



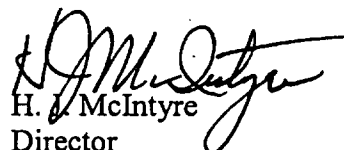
DEPARTMENT OF DEFENSE
DIRECTORATE FOR FREEDOM OF INFORMATION AND SECURITY REVIEW
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155
19 NOV 2001
01-CORR-111

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: DoD Guidance on Attorney General Freedom of Information Act (FOIA) Memorandum

On October 12, 2001, the Attorney General (AG) issued a memorandum for all heads of federal departments and agencies concerning the FOIA. On October 15, the U.S. Department of Justice (DOJ) Office of Information and Privacy (OIP) distributed the AG memorandum and stated that the new policy supersedes the previous FOIA policy statement issued by DOJ in October 1993. Copies of the AG and OIP memorandums are attached. On October 18, 2001, a FOIA officers conference was hosted by OIP in Washington D.C. to discuss the AG memorandum and other FOIA issues. The conference focused on interpretation of the AG memorandum and discussion on the possible use of the (b)(2) High (high 2) exemption in withholding information potentially of use to terrorists.

- Effective immediately, DoD components will adopt the **Sound Legal Basis** standard as reflected by the AG memorandum. The "foreseeable harm" standard is superseded. Changes to DoD 5400.7-R, "DoD Freedom of Information Act Program," will be forthcoming. Components will present a rationale for denial that DOJ will be able to defend if the denial is litigated. Components are advised to consult their respective FOIA policy and/or legal offices, or this Directorate as appropriate, to determine if a proper basis for denials of information exists.
- DoD components will apply the low 2 exemption as applicable. Be advised that the low 2 threshold applies **only** to internal matters of a relatively trivial nature. Components are encouraged to consult the DOJ "Freedom of Information Act Guide & Privacy Act Overview" for an in depth discussion on the legal history of the use of the low 2 exemption.
- Discretionary disclosures are no longer encouraged.
- DoD components may consider application of the high 2 exemption to deny information that may be of use to terrorist organizations, but must be prepared to present a **Sound Legal Basis** in support of their determinations.


H. A. McIntyre
Director

Attachments:
As stated





U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

October 15, 2001

MEMORANDUM

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

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

SUBJECT: New Attorney General Memorandum on the FOIA

Enclosed is a new policy memorandum on the Freedom of Information Act that was issued by Attorney General John Ashcroft this past Friday evening, October 12, 2001.

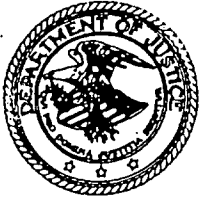
As you can see, Attorney General Ashcroft's FOIA Memorandum establishes a new "sound legal basis" standard governing the defense of Freedom of Information Act lawsuits by the Department of Justice. It also recognizes the continued agency practice of making discretionary disclosures of exempt information under the Act, subject to statutory prohibitions and careful agency consideration of all institutional, commercial, and personal interests involved.

This new statement of FOIA policy supersedes the FOIA policy statement that was issued by the Department of Justice in October 1993, and it is effective immediately. The presidential statement on the FOIA that was issued in 1993 remains in effect.

Please ensure that this new FOIA policy memorandum is distributed widely within your agency as expeditiously as possible. Additionally, we will be distributing and discussing it at a FOIA Officers Conference to be held on Thursday, October 18, at the Commerce Department's Main Auditorium, at 10:00 a.m. It also is being made available through FOIA Post on the Department of Justice's FOIA Web site as of today.

Do not hesitate to contact OIP, through its FOIA Counselor service, at (202) 514-3642, with any question about this FOIA policy memorandum or any other aspect of FOIA administration.

Enclosure



Office of the Attorney General
Washington, D. C. 20530

October 12, 2001

MEMORANDUM FOR HEADS OF ALL FEDERAL DEPARTMENTS AND AGENCIES

FROM: John Ashcroft
Attorney General

A handwritten signature in black ink that reads "John Ashcroft".

SUBJECT: The Freedom of Information Act

As you know, the Department of Justice and this Administration are committed to full compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2000). It is only through a well-informed citizenry that the leaders of our nation remain accountable to the governed and the American people can be assured that neither fraud nor government waste is concealed.

The Department of Justice and this Administration are equally committed to protecting other fundamental values that are held by our society. Among them are safeguarding our national security, enhancing the effectiveness of our law enforcement agencies, protecting sensitive business information and, not least, preserving personal privacy.

Our citizens have a strong interest as well in a government that is fully functional and efficient. Congress and the courts have long recognized that certain legal privileges ensure candid and complete agency deliberations without fear that they will be made public. Other privileges ensure that lawyers' deliberations and communications are kept private. No leader can operate effectively without confidential advice and counsel. Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), incorporates these privileges and the sound policies underlying them.

I encourage your agency to carefully consider the protection of all such values and interests when making disclosure determinations under the FOIA. Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information.

In making these decisions, you should consult with the Department of Justice's Office of Information and Privacy when significant FOIA issues arise, as well as with our Civil Division on FOIA litigation matters. When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.

This memorandum supersedes the Department of Justice's FOIA Memorandum of October 4, 1993, and it likewise creates no substantive or procedural right enforceable at law.