



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20408-0001

Information Security Oversight Office
National Archives and Records Administration
Room 100
700 Pennsylvania Avenue, NW
Washington, DC 20408-0001

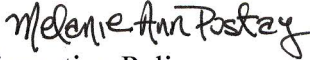


July 3, 2014

Memorandum for: Senior Agency Officials for Controlled Unclassified Information (CUI)

From:

John P. Fitzpatrick 
Director, Information Security Oversight Office
National Archives and Records Administration

Melanie Ann Pustay 
Director, Office of Information Policy
United States Department of Justice

Subject: Revised Guidance regarding Controlled Unclassified Information and the Freedom of Information Act

Executive Order 13556 (the Order), “Controlled Unclassified Information,” dated November 4, 2010, provides guidance regarding the relationship between information disclosure laws, including the Freedom of Information Act (FOIA), and Controlled Unclassified Information (CUI). The Order states: “The mere fact that information is designated as CUI shall not have a bearing on determinations pursuant to any law requiring the disclosure of information or permitting disclosure as a matter of discretion, including disclosures to the legislative or judicial branches” (Order at Section 2b).

The Information Security Oversight Office (ISOO), which exercises the responsibilities of CUI Executive Agent under the Order, and the Department of Justice’s Office of Information Policy (OIP) issue this joint guidance in response to agencies’ inquiries and to provide clarification regarding the relationship between FOIA and CUI. This guidance supersedes the joint issuance of these offices dated November 22, 2011.

Specifically, this guidance contains additional clarification on the applicability of the statutory exemptions contained in the FOIA and prior markings or designation.

- The FOIA should not be cited as a safeguarding or dissemination control authority for CUI. The purpose of the FOIA is to open agency activities to the public.
 - The FOIA gives the public the right to request and receive federal agency records unless those records are protected from disclosure by one of the Act’s exemptions.

- The FOIA exemptions are discretionary. As a result, FOIA exemptions should not be relied upon as an authority to create a CUI category or subcategory.
- Moreover, one cannot properly conduct a FOIA analysis at the creation of a document because the record's content must be analyzed at the time of the FOIA request to determine whether it is appropriate for release.
- Neither CUI markings nor any other markings are dispositive of a FOIA reviewer's disclosure determination.
 - Decisions to disclose or withhold information must be made based on the applicability of the statutory exemptions contained in the FOIA, not on a marking or designation.
- To provide further clarification:
 - When reviewing records, no markings of any kind, whether CUI or others that may appear in the same document shall be applied to require that unclassified information must be considered exempt from disclosure under the FOIA.
 - No marking or statement may be paired with a CUI marking to circumvent the provision of the Executive Order that designation as CUI does not control disclosure under the FOIA.

In sum, CUI markings and designations should not be associated with or paired to FOIA exemptions and should not be used as a basis for applying a FOIA exemption. We look forward to working with your department or agency to ensure the efficient and effective implementation of the President's direction. If we may offer any assistance, please feel free to contact the CUI Office via cui@nara.gov or (202) 357-6870.