



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

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



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

## **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:**

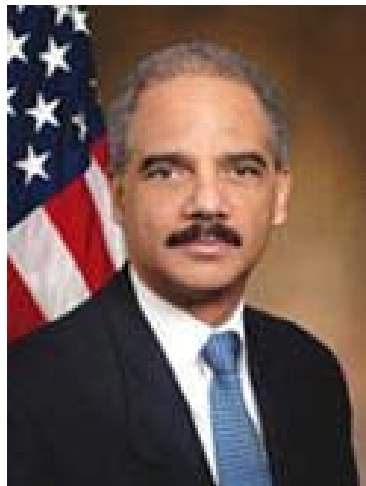
- officials might be embarrassed,**
- errors and failures might be revealed, or**
- because of speculative or abstract fears.**

**“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.”**



**United States Department of Justice**  
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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 addresses a range of principles establishing an effective system for improving accessibility of information to the public.**

**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.”**

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.**



# **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.**



**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 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.**

**Accountability.**

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

# 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

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.