



U.S. Department of Justice

Office of Information and Privacy


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Washington, D.C. 20530

January 11, 2006

**MEMORANDUM**

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

FROM:  Daniel J. Metcalfe  
Director  
Office of Information and Privacy

SUBJECT: Freedom of Information Act Executive Order\*

As most of you already should know, on December 14 the President issued Executive Order 13,392, entitled "Improving Agency Disclosure of Information," which contains several statements of governmentwide FOIA policy as well as many specific new planning and reporting requirements that will affect all Federal agencies in their administration of the Act. It warrants your immediate attention. The Office of Management and Budget (OMB) has recently issued guidance concerning the executive order.<sup>1</sup>

Background

This first-of-its-kind FOIA executive order establishes a "citizen-centered" and "results-oriented" policy for improving the Act's administration throughout the executive branch. It draws new attention to the difficulties presented by agency backlogs of pending FOIA requests, and it places new obligations on all agencies that must be met by specified deadlines. You should note that the first such deadline is January 13, 2006.

Executive Order 13,392 emphasizes the importance of the FOIA to "[t]he effective functioning of our constitutional democracy" and reminds all agencies that "FOIA requesters are seeking a service from the Federal Government and should be treated as such."<sup>2</sup> Accordingly, it states an overall policy of responding to FOIA requests "courteously and appropriately," and in ways that permit FOIA requesters to "learn about the FOIA process," most particularly "about the status of a person's FOIA request."<sup>3</sup> It calls upon all Federal agencies to handle their FOIA responsibilities in an efficient and "results-oriented" manner, and to "achieve tangible, measurable improvements in FOIA processing."<sup>4</sup> Its goal is to "improve service and

\* Please note that the instant memorandum is an updated version of, and supersedes, OIP's memorandum of January 6, 2006.

<sup>1</sup> OMB Memorandum, M-06-04 of December 30, 2005, "Implementation of the President's Executive Order 'Improving Agency Disclosure of Information,'" which can be found at: <http://www.whitehouse.gov/omb/memoranda/fv2006/m06-04.pdf>.

<sup>2</sup> Exec. Order No. 13,392, Sec. 1(a), (b).

<sup>3</sup> *Id.* at Sec. 1(b).

<sup>4</sup> *Id.* at Sec. 1(c).

performance" and "increase efficiency" in agency FOIA operations, "thereby strengthening compliance with the FOIA" and minimizing both FOIA "disputes and related lawsuits."<sup>5</sup>

Executive Order 13,392 requires all Federal agencies subject to the FOIA to designate a Chief FOIA Officer; to establish FOIA Requester Service Centers and designate FOIA Public Liaisons; to review their FOIA operations; to develop a plan for improving those operations; and to submit reports on all such new matters to the Attorney General, who in turn will report on these implementation steps in a consolidated fashion with recommendations to the President. In greater detail, these requirements are explained below.

I. **Chief FOIA Officers.** Pursuant to the executive order, all agencies will have a Chief FOIA Officer (FOIA Chief) to hold "agency-wide responsibility for efficient and appropriate compliance with the FOIA."<sup>6</sup>

- This person is to be designated by the head of the agency within thirty days of the executive order's issuance (i.e., by no later than January 13, 2006) and must be a senior agency official "at the Assistant Secretary or equivalent level."<sup>7</sup>
- Once an agency makes this designation (or any replacement one in the future), it can fulfill the executive order's notification requirement as to the Attorney General<sup>8</sup> by sending notification to the Office of Information and Privacy, which maintains such information on the Attorney General's behalf, at [Pamela.A.Maida@USDOJ.GOV](mailto:Pamela.A.Maida@USDOJ.GOV), with a copy to OMB at [FOIAreporting@omb.eop.gov](mailto:FOIAreporting@omb.eop.gov).
- OIP will compile a comprehensive list of all agency FOIA Chiefs for posting on its FOIA Web site as soon as these designations are made and all contact information is available.

II. **FOIA Requester Service Centers.** Each agency must establish one or more operating groups or units (depending upon agency size and degree of decentralization), to be called "FOIA Requester Service Centers," for the purpose of facilitating better agency communications with FOIA requesters.

- Such a Center "shall serve as the first place that a FOIA requester can contact to seek information concerning the status of the person's FOIA request."<sup>9</sup>
- FOIA Centers must have "appropriate staff to receive and respond to inquiries from FOIA requesters."<sup>10</sup>
- As with the FOIA Public Liaisons, information about the Centers should, of course, be placed on each agency's FOIA Web site promptly.

III. **FOIA Public Liaisons.** Each agency also must designate one or more supervisory-level employees to serve as "FOIA Public Liaisons" who may be located either in a separate office, or within

<sup>5</sup> *Id.* at Sec. 1(c), (d).

<sup>6</sup> Exec. Order No. 13,392, at Sec. 2(b)(i).

