

PA/FOIA INTERFACE

- FOIA

- ANY PERSON FOR ANY REASON
- AGENCY RECORDS

- PRIVACY

- US CITIZENS/ LEGALLY ADMITTED ALIENS
- FIRST PARTY REQUEST FOR ACCESS TO RECORDS CONTAINED IN A PA SYSTEM OF RECORDS

TIME LIMITS

- FOIA

- 20 WORKING DAYS
- SOME AGENCIES ISSUE ACKNOWLEDGEMENTS

- PRIVACY

- STATUTE DOES NOT SPECIFY TIMEFRAME
- RESPOND WITHIN 20 WORKING DAYS IF POSSIBLE

FEEES

- FOIA
 - OMB SETS UNIFORM FEE GUIDELINES FOR SEARCH, REVIEW, AND DUPLICATION
 - CATEGORY OF REQUESTER DETERMINES KINDS OF FEES CHARGED
- PRIVACY
 - DUPLICATION FEES ONLY
 - FEES USUALLY WAIVED

IS IT PRIVACY OR FOIA?

- DEPARTMENT OF JUSTICE SAYS TO PROCESS UNDER BOTH ACTS – NO MATTER WHAT ACT IS CITED
- MANY REQUESTERS DO NOT UNDERSTAND THE DIFFERENCE AND CITE TO ONE OR BOTH ACTS

THINGS TO CONSIDER

- DOES IT CITE TO AN ACT?
- DOES THE REQUEST REASONABLY DESCRIBE THE RECORDS BEING SOUGHT?
- HOW ARE THE RECORDS FILED?
- IS THIS A FIRST PARTY OR THIRD PARTY REQUEST?

PRIVACY ACT SYSTEMS OF RECORDS

- THE SYSTEMS NOTICE IDENTIFIES ANY EXEMPTION RULE
- EXCEPTION: (d)(5) – COMPILED IN ANTICIPATION OF LITIGATION
- MUST BE A FIRST PARTY REQUEST
- IF THE SYSTEM IS EXEMPT, THEN APPROPRIATE DENIAL MADE UNDER PA AND FILE IS THEN PROCESSED UNDER FOIA
- APPEAL RIGHTS GIVEN

FOIA PROCESSING

- REVIEW DOCUMENT TO DETERMINE IF ANY INFORMATION REQUIRES WITHHOLDING UNDER ANY OF THE FOIA EXEMPTIONS
- RESPONSE LETTER SHOULD ADDRESS WHAT INFORMATION WAS WITHHELD AND GIVE APPEAL RIGHTS

PRIVACY ACT SYSTEMS OF RECORDS NOTICE

- BLUEPRINT FOR THE KINDS OF RECORDS KEPT ON INDIVIDUALS
- RULEMAKING ESTABLISHES WHAT RECORDS ARE KEPT AND WHAT RECORDS QUALIFY FOR WITHHOLDING
- IDENTIFIES THE TIMEFRAME RECORDS ARE KEPT AND HOW THEY ARE RETRIEVED
- IDENTIFIES WHERE INFORMATION IS TAKEN TO COMPILE FILE

FOIA REQUESTS

- MUST REASONABLY IDENTIFY RECORDS BEING SOUGHT SO A KNOWLEDGEABLE OFFICIAL OF AGENCY CAN LOCATE RECORDS
- CAN INCLUDE RECORDS CONTAINED IN A PA SYSTEM OF RECORDS

WHO RESPONDS?

- FOIA
 - FOIA Officer, Raho OrtizHeadquarters
DRA
- PRIVACY ACT
 - SYSTEMS MANAGER OR PA OFFICIAL

EXEMPTIONS

- FOIA

- REVIEW DOCUMENT AND APPLY EXEMPTIONS
- FOIA has 9 exemptions

- PA

- EXEMPTIONS ARE ADDRESSED IN PA SYSTEMS NOTICE

OTHER PRIVACY ACT GENERAL EXEMPTION

- (j)(1): MAINTAINED BY CIA

APPEALS/AMENDMENTS

- FOIA
 - Requesters can appeal the adequacy of search, no record responses, fees, denial of information
- PRIVACY
 - Requesters can appeal adverse determinations
 - Can seek amendment of “factual” information (not opinions)

PENALTIES

- FOIA
 - ATTORNEY FEES AND LITIGATION COSTS
- PRIVACY
 - CIVIL AND CRIMINAL PENALTIES FOR MAINTAINING ILLEGAL PA SYSTEM OF RECORDS; WILLFULLY REQUESTS A RECORD UNDER FALSE PRETENSES; OR WILLFULLY DISCLOSES TO UNAUTHORIZED ENTITY

PLAYING THE FOIA/PA GAME

- IDENTIFY THE REQUESTER
- REVIEW WHAT THE REQUEST IS FOR: AGENCY RECORDS? PA SYSTEM OF RECORDS?
- IF IT'S FOR AGENCY RECORDS – PROCESS USING FOIA EXEMPTIONS
- IF IT'S FOR RECORDS IN A PA SYSTEM OF RECORDS – REVIEW THE SYSTEMS NOTICE

ADMINISTRATIVE RECORD

- MAKE SURE YOU ADVISE THE REQUESTER UNDER WHAT ACT(S) YOU ARE PROCESSING HIS/HER REQUEST
- DELINEATE ANY EXEMPTIONS CLAIMED
- GIVE APPEAL RIGHTS
- DELINEATE FEES/FEE WAIVER

IN SUMMARY

- WHILE BOTH STATUTES ALLOW ACCESS TO INFORMATION, ENSURE YOU FOLLOW THEIR RULE-MAKING
- MAKE SURE YOUR SEARCHES ARE COMPLETE
- DON'T HESITATE TO CONTACT THE REQUESTER FOR CLARIFICATION OF HIS/HER REQUEST

IN SUMMARY - CON'T

- MAKE SURE YOUR RESPONSE IS ACCURATE, TIMELY, AND COMPLETE
- THOROUGH EXPLANATIONS OF EXEMP-TION(S) CLAIMED MANY TIMES ELIMINATE APPEALS

FINALLY

- BE A FRIEND FOR FOIA
- REMEMBER YOUR RECORDS DISPOSAL RULES DEFINE HOW LONG RECORDS ARE MAINTAINED
- DEVELOP A PASSION FOR PRIVACY
- REMEMBER THE PA SYSTEMS NOTICE DRIVES THE TRAIN