To: William Ferragamo

Fax: 994-7005

Additional Information: The attached memo is the only one that comes quickly to hand. And the only description I'm aware of regarding appeals in the Reg., which I'm attaching. If there is something more specific you're looking for, please call again.

From: Carol Hebert

Direct Dial: 514-3642

Number of Pages (excluding this page): 5

Date: 6/19/96
ATTORNEY GENERAL RENO MOVES TO EXPEDITE EXCEPTIONAL FOIA REQUESTS

WASHINGTON, D.C. -- Attorney General Janet Reno said today that she has authorized a change in Justice Department procedures to expedite the handling of Freedom of Information Act requests in certain cases of extraordinary interest to the news media.

Current law permits only two exceptions to normal first-in, first-out processing: when information is needed to prevent a threat to life or safety, or when a delay would result in the loss of substantial due process rights such as the chance to file a claim.

The Justice Department's Office of Information and Privacy began studying whether a third category could be added after the Attorney General in December and January inquired why it was taking so long to process FOIA requests for the U.S. Park Service and FBI reports on the death of Vincent Foster? The reports were completed in August.

Under the new procedure, approved on February 1, FOIA requests can be moved to the head of the line whenever the Justice Department's Director of Public Affairs expressly finds two things:

-- there exists widespread and exceptional media interest in the requested information; and

-- expedited processing is warranted because the information sought involves possible questions about the government's integrity which affect public confidence.

A memorandum communicating the Attorney General's new policy said "The goal of such expedited processing is to permit the public to make a prompt and informed assessment of the propriety of the government's actions in exceptional cases." However, it also cautioned that in some situations, especially involving active law enforcement investigations, the law may still prevent immediate disclosure no matter how quickly the request is processed.

The policy was implemented by a directive to Justice Department FOIA and Privacy Act coordinators from Richard L. Huff and Daniel J. Metcalfe, Co-Directors of the Office of Information and Privacy. They were assisted by Peggy Irving.
MEMORANDUM

TO: All Department of Justice FOIA/PA Coordinators

FROM: Richard L. Huff
       Daniel J. Metcalfe
       Co-Directors

SUBJECT: Expediting FOIA Requests as a Matter of Agency Discretion to Promote Public Accountability

As you are aware, many Department of Justice components are unable to meet the FOIA's deadlines for responding to requests. Following Open America v. Watergate Special Prosecution Force, 547 F.2d 605, 614-16 (D.C. Cir. 1976), those components process their requests on a "first-in, first-out" basis, ordinarily taking requests out of order only when they satisfy one of the two court-recognized grounds for expediting the processing of FOIA requests: a threat to life or safety, or the loss of substantial due process rights. See FOIA Update, Summer 1983, at 3.

As a matter of agency discretion, the Attorney General has determined that the Department of Justice will expedite the processing of a third category of FOIA requests, based upon the Department's institutional interest in promoting public accountability. This category consists of those FOIA requests for which the Director of Public Affairs expressly finds that:

1. there exists widespread and exceptional media interest in the requested information; and

2. expedited processing is warranted because the information sought involves possible questions about the government's integrity which affect public confidence.

The goal of such expedited processing is to permit the public to make a prompt and informed assessment of the propriety of the government's actions in exceptional cases. It is recognized that in some cases (e.g., those involving ongoing law enforcement investigations) the Department's ability to disclose requested records without harm to protectible interests will be greatly limited. An expedited FOIA response in those cases will nevertheless provide the maximum public assurance possible through the
FOIA process. All requests for expedited FOIA processing in this new category should be forwarded to the Office of Public Affairs.

Finally, we suggest that future Open America declarations should take cognizance of this third category when describing the circumstances under which a component will expedite the processing of a FOIA request.
§16.3

The exact nature of the business information requested or provide copies of the records or portions thereof containing the business information. The requester shall be notified that notice and an opportunity to object are being provided to a submitter.

(a) When notice is required. Notice shall be given to a submitter whenever:

(1) The information has been designated in good faith by the submitter as information deemed protected from disclosure under Exemption 4, or (2) the component has reason to believe that the information may be protected from disclosure under Exemption 4.

(b) Designation of business information. Submitters of business information shall use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected from disclosure under Exemption 4. Such designations shall be deemed to have expired ten years after the date of submission unless the submitter requests, and provides reasonable justification for, a designation of greater duration.

