



**United States Department of Justice**  
***Office of Information Policy***

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**The Freedom of Information Act**  
**for Attorneys and Access Professionals**

***Procedural Guidance***

# FREEDOM OF INFORMATION ACT PROCEDURAL GUIDANCE

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## AVAILABLE RESOURCES

DOJ FOIA Guide, 2009 Edition

FOIA Counselor Hotline -- (202) 514-3642

FOIA Post (replaced the FOIA update in 2001)

OIP Website -- <http://www.justice.gov/oip/index.html>

Your Agency's Code of Federal Regulations

President Obama's FOIA memo (Jan. 21, 2009)

Attorney General Holder's FOIA Guidelines (March 19, 2009)

# THE FREEDOM OF INFORMATION ACT IN PRACTICE

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**Statute**  
+  
**Case Law**  
+  
**Your agency's  
implementing  
regulations**

**=**

**The FOIA  
in  
Practice!**

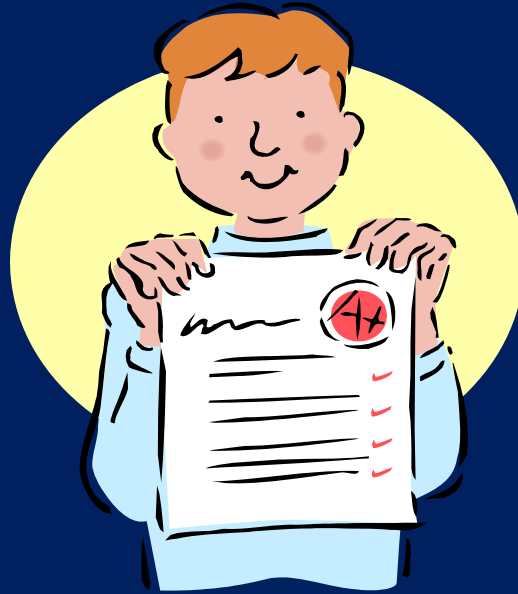
# *Common Procedural Issues*

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- **Perfected Requests:** Requester's and agency's processing responsibilities
- **Processing Matters:** Interpretation of request, search and redaction issues, case management
- **Communicating with Requesters**



# “Perfected” Requests



Remember: The requester must meet certain criteria, and once that criteria are met our processing obligations begin

# *What Responsibility Does the Requester Have?*

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In order to be “perfected,” a FOIA request must be submitted in writing for reasonably described agency records – and be in compliance with your agency’s regulations.



# Example #1

“Please inform me of the agency and address from which I may obtain free copies of (1) the United States Code, [and] (2) the United States Code of Regulations.”



Is this a perfected request?

## Example #2


“How many people in the U.S. are incarcerated for possession/sales/delivery of drugs? How many of those were simultaneously or previously convicted of a violent offense?”



Is this a perfected request?

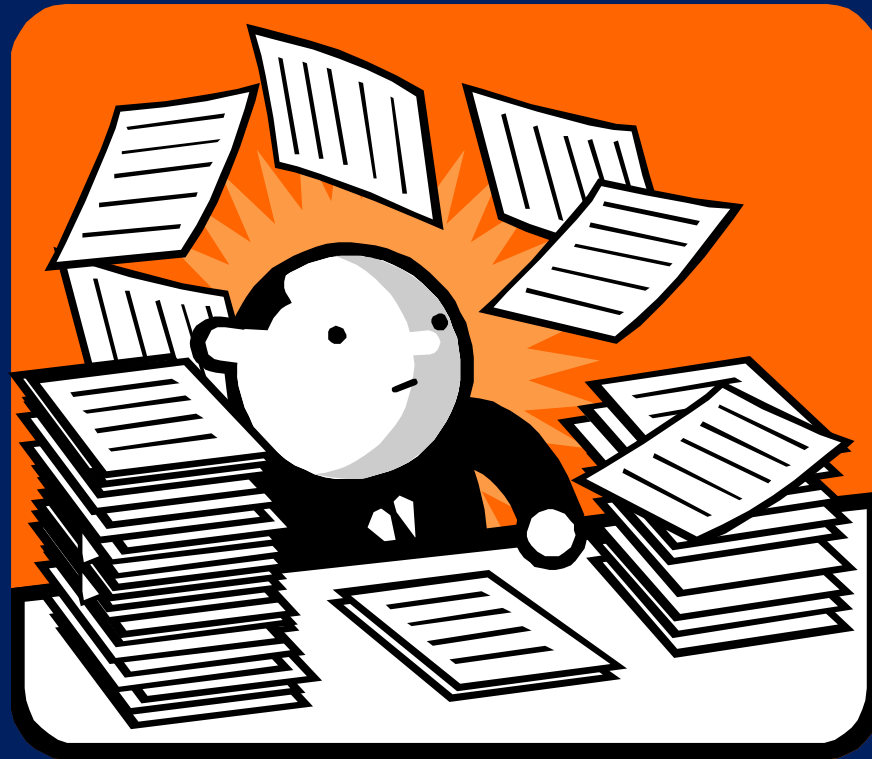


## Example #3

 “I would like to receive a copy of all dates and times physical photos, video or audio surveillance recordings, tapes or notes that were recorded inside my home by my D.V.R. cable T.V. box by your agency.”

