

## BASIC FOIA REFERENCES

The Court of Appeals for the Fourth Circuit had an opportunity to confront this issue in Acumenics Research & Technology v. Department of Justice.<sup>86</sup> There, in analyzing Department of Justice regulations which do not provide for an administrative appeal, the Fourth Circuit found that the procedures provided for in the regulations -- namely, notice of the request, an opportunity to submit objections to disclosure, careful consideration of those objections by the agency, and issuance of a written statement describing the reasons why any objections were not sustained -- in combination with a "face-to-face meeting that, in essence, amounted to an opportunity to appeal [the agency's] tentative decision in favor of disclosure," were adequate.<sup>87</sup> The Fourth Circuit, however, expressly declined to render an opinion as to whether the procedures implemented by the regulations alone would have been adequate.<sup>88</sup>

Likewise, the Court of Appeals for the Ninth Circuit has upheld the adequacy of an agency's factfinding procedures that did not provide for an administrative appeal per se.<sup>89</sup> In that case, the agency's procedures provided for notice and an opportunity to object to disclosure, for consideration of the objection by the agency, for a written explanation as to why the objection was not sustained, and then for another opportunity for the submitter to provide information in support of its objection.<sup>90</sup> After independently reviewing the record, the Ninth Circuit found that such procedures were adequate, and it accordingly held that the agency's decision to disclose the information did not require review in a trial de novo.<sup>91</sup>

## BASIC FOIA REFERENCES

The following is a list of primary reference materials pertaining to the Freedom of Information Act, 5 U.S.C. § 552 (2000 & Supp. IV 2004).

A growing number of reference materials pertaining to the FOIA are available to the public electronically through FOIA-related sites on the World Wide Web. The Department of Justice maintains a comprehensive

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<sup>85</sup>(...continued)

an appeal mechanism and a formal mechanism to provide additional information [did] not render [the agency's] procedures defective").

<sup>86</sup> 843 F.2d 800, 805 (4th Cir. 1988).

<sup>87</sup> Id.

<sup>88</sup> Id. at 805 n.4.

<sup>89</sup> See Pac. Architects & Eng'rs v. U.S. Dep't of State, 906 F.2d 1345, 1348 (9th Cir. 1990).

<sup>90</sup> Id.

<sup>91</sup> Id.

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FOIA Web site ([www.usdoj.gov/oip](http://www.usdoj.gov/oip)) -- which contains links to many of the basic reference materials listed below, including all Justice Department FOIA-related reference materials. See, e.g., Mount of Olives' Paralegals v. Bush, No. 04-CV-044, 2004 U.S. Dist. LEXIS 8504, at \*6 (S.D. Ill. Jan. 23, 2004) ("The Court suggests that [plaintiff] consult the FOIA reference guide on the DOJ website at [www.usdoj.gov](http://www.usdoj.gov) for guidance. . . . [T]he DOJ website should be helpful in this regard as well.").

The Department of Justice's FOIA Web site also contains links to the FOIA Web sites of other federal agencies; it lists the names, addresses, and telephone numbers of the FOIA contacts at all federal agencies; and it serves as a single electronic access point for linkage to the annual FOIA reports and the FOIA Improvement Plans (filed in accordance with Executive Order 13,392) of all federal agencies. See *FOIA Post*, "Executive Order 13,392 Implementation Guidance" (posted 4/27/06). In order to best facilitate public access to FOIA-related materials, individual electronic addresses are included below and the Office of Information and Privacy adds additional electronic addresses to this list as they become available. See *FOIA Update*, Vol. XVIII, No. 3, at 2.

Another basic reference tool is the cumulative index to *FOIA Update*, covering issues of that periodical through 1997. See *FOIA Update*, Vol. XVIII, No. 4, at i-ix. All issues of *FOIA Update*, from 1979-2000, also are available electronically on the Department of Justice's FOIA Web site. Its successor publication, *FOIA Post*, is made available through the Department's FOIA Web site as well. See, e.g., *FOIA Post*, "Electronic Compilation of E-FOIA Implementation Guidance" (posted 2/28/03). Further reference materials also can be found in the extensive list of related law review articles that is contained in the Department of Justice's *Freedom of Information Case List* (2002 ed.), which also is available on the Department's FOIA Web site.

### Congressional References

House of Representatives Committee on Government Operations, *Clarifying and Protecting the Right of the Public to Information*. H.R. Rep. No. 1497, 89th Cong., 2d Sess. (1966), 14 pages. Out of print. Available at most law libraries.

