



United States Department of Justice  
*Office of Information Policy*

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

Melanie Ann Pustay  
Director  
Office of Information Policy

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United States Department of Justice  
*Office of Information Policy*

**PRESIDENT OBAMA'S  
FREEDOM OF INFORMATION ACT  
MEMORANDUM**



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**"A democracy requires  
accountability, and  
accountability requires  
transparency."**

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**Clear Presumption  
of Disclosure**

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**“In the face of doubt,  
openness prevails.”**

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**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.

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**“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.”**

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

**ATTORNEY GENERAL HOLDER'S  
FREEDOM OF INFORMATION ACT  
MEMORANDUM**



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**The Attorney General's FOIA Guidelines were written to underscore our nation's “fundamental commitment to open government.”**

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**The Attorney General  
“strongly encourage[s]  
agencies to make  
discretionary  
disclosures of  
information.”**

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**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.”**

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**The Attorney General also  
comprehensively  
addresses a range of  
principles applicable to  
establishing an effective  
system for improving  
transparency.**

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**In doing so, he emphasizes that: "Each agency must be fully accountable for its administration of the FOIA."**

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**All agency employees are responsible for the FOIA, not just those who interact directly with FOIA requesters.**

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**The Attorney General highlights the key roles played by both the agency Chief FOIA Officers and the FOIA professionals in each agency.**

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**“Unnecessary bureaucratic hurdles have no place in the ‘new era of open Government’ that the President has proclaimed.”**

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**Agencies need to work “proactively” to post information online in advance of FOIA requests.**

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**When responding to requests, agencies are directed to “make it a priority to respond in a timely manner.”**

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**Chief FOIA Officers are asked to review “all aspects of their agencies’ FOIA administration” and to report each year to the Department of Justice on the steps taken “to improve FOIA operations and facilitate information disclosure at their agencies.”**

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**Combined impact of these two memos is to usher in the new era of open Government.**

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**IMPACT OF MEMORANDA**

**New standards for responding to requests and working with requesters.**

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**IMPACT OF MEMORANDA**

**New, more limited defensibility standard when agencies withhold records.**

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**IMPACT OF MEMORANDA**

**New requirement to maximize use of technology to disclose information.**

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**IMPACT OF MEMORANDA**

**New requirement to post information online affirmatively, in advance of FOIA requests.**

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**IMPACT OF MEMORANDA**

**New focus on broad array of agency personnel who are responsible for the FOIA.**

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**IMPACT OF MEMORANDA**

**New accountability standards, particularly for agency Chief FOIA Officers, who must report to the Department of Justice each year.**

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**Starting Point:  
Altering the Mind Set**

**The key frame of reference is the new presumption of openness.**

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**Starting Point:  
Altering the Mind Set**

**To achieve a “new era of  
open Government,”  
agencies must think about  
the FOIA differently.**

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**Starting Point:  
Altering the Mind Set**

**Ask “what can be released.”**

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**Applying the presumption  
of openness.**

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**Records should not be withheld just because an exemption technically or legally might apply.**

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**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.**

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**Applying the “foreseeable harm” standard.**

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**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.**

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**FOIA professionals should examine documents with an eye toward harm.**

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**When an agency determines that it cannot make a full release, it should consider whether it is possible to make a partial release.**

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**Discretionary releases.**

**Such releases are possible with a number of FOIA exemptions, including Exemptions 2, 5, and 7, but they will be most applicable under Exemption 5.**

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**For certain exemptions, discretionary disclosures are not possible because the information is protected by some other legal authority.**

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**Records protected by the exemptions covering national security, personal privacy, commercial and financial information, and information protected by statute, are not generally subject to discretionary releases.**

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**Records protected by the exemptions covering governmental interests can be subjects of discretionary disclosure.**

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**Factors to consider in determining whether there is "foreseeable harm" from disclosure.**

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**For all records, the sensitivity of the document's content and its age are universal factors that guide a decision to make a discretionary release.**

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**Agencies should handle  
Low 2 differently from High 2.**

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**For the subparts of Exemption 7,  
agencies should ensure that the  
harm being considered is not  
“speculative or abstract,” but  
instead is reasonably foreseen.**

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**There is no doubt that records  
protected by Exemption 5 hold  
the greatest promise for  
increased discretionary  
releases under the Attorney  
General’s Guidelines.**

