



Program Update – New FOIA Legislation



January 7, 2008



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- Signed by President Bush on December 31, 2007
- Result of long standing Congressional concern
- Emphasizes importance of and increases visibility of the FOIA
- Codifies concepts of FOIA Executive Order
- Primary focus – Get it done faster
- Establishes new FOIA oversight responsibility within NARA
- Significant resource considerations



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Findings

- “Our constitutional democracy, our system of self-government, and our commitment to popular sovereignty depends upon the consent of the governed.”
- Quotes two opinions rendered by judges in FOIA litigation, “The FOIA establishes a ‘strong presumption in favor of disclosure’” and “Disclosure, not secrecy, is the dominant objective of the Act”
- “Congress should regularly review...in order to determine whether further changes and improvements are necessary”



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Section 3 - Protection of Fee Status For News Media

- Adds clarifying language to definition of “a representative of the News Media”
- Cites examples of “news media” but states that “examples are not all-inclusive”
- Requires reinterpretation of “news media” standard as technology advances
- No effective date indicated



Section 4 - Recovery of Attorney Fees and Litigation Costs

- Defines “Substantially Prevailed”
 - “a judicial order or an enforceable written agreement or consent decree”
 - “a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial.”
- Assessed fees “shall be paid only from funds annually appropriated... for the Federal agency”
- Change from previous paying of judgments from DOJ Claims and Judgment Fund
- No effective date indicated



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Section 5 – Disciplinary Actions For Arbitrary and Capricious Rejections of Requests

- Adds no new disciplinary actions
- Expands reporting requirements of any “arbitrary and capricious” acts
- Attorney General will notify the Special Counsel of any “arbitrary and capricious” civil actions
- Attorney will submit annual reports to Congress on numbers of and actions taken associated with such actions
- No effective date indicated



Section 6 – Time Limits For Agencies To Act On Requests

- Amends FOIA to define when 20-day time period begins within an agency
 - 20-day period begins when request is received by appropriate component of the agency but no later than 10 days after received by a listed component of the agency
- Agencies may toll the 20-day period:
 - To make one attempt to obtain additional information from the requester
 - To clarify fee assessments
- December 31, 2008, effective date for the above subsection



Section 7 - Individualized Tracking Numbers For Requests and Status Information

- Agencies must establish a system that provides a tracking number for requests
- Agencies must establish a telephone line or Internet service that provides:
 - The date the request was received
 - An estimated date when the request will be completed
- FOIA Executive Order resulted in much of the above although requirement for estimated date of completion is new.
- Effective date of December 31, 2008, for requests filed after that date



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Section 8 - Reporting Requirements

- Establishes many new requirements for FOIA annual report
- Requires detailed reporting on 10 oldest requests and appeals
- Separate data required for each component within the agency as well as for overall agency
- Raw statistical data to be made available to the public
- No effective date indicated



Section 9 – Openness Of Agency Records Maintained By A Private Entity

- Further defines a “record” in the context of information maintained by a contractor or a private entity for an agency
- Will allow for greater access to the records maintained by the contractor or private entity
- No effective date indicated



Section 10 – Office of Government Information Services (OGIS)

- Establishes the OGIS within the National Archives and Records Administration
- OGIS will:
 - Review agency FOIA policies and procedures
 - Review compliance with the FOIA
 - Recommend policy changes to Congress
- Offer mediation services to resolve disputes as alternative to litigation
- May issue opinions if mediation is not successful



Section 10 – Office of Government Information Services (OGIS)

- Establishes that GAO shall conduct audits and issue reports on the administration of the FOIA
- Codifies FOIA Executive Order concept of Agency Chief FOIA Officer who will:
 - Have agency-wide responsibility for FOIA
 - Monitor implementation of the FOIA
 - Report to Attorney General on agency implementation of the FOIA
 - Designate Public Liaison Officers
- Effective date – **December 31, 2007**



Section 11 – Report on Personnel Policies Related to FOIA

- OPM has one year to submit to Congress a report that examines:
- Potentially enhancing stature of officials administering the FOIA
 - If compliance with the FOIA should be included in performance evaluations
 - Potential need for FOIA and Privacy Act employment classification series
 - If a minimum rate should be paid to officials administering FOIA/Privacy Act in their agencies
 - If a FOIA/Privacy Act advancement career track should be ensured
 - If the Executive branch should require any or all categories of Federal employees to undertake awareness training of FOIA/Privacy Act



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Section 12 – Requirement To Describe Exemptions Authorizing Deletions of Material Provided Under FOIA

- Codifies the requirement to indicate the FOIA exemption used in specific redactions