House of Representatives Committee on Government Operations, *Freedom of Information Act (Compilation and Analysis of Department Regulations Implementing 5 U.S.C. § 552)*. Committee Print, 90th Cong., 2d Sess. (1968), 303 pages with appendices. Out of print. Available at most law libraries.

House of Representatives Committee on Government Operations and Senate Committee on the Judiciary, *Freedom of Information Act and Amendments of 1974 (P.L. 93-502)*. Joint Committee Print, 94th Cong., 1st Sess. (1975), 571 pages. Known as the "Joint Source Book." Out of print. Available at most law libraries.

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House of Representatives Committee on Government Operations, *Freedom of Information Act Requests for Business Data and Reverse FOIA Lawsuits*. H.R. Rep. No. 1382, 95th Cong., 2d Sess. (1978), 67 pages. Out of print. Available at most law libraries.

House of Representatives Committee on Government Operations, Subcommittee on Government Information, Justice, and Agriculture, *The Freedom of Information Reform Act: Hearings on S. 774*. 98th Cong., 2d Sess. (1984), 1155 pages. Available at Federal Depository Libraries.

House of Representatives Committee on Government Operations, Subcommittee on Government Information, Justice, and Agriculture, *Federal Information Dissemination Policies and Practices*. 101st Cong., 1st Sess. (1989), 904 pages. Available at most law libraries.

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House of Representatives Committee on Government Reform and Oversight, *Electronic Freedom of Information Amendments of 1996*. H.R. Rep. No. 795, 104th Cong., 2d Sess. (1996), 40 pages. Available at most law libraries. Also available on the World Wide Web ([thomas.loc.gov/cgi-bin/cpquery/z?cp104:hr795.104](http://thomas.loc.gov/cgi-bin/cpquery/z?cp104:hr795.104)).

House of Representatives Committee on Government Reform and Oversight, *Federal Information Policy Oversight*. 104th Cong., 2d Sess. (1996), 485 pages. Available at most law libraries.

House of Representatives Committee on Government Reform, *A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records*. H.R. Rep. No. 226, 109th Cong., 1st Sess. (2005), 33 pages and appendices. Available on the World Wide Web ([www.fas.org/sgp/foia/citizen.html](http://www.fas.org/sgp/foia/citizen.html)).

House of Representatives Committee on Government Reform, Subcommittee on Government Management, Finance, and Accountability, *Information Policy in the 21st Century: A Review of the Freedom of Information Act*. 109th Cong., 1st Sess. (2005), 57 pages and appendices. Available on the World Wide Web ([http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_house\\_hearings&docid=22705.wais.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=22705.wais.pdf)).

Implementing FOIA [Freedom of Information Act] - Assessing Agency Efforts to meet FOIA Requirements: Hearing Before the Subcommittee on Information Policy, Census, and National Archives of the Committee on Oversight and Government Reform, 110th Cong. (2007) (statement of Melanie Ann Pustay, Acting Director, Office of Information and Privacy), (<http://www.usdoj.gov/oip/foia30.pdf>).

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Senate Committee on the Judiciary, *Clarifying and Protecting the Right of the Public to Information, and Other Purposes*. S. Rep. No. 813, 89th Cong., 1st Sess. (1965), 10 pages. Out of print. Available at most law libraries.

Senate Committee on the Judiciary, *Freedom of Information Act Source Book: Legislative Materials, Cases, Articles*. S. Doc. No. 82, 93d Cong., 2d Sess. (1974), 432 pages on the Act prior to the 1974 Amendments. Out of print. Available at most law libraries.

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Senate Committee on the Judiciary, *Freedom of Information: A Compilation of State Laws*. Committee Print, 95th Cong., 2d Sess. (1978), 475 pages. Out of print. Available at most law libraries.

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Senate Committee on the Judiciary, Subcommittee on the Constitution, *Freedom of Information Reform Act Report (on S. 774)*. Committee Print 98-221, 98th Cong., 1st Sess. (1983), 48 pages. Available at most law libraries.

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United States Government Accounting Office, *Report to Congressional Requesters: Information Management: Update on Implementation of the 1996 Freedom of Information Act Amendments*. GAO-02-493, August 30, 2002, 99 pages. Available on the World Wide Web ([www.gao.gov/new.items/d02493.pdf](http://www.gao.gov/new.items/d02493.pdf)).

