



United States Department of Justice
Office of Information Policy

**President Obama's
FOIA Memorandum
and
ATTORNEY GENERAL HOLDER'S
FOIA GUIDELINES**

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United States Department of Justice

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**PRESIDENT OBAMA'S
FREEDOM OF INFORMATION ACT
MEMORANDUM**



**“A democracy requires
accountability, and
accountability requires
transparency.”**

Clear Presumption of Disclosure

**“In the face of doubt,
openness prevails.”**

Information should not be kept confidential merely because:

- officials might be embarrassed,**
- errors and failures might be revealed, or**
- because of speculative or abstract fears.**

“Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve.”



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**ATTORNEY GENERAL HOLDER'S
FREEDOM OF INFORMATION ACT
MEMORANDUM**



**The Attorney General's
FOIA Guidelines were
written to underscore our
nation's "fundamental
commitment to open
government."**

**The Attorney General
“strongly encourage[s]
agencies to make
discretionary
disclosures of
information.”**

**Agencies will now be defended
“only if**

- (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or**
- (2) disclosure is prohibited by law.”**

**The Attorney General also
comprehensively
addresses a range of
principles applicable to
establishing an effective
system for improving
transparency.**

In doing so, he emphasizes that: “Each agency must be fully accountable for its administration of the FOIA.”

All agency employees are responsible for the FOIA, not just those who interact directly with FOIA requesters.

The Attorney General highlights the key roles played by both the agency Chief FOIA Officers and the FOIA professionals in each agency.

“Unnecessary bureaucratic hurdles have no place in the ‘new era of open Government’ that the President has proclaimed.”

**Agencies need to work
“proactively” to post
information online in
advance of FOIA
requests.**

When responding to requests, agencies are directed to “make it a priority to respond in a timely manner.”

Chief FOIA Officers are asked to review “all aspects of their agencies’ FOIA administration” and to report each year to the Department of Justice on the steps taken “to improve FOIA operations and facilitate information disclosure at their agencies.”

Combined impact of these two
memos is to usher in the
new era of open Government.

IMPACT OF MEMORANDA

New standards for responding to requests and working with requesters.

IMPACT OF MEMORANDA

New, more limited defensibility standard when agencies withhold records.

IMPACT OF MEMORANDA

New requirement to maximize use of technology to disclose information.

IMPACT OF MEMORANDA

New requirement to post information online affirmatively, in advance of FOIA requests.

IMPACT OF MEMORANDA

New focus on broad array of agency personnel who are responsible for the FOIA.

IMPACT OF MEMORANDA

New accountability standards, particularly for agency Chief FOIA Officers, who must report to the Department of Justice each year.

Starting Point: Altering the Mind Set

**The key frame of reference is
the new presumption of
openness.**

Starting Point: Altering the Mind Set

To achieve a “new era of open Government,” agencies must think about the FOIA differently.

Starting Point: Altering the Mind Set

Ask “what can be released.”

**Applying the presumption
of openness.**

Records should not be withheld just because an exemption technically or legally might apply.

Records cannot be withheld merely to protect public officials from embarrassment, or because errors or failures might be revealed, or because of speculative or abstract fears.

Applying the “foreseeable harm” standard.

The disclosure obligation of the FOIA is not absolute.

Congress included exemptions from mandatory disclosure to protect against certain harms, such as harm to national security, harm to personal privacy, and harm to law enforcement interests.

**FOIA professionals should
examine documents with an
eye toward harm.**

When an agency determines that it cannot make a full release, it should consider whether it is possible to make a partial release.

Discretionary releases.

Such releases are possible with a number of FOIA exemptions, including Exemptions 2, 5, and 7, but they will be most applicable under Exemption 5.

**For certain exemptions,
discretionary disclosures are
not possible because the
information is protected by
some other legal authority.**

Records protected by the exemptions covering national security, personal privacy, commercial and financial information, and information protected by statute, are not generally subject to discretionary releases.

Records protected by the exemptions covering governmental interests can be subjects of discretionary disclosure.

Factors to consider in determining whether there is “foreseeable harm” from disclosure.

For all records, the sensitivity of the document's content and its age are universal factors that guide a decision to make a discretionary release.

**Agencies should handle
Low 2 differently from High 2.**

For the subparts of Exemption 7, agencies should ensure that the harm being considered is not “speculative or abstract,” but instead is reasonably foreseen.

There is no doubt that records protected by Exemption 5 hold the greatest promise for increased discretionary releases under the Attorney General's Guidelines.

Such releases will be fully consistent with the purpose of the FOIA to open up agency activity to the light of day.

These are the principles embodied in the FOIA. The President has asked all agencies to renew their commitment to them.

Thus, as a result of the “new era of open Government” that the President has proclaimed, agencies should view each FOIA request with a presumption of openness.

Agencies should strive to maximize the amount of records released, aim to release portions of records when full release is not possible, and make discretionary releases.

***Achieving transparency in
new ways.***

***Providing information to
the public proactively.***

Anticipate interest in records.

Establish systems to identify records of interest to the public.

**Post those records on
the agency website.**

Utilize technology.

**Agencies should
exponentially increase the
amount of information on
their websites.**

**The FOIA is everyone's
responsibility.**

**The Attorney General
recognized the important role
of FOIA professionals.**

***Working cooperatively
with requesters.***

“Unnecessary bureaucratic hurdles have no place in the ‘new era of open Government’ that the President has proclaimed.”

Timely Disclosures.

“Long delays should not be viewed as an inevitable and insurmountable consequence of high demand.”

Accountability.

**Each agency must
be fully accountable
for its FOIA
administration.**

Chief FOIA Officers will be reporting each year to the Department of Justice on the steps “taken to improve FOIA operations and facilitate information disclosure at their agencies.”

SUMMARY

Presumption of disclosure applies to all decisions involving the FOIA.

If responding to a request, approach review of documents by asking: What can I release?

SUMMARY

Records should not be withheld merely because they technically fall within an exemption.

Review each document with a focus on whether there is foreseeable harm from disclosure of that particular record.

SUMMARY

Determinations of foreseeable harm are made on a case-by-case basis, but universal factors to consider are the age of the document and the sensitivity of its contents.

SUMMARY

Make discretionary releases.

When full disclosure is not possible, strive to make partial disclosure.

SUMMARY

When full disclosure is not possible, consider what can be made available to the public on that topic. Ask whether there is information that can be put on the website to satisfy public interest in the topic.

SUMMARY

Separate and apart from the handling of individual FOIA requests, agencies should anticipate interest in records, should set up systems for identifying and retrieving such records, and should post them on the website. Information about agency operations and decisions should be available to the public online.

SUMMARY

Agencies should work cooperatively with requesters and respond promptly to requests.

SUMMARY

To achieve the “new era of open Government” that the President has proclaimed will require the commitment of all agency personnel.