<sup>7</sup> *Id.* at Sec. 2(a).

<sup>8</sup> *See id.*

<sup>9</sup> *Id.* at Sec. 2(c)(i).

<sup>10</sup> *Id.*; *see also id.* at Sec. 2(c)(iv) (placing emphasis on requirement).

its Center(s).<sup>11</sup>

- FOIA Public Liaisons will among other things serve as "supervisory officials to whom a FOIA requester can raise concerns about the service a FOIA requester has received from the Center, following an initial response from the Center staff."<sup>12</sup>
- In establishing and maintaining these FOIA positions, agencies "shall use, as appropriate, existing agency staff and resources."<sup>13</sup>
- As with the FOIA Centers, information about this function should be placed on each agency's FOIA Web site promptly.

**IV. FOIA Operations Reviews.** Among the responsibilities of each FOIA Chief will be to "conduct a review of the agency's FOIA operations to determine whether agency practices are consistent with the policies" that are set forth in the executive order.<sup>14</sup>

- Beginning in early 2006, each FOIA Chief will be required to evaluate and examine a range of the agency's FOIA-related activities, including "ways to eliminate or reduce its FOIA backlog," as appropriate.<sup>15</sup>
- These reviews should be commenced immediately so that they can be completed within six months of the date of the executive order's issuance (i.e., by June 14, 2006).
- The Department of Justice (DOJ) has held a conference for the principal FOIA officers of its forty components; other agencies may find it helpful to hold similar conferences.

**V. Agency FOIA Plans.** Executive Order 13,392 further requires that all agencies, based upon the reviews that are conducted by their new FOIA Chiefs, prepare "agency-specific plan[s]" for improvement of their administration of the Act.<sup>16</sup>

- These plans are to include "concrete milestones, with specific timetables and outcomes to be achieved," by which agency improvements can be measured.<sup>17</sup>
- Both DOJ and OMB are to be consulted by agencies in the drafting and finalization of these plans, and they must be approved by the head of each agency in final form.<sup>18</sup>
- This, too, must be completed within the six-month time period.

**VI. Agency Reports.** Next, each agency must send its plan to both DOJ and OMB by June 14,

<sup>11</sup> See *id.* at Sec. 2(c)(ii) (noting that FOIA Liaison(s) "may serve in a separate office").

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at Sec. 2(c)(iv).

<sup>14</sup> *Id.* at Sec. 3(a).

<sup>15</sup> *Id.* at Sec. 3(a)(v); see also *id.* at Sec. 3(a)(i)-(v) (specifying range of matters to be reviewed).

<sup>16</sup> *Id.* at Sec. 3(b).

<sup>17</sup> *Id.* at Sec. 3(b)(iv).

<sup>18</sup> See *id.* at Sec. 3(b)(i).

2006, together with a report that "summarizes the results of" the agency's FOIA review.<sup>19</sup> (Again, these reports most conveniently can be sent to DOJ and OMB at the e-mail addresses noted in section I above.)

- Under the executive order, each agency shall make its report directly available to the public; OIP will make all such reports available at a single location on its Web site for convenient reference as well.
- Additionally, each agency will be required to further report on the "development and implementation of its plan" as a special new section of the regular annual FOIA reports that it prepares for Fiscal Year 2006 and Fiscal Year 2007, which are due to be completed and submitted by February 1, 2007 and February 1, 2008, respectively.<sup>20</sup>
- The executive order provides for specific consequences and corrective actions in the event that an agency does not meet a milestone in its plan.<sup>21</sup>

VII. **Attorney General Reports.** Lastly, Executive Order 13,392 authorizes the Attorney General to review these new agency FOIA reports and to provide to the President "appropriate recommendations on administrative or other agency actions" for purposes of future governmentwide FOIA administration.<sup>22</sup>

- The Attorney General will be making this report and these recommendations by October 14, 2006, so it is imperative that all agencies submit their plan and accompanying report to DOJ by the order's deadline of June 14, 2006.
- The executive order provides for two further Attorney General reports to the President, on June 1, 2007 and June 1, 2008, based upon the subsequent agency activity and plan implementation that is reflected in all agencies' annual FOIA reports for fiscal year 2006 and fiscal year 2007.<sup>23</sup>

Any questions about the implementation of these provisions can be directed to OIP through its FOIA Counselor service, at (202) 514-FOIA (514-3642).

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<sup>19</sup> *Id.* at Sec. 3(c)(i).

<sup>20</sup> *Id.* at Sec. 3(b)(ii).

<sup>21</sup> *See id.* at Sec. 3(c)(iii)(A)-(D).

<sup>22</sup> *Id.* at Sec. 4(a).

<sup>23</sup> *See id.*; *see also id.* at Sec. 4(b) (providing for implementation "instructions and guidance" to be issued by Attorney General).