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**Such releases will be fully consistent with the purpose of the FOIA to open up agency activity to the light of day.**

**These are the principles embodied in the FOIA. The President has asked all agencies to renew their commitment to them.**

**Thus, as a result of the "new era of open Government" that the President has proclaimed, agencies should view each FOIA request with a presumption of openness.**

**Agencies should strive to maximize the amount of records released, aim to release portions of records when full release is not possible, and make discretionary releases.**

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**Achieving transparency in new ways.**

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**Providing information to the public proactively.**

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**Anticipate interest in records.**

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**Establish systems to identify records of interest to the public.**

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**Post those records on the agency website.**

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**Utilize technology.**

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**Agencies should exponentially increase the amount of information on their websites.**

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**The FOIA is everyone's responsibility.**

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**The Attorney General recognized the important role of FOIA professionals.**

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**Working cooperatively  
with requesters.**

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**"Unnecessary bureaucratic hurdles  
have no place in the 'new era of  
open Government' that the  
President has proclaimed."**

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**Timely Disclosures.**

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**“Long delays should not be viewed as an inevitable and insurmountable consequence of high demand.”**

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**Accountability.**

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

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**Chief FOIA Officers will be reporting each year to the Department of Justice on the steps "taken to improve FOIA operations and facilitate information disclosure at their agencies."**

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**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?**

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**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.**

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**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.**

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**SUMMARY**

**Make discretionary releases.**

**When full disclosure is not possible, strive to make partial disclosure.**

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**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.**

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**SUMMARY**

Separate and apart from the handling of individual FOIA requests, agencies should anticipate interest in records, should set up systems for identifying and retrieving such records, and should post them on the website. Information about agency operations and decisions should be available to the public online.

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**SUMMARY**

Agencies should work cooperatively with requesters and respond promptly to requests.

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**SUMMARY**

To achieve the "new era of open Government" that the President has proclaimed will require the commitment of all agency personnel.

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President Obama's FOIA Memorandum  
And  
Attorney General Holder's FOIA Guidelines

Melanie Ann Pustay  
Director  
Office of Information Policy

{Tina, Please next insert existing Obama slides that I have hand numbered 1 thru 5, 6}

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."

Attorney General also comprehensively addresses a range of principles applicable to establishing an effective system for improving transparency.

In doing so he emphasizes that "[e]ach agency must be fully accountable for its administration of the FOIA."

All agency employees are responsible for FOIA, not just those who interact directly with FOIA requesters.

The Attorney General highlights the key roles played by both the agency Chief FOIA Officer and 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."

Chief FOIA Officers are asked to review "all aspects of their agencies' FOIA administration" and to report each year to the Department of Justice on the steps taken "to improve FOIA operations and facilitate information disclosure."

Combined impact of these two memos' is to usher in the new era of open government

New standards for responding to requests and working with requesters

New, more limited defensibility standard when agencies withhold records

New requirement to maximize use of technology to disclose information

New requirements to post information online affirmatively, in advance of FOIA requests

New focus on broad array of agency personnel who are responsible for FOIA

New accountability standards, particularly for agency Chief FOIA Officers who must report to the Department of Justice each year

*Starting Point: Altering the Mind Set*

The key frame of reference is the new presumption of openness.

*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 different harms, such as harm to national security, harm to personal privacy, and harm to law enforcement interests.

FOIA professionals should examine documents with an eye toward harm.

When agency determines that it cannot make a full release, consider whether it is possible to make a partial release.

*Discretionary Release*

Such releases are possible with a number of FOIA exemptions, including Exemptions 2, 5, and 7, but they will be most applicable under Exemption 5.

For certain exemptions, discretionary disclosures are not possible because the information is protected by some other legal authority.

Records Protected by the Exemptions Covering National Security, Personal Privacy, Commercial and Financial Information, and Information Protected by Statute, are not Generally Subject to Discretionary Releases

Records Protected by the Exemptions Covering Governmental Interests Can be Subjects of Discretionary Disclosure

Factors to consider in determining whether there is "foreseeable harm" from disclosure

For all records, the sensitivity of the document's content and its age are universal factors that guide a decision to make a discretionary release.

Agencies should handle Low 2 differently from High 2.

There is no doubt that records protected by Exemption 5 hold the greatest promise for increased discretionary releases under the Attorney General's Guidelines.

Such releases will be fully consistent with the purpose of the FOIA to open up agency activity to the light of day.

