CURRENT POLICY ISSUES/EFOIA

I  Attorney General Ashcroft’s October 12, 2001 FOIA Memorandum (see page II-6)

A. Underscores commitment to full compliance with FOIA.

B. Important interests in maintaining open and accountable government.

C. Important institutional, commercial, and personal interests to be protected.

D. Recognition of continued agency practice of making discretionary disclosure of exempt information.

E. Discretionary disclosures to be made after careful consideration of interests protected by applicable exemption.

F. “Sound legal basis” standard governing Department of Justice’s decision as to whether to defend agency’s action in court.

II  Supreme Court Rules in Exemption 5 Case: Dep’t of the Interior v. Klamath Water

*Users Protective Ass’n, 532 U.S. 1 (2001)* (see pages IV-136-40)

A. Agency/Tribes “trust relationship” insufficient to satisfy “inter-agency or intra-agency” threshold.

B. Implicitly recognizes “outside consultant” line of cases.

C. Self-interest alone on part of consultant is not disqualifying.

D. Disqualifies only “an interested party [that is] seeking a Government benefit at the expense of other applicants.”

E. Narrows potential application of settlement privilege.

F. Potential Exemption 3 legislation.
III Supreme Court Refuses to Hear Exemption 7(A) Case: *Maydak v. United States*

*Dep't of Justice, 218 F.3d 760 (D.C. Cir. 2000), cert. denied, 533 U.S. 950 (2001)* (see pages IV-141-42)

A. Waiver in litigation found when agency invoked only Exemption 7(A), which subsequently became inapplicable at conclusion of the requester's criminal prosecution.

B. Agency not permitted to supplement its defenses by later asserting other exemptions.

C. Possible applicability to other threshold defenses.

D. Applies only in litigation, not at administrative level.

IV Safeguarding Information Regarding Weapons of Mass Destruction and Other Sensitive Documents Related to Homeland Security (see pages IV-155-58)

A. Classified records – Exemption 1

B. Unclassified records – Exemptions 2, 3, and 4.

V Summary of Key E-FOIA Issues


C. Reading room treatment for frequently requested records – (a)(2)(D).

D. Electronic reading room – (a)(2).


G. Annual reports – (e).

H. Current E-FOIA resources

1. OIP Supplemental Guidance on Annual Reports (see pages IV-143-50).

2. OIP memo on GAO E-FOIA Implementation Report (see pages IV-129-35).