(c) Opportunity to object to disclosure. The notice described in paragraph (a) of this section shall provide the submitter with a reasonable period of time within which to provide the component with a detailed written statement of any objection to disclosure. Such statement shall specify all grounds for objection to disclosure and any information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is considered to be trade secret or commercial or financial information that is privileged or confidential. Whenever possible, the submitter's claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(d) Notice of intent to disclose. A component shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a component decides to disclose business information over the objection of a submitter, the component shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date.

Such notice or intent to disclose shall be forwarded to the submitter within a reasonable number of days prior to the specified disclosure date and the requester shall be notified likewise.

(4) Exceptions to notice requirements. The notice requirements of paragraph (a) of this section shall not apply if:

(1) The component determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552a); or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such case, the component shall provide the submitter with written notice of any final administrative decision to disclose business information within a reasonable number of days prior to a specified disclosure date.

[Passed No. 1266, 36 P.B. 2159, July 1, 1967]

§16.8

Appeals

(a) Appeals to the Attorney General. When a request for access to records or for a waiver of fees has been denied in whole or in part, or when a component fails to respond to a request within the time limits set forth in the FOIA, the requester may appeal the denial of the request to the Attorney General within 30 days of his receipt of a notice denying his request. An appeal to the Attorney General shall be made in writing and addressed to the Office of Informa-
§16.9

Protection and Privacy. United States Department of Justice, 10th Street and Constitution Avenue, NW, Washington, DC 20530. Both the envelope and the letter of appeal itself must be clearly marked: "Freedom of Information Act Appeal." An appeal not so addressed and marked will be forwarded to the Office of Information and Privacy as soon as it is identified. An appeal that is improperly addressed will be deemed not to have been received by the Department until the Office of Information and Privacy receives the appeal, or would have done so with the exercise of reasonable diligence by Department personnel.

(b) Action on appeals by the Office of Information and Privacy. Unless the Attorney General otherwise directs, the Director, Office of Information and Privacy, under the supervision of the Assistant Attorney General, Office of Legal Policy, shall act on behalf of the Attorney General on all appeals under this section, except that:

(1) In the case of a denial of a request by the Assistant Attorney General, the request shall be reviewed by the Assistant Attorney General or his designee before acting on the appeal;

(2) A denial of a request by the Attorney General shall constitute the final action of the Department on that request.

(c) Form of action on appeal. The disposition of an appeal shall be in writing. A decision affirming in whole or in part the denial of the request, or withdrawing the request under section 552(b)(6) of the Freedom of Information Act, shall include a brief statement of the reason or reasons for the affirmance, including a brief statement that judicial review of the denial is available in the U.S. District Court for the judicial district in which the requested record is located, or the District of Columbia. If the denial of a request is reversed on appeal, the request shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

§16.10 Fees.

(a) In general. Fees pursuant to 5 U.S.C. 552 shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by components in responding to and processing requests for records under this subpart. All fees assessed shall be charged to the requester, except where the charging of fees is limited under paragraph (b) of this section or where a waiver or reduction of fees is granted under paragraph (b) of this section. A component shall collect all applicable fees before making copies of requested records available to a requester. Requesters shall pay fees by check or money order made payable to the Treasurer of the United States.

(b) Charges. In responding to requests under this subpart, the following fees shall be assessed, unless a waiver or reduction of fees has been granted pursuant to paragraph (d) of this section:

(1) Search. (i) No search fee shall be assessed with respect to requests by educational institutions, non-commercial scientific institutions, and representatives of the news media, as defined in paragraph (b)(5), (7) and (8) of this section, respectively. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. Components may assess fees for time spent searching even if they fail to locate any requested record or where records located are subsequently determined to be entirely exempt from disclosure.

(2) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee shall be $2.50. Where a search and retrieval cannot be performed entirely by clerical personnel—for example, where the identification of records within the scope of a request requires the use of professional personnel—$4.50 for each quarter hour spent by such personnel. Where the time of personnel is required, the fee for each quarter hour of such managerial personnel shall be equal to the actual direct costs of the search, although certain defined in paragraph(s) of this section shall be entitled to hour of search time without charge.

(3) Duplication. Duplication shall be assessed with respect to the duplication of a record, one copy of which need not be charged $10 per copy produced by compendiums, or printed, or charged the actual direct operating cost of a search.

(4) Review. (i) Review fees, assessed with respect to requests for records or portions of records, shall be charged as set forth in paragraph (b)(6) of this section. For each hour spent by an agency personnel reviewing a requested record or portion thereof, the fee shall be charged for each hour of time spent by such personnel preparing the review.

(ii) Review fees shall be for the initial record review undertaken by the agency personnel analyzing the appl...