These are the principles embodied in the FOIA which the President has asked all agencies to renew their commitment to.

Thus, as a result of the "new era of open Government" that the President has proclaimed, agencies should view each FOIA request with a presumption of openness,

-- should strive to maximize the amount of records released and aim to release portions of records when full release is not possible.

Discretionary releases are encouraged

Achieving Transparency In New Ways

Providing Information to the Public Proactively

Utilizing Technology

FOIA is Everyone's Responsibility

Recognition of FOIA Professionals

Working Cooperatively with Requesters and Disclosing Records Promptly

Accountability

President Obama's FOIA Memorandum  
And  
Attorney General Holder's FOIA Guidelines

Background:

- ✓ • President Obama issued his FOIA Memorandum on January 21, 2009 ~~this list~~  
~~with~~ in office. ✓ Democracy / accountability / transparency
- ✓ • The President directed that FOIA "should be administered with a clear  
~~presumption~~. In the face of ~~doubt~~, openness prevails."
- ✓ ○ Information should not be withheld because of "speculative or abstract fears" ✓ - never  
base  
non-sense
- ✓ ○ ~~This presumption of disclosure applies to all decisions involving the FOIA~~
- ✓ • President directed Attorney General Holder to issue FOIA Guidelines  
"reaffirming the commitment to accountability and transparency."
  
- On March 19, 2009, during Sunshine Week, Attorney General Holder issued a  
Memorandum for Heads of Executive Departments and Agencies on the FOIA
  
- ✓ ○ These Attorney General FOIA Guidelines were written to underscore our nation's  
"fundamental commitment to open government"

- o The Guidelines stress that the FOIA is to be administered with the presumption of openness called for by the President
- o This presumption means that ~~information should not be withheld "simply because [an agency] may do so legally."~~
- o Moreover, ~~whenever a full disclosure of a record is not possible, agencies "must consider whether [they] can make partial disclosure."~~

✓ The Attorney General also "strongly encourage[s] agencies to make ~~discretionary~~ disclosures of information."

While recognizing that the FOIA contains exemptions to disclosure, the  
Guidelines stress that the President has directed agencies not to withhold to prevent  
embarrassment, or because "errors and failures might be revealed or because of  
speculative or abstract fears."

✓ Accordingly, the Attorney General rescinded the October 12, 2001 Attorney  
General Memorandum on FOIA and established a new standard for defending agency  
decisions to withhold 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.~~"

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✓ In addition to establishing these many principles applicable to applying the  
presumption of disclosure, the Attorney General also ~~comprehensively~~ addresses a range  
of principles applicable to ~~establishing an effective system for improving transparency.~~

✓ In doing so he emphasizes that "[e]ach agency must be ~~fully~~ accountable for its  
administration of the FOIA."

✓ The Guidelines emphasize that ~~all agency employees are responsible for FOIA,~~  
not just those who interact directly with FOIA requesters. The Attorney General  
✓ highlights the ~~key roles played by both the agency Chief FOIA Officer and FOIA~~  
~~professionals~~ in each agency. He also reminds agency personnel that "~~[u]nnecessary~~  
✓ ~~bureaucratic hurdles have no place in the 'new era of open Government' that the President~~  
~~has proclaimed.~~"

✓ The Guidelines also focus on the ~~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.~~" Finally, Chief FOIA Officers are  
asked to ~~review "all aspects of their agencies' FOIA administration"~~ and to report each

use  
technology

year to the Department of Justice on the steps taken " to improve FOIA operations and facilitate information disclosure."

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✓ Combined impact of these two memos is a sea change in way transparency is viewed across the government.

- ✓ • New standards for responding to requests and working with requesters
- ✓ • New, more limited defensibility standard when agencies withhold records
- ✓ • New requirement to maximize use of technology to disclose information
- ✓ • New requirements to post information online affirmatively, in advance of FOIA

requests

- ✓ • New focus on broad array of agency personnel who are responsible for FOIA
- ✓ • New accountability standards, particularly for agency Chief FOIA Officers who must report to the Department of Justice each year

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# ✓ STARTING POINT

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The President has proclaimed that this is a "new era of open Government." The Attorney General has issued FOIA Guidelines that strongly favor disclosure and transparency.

