~~ Richard L. Huff
~~DJ~~ Daniel J. Metcalfe
Co-Directors
Office of Information and Privacy

SUBJECT: Further Efforts to Implement E-FOIA Provisions

Within the past week, the General Accounting Office (GAO) completed its final report of its examination of federal agency implementation of the provisions of the Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104-231, 5 U.S.C. § 552 (as amended), commonly referred to as "E-FOIA." This GAO study follows up on the E-FOIA implementation oversight hearing that was held by the House Government Reform Committee's Government Management, Information, and Technology Subcommittee in June 2000. Last summer, GAO selected twenty-five federal agencies for review of their FOIA Web sites and annual FOIA reports, and eight agencies for more extensive interviewing and document exchange, with coordination assistance provided by the Office of Information and Privacy. The Department of Justice has fully supported this important FOIA study.

Now that GAO's report (entitled "Progress in Implementing the 1996 Electronic Freedom of Information Act Amendments") has been issued in final form, we are pleased to be able to attach a printed copy of it for immediate use by every federal agency. This report provides an excellent basis for all agencies -- whether they were among the agencies examined by GAO as part of its study or not -- to review their current state of compliance with E-FOIA's requirements and to make any and all improvements that are needed.

This GAO report finds incomplete E-FOIA compliance in multiple respects, and it provides much useful detail to facilitate further agency attention to several E-FOIA requirements in particular. While it discusses such procedural matters as the mechanics of FOIA processing, the operation of the Act's time limits, and the value

of negotiating the scope of a FOIA request with the requester, you should note that it places primary focus on: (1) the E-FOIA requirement to make certain categories of information available to the public electronically, and (2) the quality of the annual FOIA reports that are required to be prepared after the end of each fiscal year by all agencies. These requirements warrant particular attention.

First, the most basic categories of information that all agencies must make available electronically (through their FOIA Web sites, in what may be called "electronic reading rooms") are the following:

- final opinions and orders issued in the adjudication of administrative cases;
- specific agency policy statements;
- administrative staff manuals that affect members of the public;
- records that are "frequently requested" by FOIA requesters, which must be made available in their FOIA-processed form; and
- an index facilitating public access to all such information.

See GAO Report at 21. These statutory requirements are all contained in subsection (a)(2) of the FOIA, as amended by E-FOIA, and they apply to any such record that was created by an agency since November 1, 1996. See 5 U.S.C. § 552(a)(2)(A)-(E). Detailed discussions of these requirements are contained in the "FOIA Reading Rooms" Section of the "Justice Department Guide to the Freedom of Information Act," which also includes citations to all underlying E-FOIA implementation guidance that has been issued by the Department of Justice on this subject.

Another category of information that agencies are required to make available electronically through their FOIA Web sites consists of:

- an index of the agency's "major information systems";
- a description of the agency's "major information systems";
- a description of the agency's "record locator systems"; and

- a handbook for obtaining agency information.

See GAO Report at 22. These statutory requirements are all contained in subsection (g) of the FOIA, 5 U.S.C. § 552(g), and they may be met by an agency in a consolidated fashion under the single heading of a "FOIA Reference Guide," or some similar title. Governmentwide guidance regarding these particular E-FOIA requirements has been issued by the Office of Management and Budget -- see Memorandum From Franklin D. Raines For The Heads Of Executive Agencies (Apr. 23, 1998) -- which should be consulted on any technical question regarding agency compliance with them. See also H.R. Rep. No. 104-795, at 29-30 (1996) (legislative report specifying OMB's guidance role regarding FOIA's subsection (g) requirements). In addition to that, though, the Department of Justice's "FOIA Reference Guide" is available to be used as a model by any agency that needs to improve its compliance in this E-FOIA category.¹

A third set of information items addressed in GAO's report consists of:

- the agency's FOIA regulations;
- information describing the agency's multi-track processing system (if one is used);
- information regarding expedited processing;
- the agency's fee schedule; and
- the agency's annual FOIA reports.

