



U.S. Department of Justice  
Office of Information Policy  
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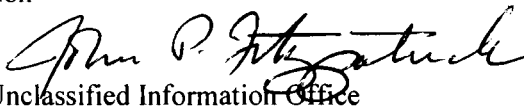
National Archives and Records Administration  
Controlled Unclassified Information Office  
Room 100  
700 Pennsylvania Avenue, NW  
Washington, DC 20408-0001

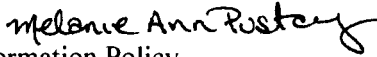


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November 22, 2011

**Memorandum for:** Senior Agency Officials for Executive Order No. 13556, "Controlled Unclassified Information"

**From:** John P. Fitzpatrick   
Director, Controlled Unclassified Information Office  
National Archives and Records Administration

Melanie Ann Pustay   
Director, Office of Information Policy  
United States Department of Justice

**Subject:** Guidance regarding Controlled Unclassified Information and the Freedom of Information Act

Executive Order 13556 (the Order), "Controlled Unclassified Information," dated November 4, 2010, provides guidance regarding the relationship between information disclosure laws, including the Freedom of Information Act (FOIA), and Controlled Unclassified Information (CUI). The Order states: "The mere fact that information is designated as CUI shall not have a bearing on determinations pursuant to any law requiring the disclosure of information or permitting disclosure as a matter of discretion, including disclosures to the legislative or judicial branches" (Order at Section 2b). The CUI Office Notice 2011-01, "Initial Implementation Guidance for Executive Order 13556," June 9, 2011, further provides: "The mere fact that information is designated as CUI shall not have a bearing on determinations pursuant to the FOIA, or any law requiring the disclosure of information or permitting disclosure as a matter of discretion, including disclosures to the legislative or judicial branches, in accordance with section 2(b) of the Order."

In response to agencies' inquiries and to provide additional clarity as to the intent of the policy references, the CUI Office and the Department of Justice's Office of Information Policy developed the following joint guidance for agencies:

- The FOIA should not be cited as a safeguarding or dissemination control authority for CUI. The purpose of the FOIA is to open agency activities to the public.
  - The FOIA gives the public the right to request and receive federal agency records unless those records are protected from disclosure by one of the Act's exemptions.
  - The FOIA exemptions are discretionary. As a result, FOIA exemptions should not be relied upon as an authority to create a CUI category or subcategory.
  - Moreover, one cannot properly conduct a FOIA analysis at the creation of a document because the record's content must be analyzed at the time of the FOIA request to determine whether it is appropriate for release.

- CUI markings are not dispositive of a FOIA reviewer's disclosure determination.
  - Decisions to disclose or withhold information must be made based on the applicability of the statutory exemptions contained in the FOIA, not on a CUI marking or designation.

In sum, CUI markings and designations should not be associated with or paired to FOIA exemptions and should not be used as a basis for applying a FOIA exemption. We look forward to working with your department or agency to ensure the efficient and effective implementation of the President's direction. If we may offer any assistance, please feel free to contact the CUI Office via [cui@nara.gov](mailto:cui@nara.gov) or (202) 357-6870.