## ALTER MINDSET

Agency personnel must adjust their mind set accordingly. ~~This is the first and in many ways the most important step. To achieve a "new era of open Government" agency personnel must think about the FOIA differently. They must focus on the principles set out in the President's Memorandum and the Attorney General's Guidelines and view FOIA decisions through the prism of openness.~~

The key frame of reference is the new presumption of openness. Agency personnel should keep the purpose of the FOIA foremost in their mind. The statute is designed to open agency activity to light of day.

Records should not be reviewed with the goal of fitting everything into an exemption.

□ Instead, records should be reviewed in light of the presumption of openness with a view toward determining what can be disclosed, rather than what can be withheld.

- For every request, for every record reviewed, ask can this be released, rather than asking how can this be withheld.
- Understand that whether a release involves boxes of material, or only a few pages, the increased transparency is worthwhile.

✓  
Applying the Presumption of Openness

- ✓  Keep in mind that records should not be withheld just because an exemption technically or legally might apply.

③  
Indeed, if you find yourself struggling to fit something into an exemption, be aware of the President's directive that in the face of doubt, openness prevails.

When full disclosure of a record is not possible, agencies should consider making a partial disclosure.

✓  
④ Moreover, keep in mind that 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. Agencies should only withhold if they reasonably foresee that disclosure would cause harm.

✓  
Applying the "foreseeable harm" standard

After taking all these openness principles into account, there still are records for which protection will remain entirely appropriate.

✓ □ As the Attorney General recognized in his Guidelines, the disclosure obligation of the FOIA is not absolute. Congress included exemptions from mandatory disclosure to protect against different harms, such as harm to national security, harm to personal privacy, and harm to law enforcement interests.

✓ • Thus, FOIA professionals should examine documents with an eye toward harm.

✱ • Each record should be reviewed for its content, and the actual impact of disclosure of that particular record, rather than simply looking at the type of document or the type of file the record is located in.

• Thus, for example, a requested record might be a draft, or a memo consisting of a recommendation, and such a record could technically be withheld under Exemption 5, but that is not the end of the review.

• Rather, the content of that particular draft or particular memorandum should be reviewed and a determination made whether the agency reasonably foresees that disclosure of that particular document would harm an interest protected by Exemption 5.

□ Remember that mere "speculative or abstract fears" are not a sufficient basis for withholding.

Instead, the agency must reasonably foresee that disclosure would cause harm.

Be mindful of the President's directive that in the face of doubt openness prevails

✓ Moreover, the Attorney General's Guidelines emphasize that agencies should consider in each case where it determines that it cannot make a full release, whether it is possible to make a partial release. Just as FOIA statute requires that agencies review documents for purposes of determining whether there is any reasonably segregable, non-exempt information that can be released, the Guidelines require agencies to consider whether there is any information that "may be covered only in a technical sense unrelated to the actual impact of disclosure."

Thus, for each record that is responsive to a FOIA request for which the agency has determined that it is reasonably foreseeable that disclosure would cause harm, the segregation review must also encompass application of the foreseeable harm standard. Within a record that cannot be disclosed in full, agencies should consider whether it is possible to release the record in part.

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✓ Discretionary Release

□ Agencies are encouraged to make discretionary releases

Thus, even if an exemption would technically apply, discretionary disclosures are encouraged.

Such releases are possible with a number of FOIA exemptions, including Exemptions 2, 5, and 7, but they will be most applicable under Exemption 5.

✓  For certain exemptions, discretionary disclosures are not possible because the information is protected by some other legal authority.

✓ Records Protected by the Exemptions Covering National Security, Privacy, Commercial and Financial Information, and Information Protected by Statute, are not Subject to Discretionary Releases

Thus, for Ex 1, which protects classified information, if an agency determines that the information is properly classified, no discretionary disclosure is appropriate.

• For Ex 3, if material is protected by a withholding statute encompassed under Ex. 3, the protection afforded by that statute should be applied and a discretionary release is not appropriate. Agencies should be sure that the statute being invoked meets the requirements of Ex. 3, and importantly, that the documents being withheld fall within the scope of the statute.

• For Ex 4, if material falls within the scope of this exemption it is also generally correspondingly protected by the Trade Secrets Act, a statute that prohibits release.

— Ex. 8

Here, again, a discretionary disclosure cannot be made. Agencies should be sure that the strict requirements for invoking Ex. 4 are met in the first instance. For example, if the competitive harm prong is being considered agencies must be sure that they have a detailed showing of competitive harm from the submitter before invoking the exemption.