 Is this a perfected request?

# Processing Matters

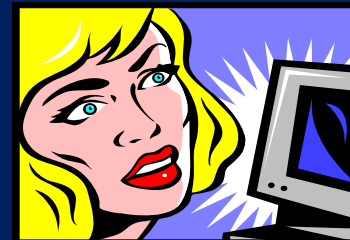


# *What Responsibility Do You Have?*

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Once a FOIA request is perfected, you will:

- Interpret the scope of the request
- Create and maintain an administrative file
- Conduct an adequate search
- Redact exempt information



# *Understanding the Scope*

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- Only process responsive material
- Scoping within a document
- Burdensome  $\neq$  Unreasonable
- Direct negotiation with requester



## Example #4



“Any correspondence or communications between DOJ employees and staff and members of the Congress concerning the expansion of the FBI’s authority under the Foreign Intelligence Surveillance Act through the reauthorization of the PATRIOT Act.”



Is the scope of this request clear?

## Example #5



“This FOIA request specifically includes a request for FOIA production of records on the need to recognize (or not), formally or informally, the rights of Chinese detainees who are wholly innocent persons being detained at Guantanamo Bay. Moreover, this FOIA request specifically includes a request for production of records on the need to immediately advise (or not) any and all Guantanamo detainees and their lawyers about determinations by Combatant Status Review Tribunals.”



Is the scope of this request clear?



# *Search Issues*

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- Electronic searches: “reasonable efforts” standard
- E-mails and personal records issues
- Cut-off dates
- Remember: just because you don’t find anything, doesn’t mean you did a bad search!



## *Redaction Issues*

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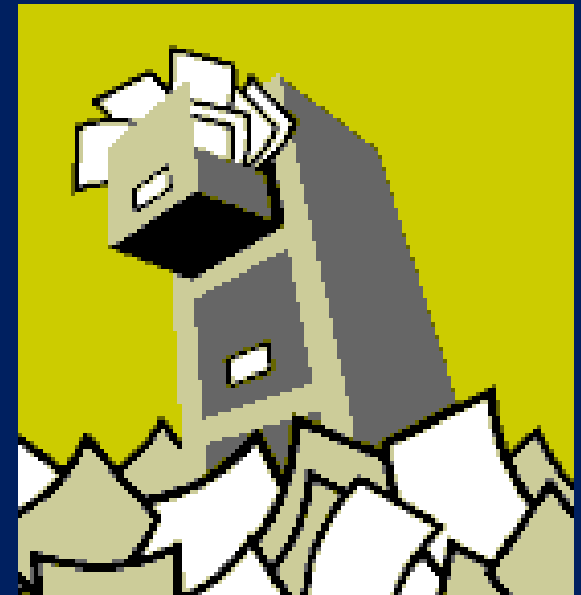
- Making black-outs
- Electronic redaction concerns
- E-mail considerations
- Duty to reasonably segregate unless non-exempt material is inextricably intertwined



# *Administrative File Maintenance*

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- Detailed case notes
- Working copies
- Document indexing
- Determine if consultations or referrals are necessary
- Litigation concerns



# *Communicating with Requesters*

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Acknowledgments, interims,  
and final responses

# *Acknowledgment Letters*

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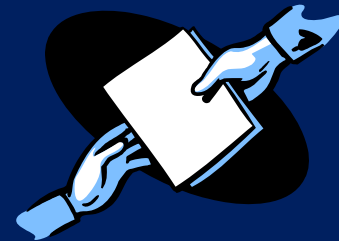
- Acknowledgments establish communication but don't stop the time clock
- Address fee and expedition issues, if appropriate
- Establish the scope of the request



# *Interim Responses*

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- Streamlines complex and voluminous cases
- Still interested letters
- Keeps channel of communication open between requester and agency



# *Final Responses*

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- Requester's choice of format and the "readily reproducible" standard
- When is an "appeal pitch" appropriate?
- Identifying exempt material