See GAO Report at 20-21. All of these items are closely related. First, the FOIA explicitly requires that each agency publish regulations that govern its individual rules and practices for administering the Act, see 5 U.S.C. § 552(a)(3)(A), and such regulations are a logical component of any agency's FOIA Web site, see FOIA Update, Vol. XIX, No. 3, at 3-4 ("OIP Guidance: Recommendations

¹ The Department of Justice was found by GAO to be in full compliance with E-FOIA's electronic availability requirements in this respect, see GAO Report at 22, as well as with regard to all other categories of information, see id. at 20-21. The report also includes a complementary statement about the quality of the E-FOIA implementation guidance that agencies have received from the Justice Department. See id. at 31.

for FOIA Web Sites"). Further, by the FOIA's terms, as amended by E-FOIA, these regulations must include specific information on expedited processing, see 5 U.S.C. § 552(a)(6)(E)(i), must include information on multi-track processing unless an agency simply makes no use of it, see 5 U.S.C. § 552(a)(6)(D)(i), and must include a "schedule of fees," 5 U.S.C. § 552(a)(4)(A)(i).

Regarding the electronic availability of annual FOIA reports, the provisions of the amended FOIA are likewise very clear: In addition to the centralized electronic access to all agencies' reports that is required to be afforded through the Department of Justice's FOIA Web site, each federal agency is individually required to make its annual FOIA reports available electronically through its own FOIA Web site as well. See 5 U.S.C. § 552(e)(2). This can be a highly effective vehicle through which all agencies can ensure that they meet this entire set of electronic availability requirements, if they simply follow the Department of Justice's recommendation that a copy of the agency's current FOIA regulations be included at the end of each annual FOIA report. See FOIA Update, Vol. XVIII, No. 3, at 7 (guidance issued specifically pursuant to 5 U.S.C. § 552(e)(4)). In short, there is no good reason why any agency might be found not to be in E-FOIA compliance for any of these regulation-related items of information.²

As an immediate step with respect to each of the information categories discussed above, we strongly encourage all agencies to conduct a thorough review of their current compliance with E-FOIA's clear electronic availability requirements. Certainly, if your agency is one of the several agencies that were found by GAO to be deficient in one or more of these respects, then your agency has an unquestionable need for improvement right now. Beyond that, however, the GAO report should be used by all agencies as a roadmap to ensuring full and proper E-FOIA compliance across the board -- which is something that requires careful vigilance in both the establishment and the augmentation of agency FOIA Web sites with the passage of time. In aid of this process, you may contact members of the Office of Information and Privacy who have particular expertise in the substance of E-FOIA's requirements and in the

² It should be noted that GAO found proper compliance in the categories of regulations, fee schedules, and annual FOIA reports for all twenty-five of the agencies that it examined. See GAO Report at 20-21. However, it found far less than universal compliance in the multi-track and expedited processing categories. See id.

processes of FOIA Web site maintenance -- Pamela Maida, Laurie A. Day, and Tricia S. Wellman -- if further assistance regarding these electronic availability requirements is needed.

Secondly, GAO's study also focused on the annual FOIA reports that are prepared by all agencies in the relatively new format that was established by E-FOIA as of fiscal year 1998. In doing so, and focusing on fiscal year 1999, GAO found "reporting inconsistencies and data quality problems" with some of the annual reports that it examined. GAO Report at 32. It identified a number of particular concerns with these annual reports. See id. at 33-34.

The Department of Justice has been addressing such concerns. As of last year, for the annual reporting period that ended on September 30, 2000, the Office of Information and Privacy initiated a process of reviewing all agency annual reports as they are sent to OIP for centralized access on the Department's FOIA Web site, and then contacting individual agencies to discuss and resolve any identified question or discrepancy. OIP plans to continue to do so in future years, within an even broader framework of scrutiny, in accordance with the GAO report.

As part of this increased focus on the quality of all agencies' annual FOIA reports, OIP also is developing additional annual report guidance that will be based upon the specific findings of GAO's annual report examination.³ This supplemental guidance should be used by all agencies in the preparation of their next annual FOIA reports at the end of 2001, after the close of the current fiscal year. OIP is planning to disseminate this supplemental guidance in the near future, and it will do so through *FOIA Post*, a new Web-based means of FOIA information dissemination that has now been established on the Department of Justice's FOIA Web site.⁴

³ This guidance will supplement the "Guidelines for Agency Preparation and Submission of Annual FOIA Reports" that were issued by the Department of Justice in 1997. See FOIA Update, Vol. XVIII, No. 3, at 3-7; see also FOIA Update, Vol. XIX, No. 3, at 2 (clarifying that annual FOIA reports should uniformly use "working days" for statistical measurement wherever practicable).