- For Exemptions 6 and 7©, if the material is also protected by the Privacy Act, it is generally not possible to make a discretionary release, as the Privacy Act protects against disclosure without consent. Agencies should be mindful of the need to conduct a balancing under these exemptions and also should consider whether information can be released with just the identities of the individuals protected, in order to both protect privacy and to further the public's interest in disclosure.
- When reviewing documents to determine whether Exemptions 1, 3, 4, and 6 and 7© apply, agencies must ensure that all portions of each record squarely fall within the claimed exemption. Because no discretionary release is possible for records protected by these exemptions, it is all the more important to be sure that the exemptions themselves are properly applied in the first instance. In addition, agencies should strive to reasonably segregate any non-exempt information from such documents, in order to make a partial disclosure if possible.

Records Protected by the Exemptions Covering Governmental Interests Can be Subjects of Discretionary Disclosure

- Documents protected by the remaining Exemptions, 2, 5, 7, can all be subjects of discretionary release
- Moreover, these exemptions should not be invoked unless an agency reasonably foresees that disclosure would harm an interest protected by the exemption.
- If an agency finds foreseeable harm for portions of requested records, it should strive to release other portions that would not cause foreseeable harm

✓ ~~Factors to consider in determining whether there is "foreseeable harm" from disclosure~~

*whether  
discretionary*

✓ ~~For all records, the sensitivity of the document's content and its age are universal factors that guide a decision to make a discretionary release. There are no hard and fast rules on applying discretion. Agency FOIA professionals must use their judgment in making such determinations for each document, but they should be guided by the "fundamental commitment to open government" that the Attorney General directed should be "realized in practice."~~

Fundamentally, in reviewing a record the agency must first ensure that any portion being considered for withholding fits all requirements of the exemption being considered. If the exemption squarely applies, the agency should then take the second step of making a

Let's discuss the exemptions

determination whether to make a discretionary release of the record or portion of the record.

✓ For Exemption 2, agencies should handle Low 2 differently from High 2. For information considered for withholding under Low 2, by definition the material is trivial to begin with and so discretionary release should be general rule.

Ex. Mail routes

Before applying High 2 to a record, agencies should ensure that they are not withholding based on "speculative or abstract fears," but instead are withholding because they reasonably foresee that disclosure would harm an interest protected by Exemption 2

✓ Similarly, for the subparts of Exemption 7 other than 7C, agencies should ensure that they are not withholding based on "speculative or abstract fears," but instead are withholding because they reasonably foresee that disclosure would harm an interest protected by one of those subparts of Exemption 7.

- tech may be old

- procedure not sensitive

- 7D - what type of info provided

- school data - court records

✓ There is no doubt that records protected by Exemption 5 hold the greatest promise for increased discretionary releases under the Attorney General's Guidelines. Such releases will be fully consistent with the purpose of the FOIA to open up agency activity to the light of day. These are the principles embodied in the FOIA which the President has asked all agencies to renew their commitment to.

- institutional sources



Ex: doc labeled as Recommendation

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Ex: Portion of Delib

Records covered by the deliberative process privilege in particular have significant release potential. In addition to the age of the record and the sensitivity of its content, the nature of the decision at issue, the status of the decision, and the personnel involved, are all types of factors that should be analyzed in determining whether a discretionary release is appropriate. Documents protected by other Exemption 5 privileges are also candidates for discretionary disclosure.

process  
more  
procedural

→ OLC opinions

✓  
✓  
In sum, as a result of the "new era of open Government" that the President has proclaimed, agencies should view each FOIA request with a presumption of openness, should strive to maximize the amount of records released and aim to release portions of records when full release is not possible. Agencies should only withhold when documents fully satisfy all elements of the exemption being asserted. For any document or portion of a document for which a discretionary release is possible, agencies should consider making such a release and should withhold only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption.

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✓  
Achieving Transparency in new ways

In addition to responding to FOIA requests, agencies must look for ways to increase transparency affirmatively.

✓ Providing Information to the Public Proactively

- President directed agencies to take "affirmative steps to make info public"
- ✓ Agencies should not wait for a request to be made
- The more information is available on agency websites, the greater the potential to reduce the number of requests made for records

- This is key area where agencies should strive to make significant improvement

- ✓ Agencies should set up systems where records of interest to the public are identified and systematically posted. The President has directed that information about the operations and decisions of the agency should be online and readily available to the public

Ex:  
 - all protected -  
 what can be disclosed.

