U.S. Department of Justice
Office of Information and Privacy

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Attorney General Ashcroft's FOIA Memorandum and Homeland Security FOIA Policy Issues

I. Attorney General Ashcroft's October 12, 2001 FOIA Memorandum

A. Site: http://www.usdoj.gov/04foia/011012.htm

B. Underscores commitment to full compliance with FOIA

C. Important interests in maintaining open and accountable government

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

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

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

G. "Sound legal basis" standard governing Department of Justice's decision as to whether to defend agency's action in court

II. Safeguarding Information Regarding Weapons of Mass Destruction and Other Sensitive Information Related to Homeland Security


B. Memorandum by White House Chief of Staff Andrew Card

1. Includes chemical, biological, radiological, and nuclear weapons

2. Required reexamination of current measures for identifying and safeguarding such information

C. Memorandum by Information Security Oversight Office and Office of Information
and Privacy

1. Classified information: Exemption 1
   a. Currently classified information
      - *Abbotts v. NRC*, 766 F.2d 604 (D.C. Cir. 1986) (security of nuclear power plant)
   b. Previously unclassified or declassified information not previously disclosed to the public

2. Sensitive but unclassified information
   a. Exemption 2 ("high 2")
      i. Vulnerability studies
      ii. Critical infrastructure information
   b. Exemption 4
      - Second prong of *Nat'l Parks & Conservation Ass'n v. Morton*, 489 F.2d 765 (D.C. Cir. 1974): required submissions the disclosure of which would cause substantial competitive harm
      - Third prong of *Nat'l Parks*: required submissions the disclosure of which would cause harm to agency program effectiveness
D. Related issues

1. Exemption 3

a. 42 U.S.C. § 7412(r)(7(B)(iii) (offsite-consequence analysis of risk-management plans)


2. Exemption 7(F): law enforcement records the disclosure of which could reasonably be expected to endanger the life or physical safety of any individual