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### Executive Branch Materials

*Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act (FOIA)*, June 1967, 40 pages. Out of print. Reprinted in *Gov't Disclosure Serv.* (Prentice-Hall), Vol. 1, ¶ 300,601. Available on the Department of Justice's FOIA Web site at [www.usdoj.gov/oip/67agmemo.htm](http://www.usdoj.gov/oip/67agmemo.htm).

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*Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act*, December 1987, 30 pages and appendices. Available on the Department of Justice's FOIA Web site at [www.usdoj.gov/oip/86agmemo.htm](http://www.usdoj.gov/oip/86agmemo.htm).

Attorney General's Memorandum for Heads of All Departments and Agencies Regarding the Freedom of Information Act, October 12, 2001. Available on the Department of Justice's FOIA Web site at [www.usdoj.gov/oip/011012.htm](http://www.usdoj.gov/oip/011012.htm). Also reprinted in *FOIA Post* (posted 10/15/01).

Attorney General's Report to the President Pursuant to Executive Order 13,392, entitled "Improving Agency Disclosure of Information," October 16, 2006. Available on the Department of Justice's FOIA Web site at [www.usdoj.gov/oip/ag\\_report\\_to\\_president\\_13392.pdf](http://www.usdoj.gov/oip/ag_report_to_president_13392.pdf).

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Department of Justice's Basic FOIA Training Manual, a comprehensive compilation of current FOIA training materials. See *FOIA Post*, "Basic FOIA Training Manual Now Available On-Line" (posted 11/26/04). Available on the Department of Justice's FOIA Web site at [www.usdoj.gov/oip/trainingmaterials.htm](http://www.usdoj.gov/oip/trainingmaterials.htm).

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Department of Justice's Freedom of Information Act and Privacy Act Regulations, 28 C.F.R. Part 16 (2006), published by the Office of the Federal Register, but primarily available on the Department of Justice's FOIA Web site at [www.usdoj.gov/oip/04\\_1\\_1.html](http://www.usdoj.gov/oip/04_1_1.html).

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*Freedom of Information Case List*, a compilation of judicial decisions that was published by the Office of Information and Privacy, Department of Justice, up to and including 2002, containing decisions, both published and unpublished, under the Freedom of Information Act, the Privacy Act of 1974, the Federal Advisory Committee Act, and the Government in the Sunshine Act, as well as a list of "reverse" FOIA decisions. The final edition, published in May 2002, is available on the Department of Justice's FOIA Web site at [www.usdoj.gov/oip/cl-tofc.html](http://www.usdoj.gov/oip/cl-tofc.html).

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Presidential Memorandum for Heads of Departments and Agencies Regarding the Freedom of Information Act, October 4, 1993. Published at 29 Weekly Compilation of Presidential Documents 1999 (Oct. 4, 1993). Reprinted in *FOIA Update*, Vol. XIV, No. 3, at 3. Also still available on the Department of Justice's FOIA Web site at [www.usdoj.gov/oip/93clntmem.htm](http://www.usdoj.gov/oip/93clntmem.htm).

White House Memorandum for Heads of Executive Departments and Agencies Concerning Safeguarding Information Related to Homeland Security, with an accompanying memorandum from the Acting Director of the Information Security Oversight Office and the Co-Directors of the Department of Justice's Office of Information and Privacy, March 19, 2002. Available on the Department of Justice's FOIA Web site at [www.usdoj.gov/oip/foiapost/2002foiapost10.htm](http://www.usdoj.gov/oip/foiapost/2002foiapost10.htm). Also reprinted in *FOIA Post* (posted 3/21/02).

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### Nongovernment Publications

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*Federal Information Disclosure* (3d ed. 2000), James T. O'Reilly, West Group, Rochester, NY 14694. Biannual supplements. World Wide Web address [www.west.thomson.com](http://www.west.thomson.com).

*Getting and Protecting Competitive Business Information: A Business Guide to Using the Freedom of Information Act* (1997), Burt A. Braverman, Frances J. Chetwynd, and Harry A. Hammitt, Management Concepts, Inc., Vienna, VA 22182. Out of print.

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*How to Use the Federal FOI Act* (9th ed. 2004), Reporters Committee for Freedom of the Press, Arlington, VA 22209. Complete set also available on CD-ROM. World Wide Web address [www.rcfp.org](http://www.rcfp.org).

*Information Law: Freedom of Information, Privacy, Open Meetings, and Other Access Laws* (1985), Burt A. Braverman and Frances J. Chetwynd, Practising Law Institute, New York City, NY 10019. Two volumes. Supplement published in 1990. World Wide Web address [www.crblaw.com](http://www.crblaw.com).

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