



U.S. Department of Justice
Immigration and Naturalization Service

HQFPB 160/5-C

Office of the Executive Associate Commissioner

425 I Street NW
Washington, DC 20536

JANUARY 17, 2002

MEMORANDUM FOR MANAGEMENT TEAM
REGIONAL DIRECTORS
DISTRICT DIRECTORS
SECTION CHIEFS
SERVICE CENTER DIRECTORS

ATTENTION: ADMINISTRATIVE CENTER FOIA/PA OFFICERS

FROM: George H. Bohlinger, III /S/
Executive Associate Commissioner
Office of Management

SUBJECT: Freedom of Information Act Policy

The purpose of this memorandum is to provide you with the new Freedom of Information Act (FOIA/PA) policy memorandum issued by Attorney General John Ashcroft. Please disseminate to all FOIA offices within your area of jurisdiction.

The attached Attorney General's FOIA memorandum establishes a new "sound legal basis" standard. Generally, the Department of Justice will defend the application of exemptions which are in proper compliance with the law and which will be withheld when challenged in court. This differs from the foreseeable harm standard established under Attorney General Reno, which encouraged release of exempt information where no harm was present. Under the new standard we should protect exempt records/information, while ensuring that we can articulate both a factual and legal basis for all withholdings.

The memorandum emphasizes the purpose of the FOIA and the importance of maintaining openness in government, informing the public of the activities of the government,

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and ensuring that the leaders remain accountable. At the same time, it reminds agencies to remain committed to protecting records and information that contain matters that are subject to exemptions under the FOIA. The exemptions most commonly applied to Immigration and Naturalization documents are those that protect information that:

1. is established by Executive Order to be in the interest of national security
2. constitutes trade secrets and commercial or financial information
3. is deliberative inter-agency or intra-agency memorandums and letters
4. consists of personal privacy records
5. includes records or information compiled for law enforcement purposes

The Attorney General paid particular attention to discretionary decisions to disclose information protected under the FOIA. Disclosure should be made only after full consideration of the implications of release; e.g., legal privileges and deliberative information protected under Exemption 5 of the FOIA 5 U.S.C. §552 (b)(5). He did not eliminate discretionary disclosure, but instead cautioned agencies to be cognizant of the law.

This memorandum supersedes the Office of Management Memorandum of November 24, 1993 in part to include only the references to discretionary disclosures based on harm. The Presidential statement on the FOIA that was issued and attached thereto also remains in effect.

If you have any questions, please contact Mildred Carter, Acting Director, FOIA/PA Branch at (202) 514-1722.

Attachment