This needs to be an on-going practice where records are sought out by FOIA professionals for purposes of posting. Agencies can also set up procedures in various offices for those officials to identify in advance, or as records are finalized, those that would be good candidates for posting.

✓ Utilizing Technology

- President directed agencies to use modern technology to inform citizens "about what is known and done by their Government"
- President directed that such disclosures should be timely
- ✓ - As mentioned, agencies should use technology vigorously to dramatically increase the amount of information posted on their webpages
- Agencies started this process with activities under FOIA EO
- ✓ - FOIA is everyone's responsibility
- AG emphasized that FOIA is the responsibility of all agency personnel, not just the FOIA professionals who work with requesters day to day.
- Agencies identified competing agency priorities and lack of support from IT personnel as factors that hindered EO operations
- Agencies must address the key roles played by a broad spectrum of personnel who work with FOIA professionals in responding to FOIA requests

#### ✓ Recognition of FOIA Professionals

- Specifically notes that such professionals deserve full support of agency Chief FOIA Officers to be sure they have tools they need

✓ Working Cooperatively with Requesters and Disclosing Records Promptly

- President directed agencies to act promptly

✓ Unnecessary bureaucratic hurdles . . .

- Delay is key complaint of requesters

- Note: DOJ now requires information on backlogs to be reported in Annual Report

✓ Timely

- ✓ • Significantly, the AG declared that "long delays should not be viewed as an inevitable and insurmountable consequence of high demand."

- That means all agencies, but particularly those with large volumes of requests and large backlogs, must examine their entire approach to providing information to requesters in order to be able to respond more promptly

- Ex. Don't have systems in place where approvals, for example, must be obtained from far off sites that routinely add significant amounts of time to the process

- Chief FOIA Officers should be involved in this as well

- President likewise directed agencies to act in a "spirit of cooperation"
- Unnecessary bureaucratic hurdles have no place in the "new era of open government that the President proclaimed.
- Note; R's should not have to jump thru hoops to make request or to contact agency or to receive requested records

✓ Accountability

✓ AG emphasizes that each agency must be fully accountable for its FOIA operation

- AG also stressed that Chief FOIA Officers must be active participants in FOIA
- Chief FOIA Officers required by law to be senior level official - Assistant Secretary level or equivalent
- These officials must recommend adjustments to practices, personnel, and funding as are necessary in each agency

As mentioned, common concerns cited by agencies in their reports under the FOIA EO, 13,392, were competing priorities and insufficient technology support. These are key areas where the assistance of the Chief FOIA Officer can be vital. When, for example, FOIA personnel are pulled away from FOIA to work on other matters, or when

If support personnel are not available to FOIA professionals, these actions negatively impact FOIA administration. This is where the agency Chief FOIA Officer plays a critical role in prioritizing demands and allocating resources so that FOIA operations do not suffer needlessly. As the Attorney General emphasized, FOIA professionals "deserve the full support of the agency's Chief FOIA Officer to ensure that they have the tools they need to respond promptly and efficiently to FOIA requests."

- ✓ • Chief FOIA Officers will now be required to report to the AG each year on the steps they have taken in their agency to improve transparency
- Key: FOIA Professionals must utilize their agency Chief FOIA Officer

#### Summary

- ✓ • 1. ~~Presumption of disclosure applies to all~~ decisions involving the FOIA — ALTER MIND SET
- 2. If responding to a request, approach review of documents by asking "What can I release."
- ✓ 3. Records should not be withheld merely because they technically fall within an exemption.

4. Review each document with a focus on whether there is foreseeable harm from disclosure of that particular record.

✓ 5. 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.

✓ 5. Make discretionary releases.

6. When full disclosure is not possible strive to make partial disclosure.

✓ 7. When full disclosure is not possible, consider what can be made available to the public on that topic. Is there information that can be put on the website to satisfy public interest in the topic.

✓ 8. Separate and apart from the handling of individual FOIA requests, agencies should anticipate interest in records, should set up systems for identifying and retrieving them, and should post them on the website. Information about agency operations and decisions should be available to the public online.

9. Agencies should work cooperatively with requesters and respond promptly.

10. To achieve the "new era of open Government" the President has proclaimed, will require the commitment of all agency personnel.