

CHERYL SYLVESTER

10/30/01 07:12 AM

To: Alexandra Mallus/PIR/OS/DOI@DOI

cc:

Subject: Re: New FOIA Policy & Procedures

Alex, tis message says a bureau must consult w/ a designated FOIA attorney before making a discretionary RELEASE of FOIA materials. Is that really what you meant?
Alexandra Mallus

Alexandra Mallus

10/29/2001 03:05 PM

To: Sue Ellen Sloca/NBC/OS/DOI@DOI, James Rodden, Leslie Laraway/OAS/OS/DOI@DOI, Willie S Chism/DC/BIA/DOI@BIA, John Livornese/WO/BLM/DOI@BLM, John E Cordyack/OPS/USGS/DOI@USGS, ibr8dm10.8MSO:CSNYDER@BORGGroupwise, Diane Cooke/WASO/NPS@NPS, Johnny Hunt/ARL/R9/FWS/DOI@FWS, MWRIGHT@osmre.gov, Amy Edwards/WO/BLM/DOI@BLM, Charles Breece/PHA/OS/DOI@DOI, Roberta Richardson/PHA/OS/DOI@DOI, Betsy Chittenden/WASO/NPS@NPS, Sandra Evans/WDC/OIG/DOI@OIG, MMBrown@hdqgw.osmre.gov, Joan Shafer/MMS/DOI@MMS, CHRISTINA KALAVRITINOS/HQ/SOL/DOI@DOI, JACK COLEMAN/HQ/SOL/DOI@DOI, HOWARD CHALKER/HQ/SOL/DOI@DOI, CHERYL SYLVESTER/HQ/SOL/DOI@DOI, Carrie Prokop/TWC/SOL/DOI@DOI, STEPHEN SIMPSON/HQ/SOL/DOI@DOI, JEAN SONNEMAN/HQ/SOL/DOI@DOI, VERONICA LARVIE/HQ/SOL/DOI@DOI, PHYLLIS LESLIE/HQ/SOL/DOI@DOI, KC BECKER/HQ/SOL/DOI@DOI, RANDOLPH MYERS/HQ/SOL/DOI@DOI, LARRY MELLINGER/HQ/SOL/DOI@DOI, daniel_shillito@os.doi.gov, gloria_koehne@os.doi.gov, JESSICA ROFF/HQ/SOL/DOI@DOI, Delores Young/ATL/SOL/DOI@DOI, Michael Riley/KNX/SOL/DOI@DOI, John Coleman/KNX/SOL/DOI@DOI, Kimberly Gilmore/PIT/SOL/DOI@DOI, Tony Conte/BOS/SOL/DOI@DOI, Robin Lepore/BOS/SOL/DOI@DOI, Marcia Kimball/TWC/SOL/DOI@DOI, Kara Pfister/TWC/SOL/DOI@DOI, Jerry O'Nan/DNV/SOL/DOI@DOI, DeAnn Owen/DNV/SOL/DOI@DOI, Richard DeClerck/POR/SOL/DOI@DOI, Karan Dunnigan/BIL/SOL/DOI@DOI, Shari Mauney/PHX/SOL/DOI@DOI, Richard Greenfield/PHX/SOL/DOI@DOI, Tony Sullins/BOI/SOL/DOI@DOI, Steve Palmer/SAC/SOL/DOI@DOI, REGINA SLEATER/AK/SOL/DOI@DOI
cc: Alexandra Mallus/PIR/OS/DOI@DOI, BOB MOLL/HQ/SOL/DOI@DOI, Daryl White/PIR/OS/DOI@DOI, Roy Francis/PIR/OS/DOI@DOI, Sue Rachlin/PIR/OS/DOI@DOI, Julia Laws/PIR/OS/DOI@DOI, William Wolf/PIR/OS/DOI@DOI, Marilyn Legnini/PIR/OS/DOI@DOI, Daniel Jorjani/PMB/OS/DOI@DOI, Robert Lamb/PMB/OS/DOI@DOI, EDWARD KEABLE/HQ/SOL/DOI@DOI, KAREN MOURITSEN/HQ/SOL/DOI@DOI, DARRELL STRAYHORN/HQ/SOL/DOI@DOI, TIMOTHY E MURPHY/HQ/SOL/DOI@DOI, Catherine Freels/ALBUQUERQUE/BIA/DOI@BIA, ROBIN FRIEDMAN/HQ/SOL/DOI@DOI, Lanel Crawley/PIR/OS/DOI@DOI

Subject: New FOIA Policy & Procedures

BUREAU/OFFICE FOIA OFFICERS:

As you are aware, on October 12, 2001, the Attorney General issued this Administration's new FOIA policy which differs in several important respects from the policy issued by former Attorney General Janet Reno. The new FOIA policy articulated in the Ashcroft memorandum supersedes the prior policy that documents should be released even if exempt, unless a

foreseeable harm would occur from the release. While the new policy does not actively encourage discretionary disclosures, it does recognize the agencies' ability to make discretionary disclosures. The FOIA Officers discussed the new policy and DOI's procedures for implementing it at a meeting on October 24.

Under the new FOIA procedures, when considering whether to make a discretionary release, a bureau/office must review the facts and information in the documents and carefully consider the institutional (the Government), commercial (business entities), and personal privacy (individuals) interests that might be impacted by disclosure of the information. **The bureau must consult with its Designated FOIA Attorney and obtain his/her surname before making a discretionary release of information.** In the past, bureaus only had to consult with their attorneys (see Chapter 5.2 of the Departmental FOIA Handbook (383 DM 15)).

An exempted record may be released to a requester when, in the bureau's judgment, the interests which underlie the exemptions (discussed above) would not be jeopardized, unless disclosure is restricted by statute or Executive order. Disclosure of documents protected under exemptions 1, 3, 4, and frequently 6 and 7(C), will be restricted by a statute or Executive order--such documents are not subject to discretionary release. In making decisions regarding disclosure, bureaus/offices should carefully consider the values and interests underlying the exemptions. Before withholding documents, bureaus/offices must consult with their FOIA Attorneys to ensure that they have both a sound factual and legal footing for withholding the documents. Under the new policy, DOJ has advised it will defend withholdings of documents unless they lack a **sound legal basis** for the withholding. (The Ashcroft memorandum and DOJ guidance may be found at <http://www.usdoj.gov/oip/foiapost/2001foiapost19.htm>).

Also, under the Attorney General's new policy, bureaus/offices once again may use the "low 2" exemption providing the information being withheld meets the criteria in Chapter 5.4B(1) of the Departmental FOIA Handbook.

These procedures are effective immediately. The Attorney General's new FOIA policy will be incorporated in an IRM Bulletin in the near future. Please ensure that all employees involved with processing FOIA requests are aware of the new policy and these procedures. This will ensure that information is not released that could jeopardize our national security and the effectiveness of our law enforcement activities, and that the sensitive business and personal privacy information we maintain is protected.

If you have any questions, please consult your designated FOIA attorney. When he/she is not available, feel free to contact Bob Moll by telephone at (202) 208-5316, or by email at Bob_Moll@ios.doi.gov, or me at (202) 208-5342 or Alexandra_Mallus@ios.doi.gov.

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