



United States
**Office of
Personnel Management**

Washington, D.C. 20415

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OCT 23 2001

MEMORANDUM FOR ASSOCIATE DIRECTORS AND HEADS OF OFFICES

FROM:

JANET L. BARNES
CHIEF INFORMATION OFFICER

MARK A. ROBBINS
GENERAL COUNSEL

SUBJECT:

New Attorney General Memorandum on the FOIA

Attached is a new policy memorandum on the Freedom of Information Act (FOIA) recently issued by Attorney General John Ashcroft. In this memorandum, the Attorney General reaffirms the commitment of the Department of Justice and this Administration to full compliance with the FOIA. At the same time, he recognizes the need to protect fundamental values of our society by safeguarding national security, enhancing the effectiveness of law enforcement agencies, protecting sensitive business information and preserving personal privacy.

The Attorney General's memorandum notes that Exemption 5 of the FOIA incorporates certain important legal privileges that protect from public disclosure any agency document that is part of an agency's deliberative process. He notes further that Congress and the courts have recognized the importance of ensuring full and candid deliberations by agency officials based upon confidential advice and counsel they receive. Finally, the Attorney General encourages agencies making discretionary decisions to disclose information protected by the FOIA to carefully consider the various institutional, commercial and personal privacy interests involved. He also advises that the Justice Department stands ready to defend agency decisions to withhold records in FOIA litigation provided there is a sound legal basis for such decisions.

This new statement supersedes the FOIA policy statement that was issued by the Department of Justice in 1993, and it is effective immediately. The Department's Office of Information and Privacy has asked that this new policy be widely distributed in each agency and as expeditiously as possible. If you or the FOIA Officer for your organization have any questions about this FOIA policy memorandum or about the policy or legal implications of any specific FOIA disclosure matters, please do not hesitate to contact the Office of the Chief Information Officer at 606-2150 or the Office of the General Counsel at 606-1700.

Attachment



Office of the Attorney General

Washington, D. C. 20530

October 12, 2001

MEMORANDUM FOR HEADS OF ALL FEDERAL DEPARTMENTS AND AGENCIES

FROM: John Ashcroft
Attorney General

A handwritten signature in black ink that reads "John Ashcroft".

SUBJECT: The Freedom of Information Act

As you know, the Department of Justice and this Administration are committed to full compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2000). It is only through a well-informed citizenry that the leaders of our nation remain accountable to the governed and the American people can be assured that neither fraud nor government waste is concealed.

The Department of Justice and this Administration are equally committed to protecting other fundamental values that are held by our society. Among them are safeguarding our national security, enhancing the effectiveness of our law enforcement agencies, protecting sensitive business information and, not least, preserving personal privacy.

Our citizens have a strong interest as well in a government that is fully functional and efficient. Congress and the courts have long recognized that certain legal privileges ensure candid and complete agency deliberations without fear that they will be made public. Other privileges ensure that lawyers' deliberations and communications are kept private. No leader can operate effectively without confidential advice and counsel. Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), incorporates these privileges and the sound policies underlying them.

I encourage your agency to carefully consider the protection of all such values and interests when making disclosure determinations under the FOIA. Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information.

In making these decisions, you should consult with the Department of Justice's Office of Information and Privacy when significant FOIA issues arise, as well as with our Civil Division on FOIA litigation matters. When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.

This memorandum supersedes the Department of Justice's FOIA Memorandum of October 4, 1993, and it likewise creates no substantive or procedural right enforceable at law.