⁴ As of 2001, *FOIA Post* has replaced the Department of Justice's *FOIA Update* newsletter publication, which was published from 1979-2000 and which is now entirely archived in electronic form for reference purposes on the Department's FOIA Web site. See FOIA

In conclusion, we urge you to take the findings of this GAO report very seriously and to make effective use of it throughout your agency in order to ensure that your agency both attains and maintains proper compliance with all of E-FOIA's electronic availability requirements. This will warrant continued careful attention during the coming months, and it is a subject that can be expected to be discussed in such forums as Department of Justice training programs. It also can be expected to be the subject of continuing congressional interest. See, e.g., FOIA Post, "Agencies Continue E-FOIA Implementation" (posted 3/14/01) (describing continued basis for E-FOIA interest in 107th Congress). Accordingly, the goal should be nothing less than full E-FOIA compliance. Each agency must ensure that it does whatever is necessary to meet this goal.

Please do not hesitate to contact the Office of Information and Privacy, at (202) 514-3642, regarding any aspect of this important Freedom of Information Act subject at any time.

Attachment

⁴(...continued)
Post, "Introducing *FOIA Post*" (posted 3/14/01). By this memorandum, we ask that you please pass this information along to all FOIA personnel and any other interested persons within your agency, with the suggestion that this new part of the Department's FOIA Web site be electronically "bookmarked" for ready reference purposes. (We are enclosing an information page on *FOIA Post*, which includes its electronic address, to facilitate this.)

ENCLOSURE (2)

Introducing *FOIA Post*

With this posting on its FOIA Web site, the Department of Justice's Office of Information and Privacy introduces *FOIA Post*, a new means of disseminating Freedom of Information Act-related information to federal agencies governmentwide.

FOIA Post replaces the Department of Justice's *FOIA Update* newsletter publication, which was published from 1979 to 2000. All issues of *FOIA Update* for that twenty-year period have now been placed on the Department of Justice's FOIA Web site, where they are available electronically -- and are "keyword searchable" -- for ready reference purposes.

As of 2001, *FOIA Post* will serve as a primary means of FOIA policy dissemination and as an efficient vehicle for communicating FOIA-related information to agency FOIA personnel and others who are interested in the Act's administration. It is planned to include the same types of FOIA guidance and information features that were disseminated in paper form through *FOIA Update*, but in a more efficient electronic form that also can make effective use of electronic "links" to referenced documents and other sources of information in a Web-based format.

A major enhancement in *FOIA Post* will be its inclusion of all new FOIA decisions that are received by the Office of Information and Privacy. OIP will disseminate summary descriptions of all newly decided FOIA cases, through *FOIA Post*, on no less than a quarterly basis. In time, OIP plans to post quarterly compilations of such case summaries for FOIA decisions that have been handed down in recent years as well.

This natural evolution to Web-based governmentwide information dissemination for the Freedom of Information Act not only takes advantage of the cost-efficiencies of electronic communication, it also is very much in keeping with the Act's growing emphasis on the disclosure of agency information to the public electronically, through use of the Internet and the World Wide Web, under the provisions of the Electronic Freedom of Information Act Amendments of 1996. Just as individual agency FOIA Web sites have become a vital means by which the FOIA is administered at all federal agencies, agencies can now look to the Department of Justice's FOIA Web site for the most recent postings of information regarding matters of governmentwide FOIA administration.

The Department of Justice suggests that this part of its FOIA Web site

be electronically "bookmarked" by all agency FOIA personnel and others interested in the Act for this purpose.

Questions about *FOIA Post* can be directed to editor Pamela Maida, of the Office of Information and Privacy, at (202) 514-5105. Ms. Maida also is the primary contact for OIP's compilation of new FOIA decisions, which can be faxed to her attention at (202) 514-1009. (posted 3/14/01)

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