



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



In Reply Refer To:
FWS/PDM

Memorandum

To: Service Directorate

From: **Acting Deputy** Director *K Odams* NOV - 7 2001

Subject: New Attorney General Memorandum on the Freedom of Information Act (FOIA)

Attached is the subject memorandum, from Attorney General John Ashcroft that supersedes an October 4, 1993, memorandum by former Attorney General Janet Reno.

The previous Attorney General's policy

On October 4, 1993, Attorney General Reno issued a memorandum outlining government policy related to the disclosure of information under the FOIA. In that memo the Attorney General recognized the importance of an informed citizenry and the role of FOIA in maintaining the principle of openness in government and asserted the following:

- 1) FOIA is a law whose presumption is on disclosure.
- 2) The Department of Justice would no longer defend an agency's withholding merely because there was a "substantial legal basis" for doing so.
- 3) Instead, there must be a specific reference to harm to an interest protected by the exemption used.
- 4) There is an **emphasis** on "discretionary disclosures" (we disclose information even though technically there is an exemption that can be applied).
- 5) Agencies had a 'reasonable segregation' obligation under the FOIA (i.e., the agency must attempt to separate factual information from predecisional and deliberative information).

The current Attorney General's policy

Attorney General John Ashcroft's October 12, 2001, memorandum, is similar in that it recognizes the following: the importance of a well-informed citizenry, the FOIA's role in preserving government accountability, the opportunity for 'discretionary disclosures'; and the obligation to 'reasonably segregate' factual information from predecisional and deliberative information. However it **emphasizes** the following.

- 1) There is a need to safeguard national security, enhance the effectiveness of law enforcement operations, protect sensitive business information, and preserve personal privacy.
- 2) Confidential advice and counsel prepared in the conduct of agency deliberations must be preserved to operate effectively.
- 3) 'Discretionary disclosures' may be made but only after full and deliberate consideration of the institutional, commercial, and personal privacy interests.

How does this affect your processing of FOIA requests?

Attorney General Ashcroft's memorandum establishes a shift in FOIA policy and does the following.

- 1) It preserves the opportunity for 'discretionary disclosures' but does not establish a presumption for such disclosures.
- 2) It allows 'discretionary disclosures' of information only after a thorough analysis of the effects upon institutional, commercial, and personal privacy interest; and in consultation with and under surname of the Office of the Solicitor.
- 3) It eliminates the need to prepare a 'foreseeable harm statement' related to exemption 5 (predecisional and deliberative) withholdings.
- 4) It reinvigorates the application of exemption 2 (circumvention of internal agency rules and procedures) in order to withhold institutional information.

We wish to emphasize that the shift related to release of information under the FOIA has moved from the presumption of 'discretionary disclosure' of information to the need to safeguard institutional, commercial, and personal privacy interests. The application of Attorney General Ashcroft's policy will be further defined by the interpretation of future case law. This information will be provided to bureau FOIA contacts as soon as it becomes available.

All other procedures including, the requirements to seek review from the Office of the Solicitor and to provide the requester appeal rights when withholding information are still in effect. If you have further questions or need additional information, please contact the Service FOIA Officer, Johnny Hunt, on 703/358-2504.

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

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.

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To: Service Directorate

Acting

From: **Deputy** Director Kevin Adams NOV - 7 2001

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Attachment

Cc: Directorate Reading File
DDChron
ABHR Reading File
PDM FOIA File

fws/pdm/jhunt/diskfy2002/ashcroft1/10/29/01

Flunt	10/29/01
Pa	10/29/01
Sheehan	11/1/01
Shaw	11/1/01
Acting DD K. De	11-7-01

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To: **Acting** Service Directorate
 From: **Deputy** Director **Kevin Adams** **NOV - 7 2001**

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October 12, 2001

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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.

NOTE TO REVIEWERS

- Attorney General Ashcroft recently issued his new policy regarding the implementation of FOIA under the current administration
- The new policy emphasizes a shift from presumption of discretionary release to a more careful analysis of the institutional effects regarding release of information in response to a FOIA request.
- The Department held a meeting where the Office of the Solicitor discussed the new policy and the effects it would have upon the processing of FOIA requests.
- The Division of Policy and Directives Management was tasked by the Director with issuing guidance to the Service Directorate
- The attached guidance has received Solicitors Office review. They concurred with our assessment and guidance and indicated that this is a developing area that will be further defined by future case-law.

Program Contact: Johnny Hunt (703/358-2504)



**FISH AND WILDLIFE SERVICE
DOCUMENT TRACKING CONTROL SLIP**

FWS Form 3-2180
Attach to front of folder

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DCN: 005496	ES No:
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Orig. Office: ABHR-PDM	Received Date: 10/29/2001	Addressee: Service Directorate,
Due Date:	Signature Level:	
Subject: New Attorney General Memorandum on the FOIA		

Comments:

Action Codes:

- | | | |
|--------------------------|--------------------------------|----------------------------|
| 0 - Prepare Draft Reply, | 4 - Signature | 8 - Other - See Comments |
| 1 - Prepare Reply | 5 - Review/Comment | 9 - Mail/Distribute |
| 2 - Appropriate Action | 6 - Revise | 10 - Finalize |
| 3 - Surname | 7 - Obtain Additional Surnames | 11 - Simultaneous Surnames |

Routing:

Routed To	Action	Assigned Date	BF DATE	Returned Date
ABHR-PDM	3 - Surname	10/29/2001		10/29/2001
ABHR	3 - Surname	10/29/2001		
CCU	2 - Appropriate Action			
ABHR-PDM	9 - Mail/Distribute			

D	4	11/6		
CCU	2	11/7		
ABHR	9	11/7/01		
PDM	9	11.7.01		

U.S. FISH AND WILDLIFE SERVICE ROUTE SLIP

3-1936 (10/)

TO	MAIL STOP	TO	MAIL STOP
D DIRECTOR/DEPUTY DIRECTOR	3012 MIB	OIM Office of Information Technology & Mgmt	670 ARL
2 [REDACTED]	[REDACTED]	DVSC Division of Visitor Servs & Communications	670 ARL
ALE ASST DIRECTOR - LAW ENFORCEMENT	3250 MIB	AFHC ASST DIRECTOR - FISHERIES & HABITAT CONSERVATION	3245 MIB
LE Office of Law Enforcement	520 ARL	DFHC Deputy Assistant Director	840 ARL
AEA ASST DIRECTOR - EXTERNAL AFFAIRS	3251 MIB	OPO Office of Program Operations	820 ARL
DAEA Deputy Assistant Director	3251 MIB	FHS Division of the National Fish Hatchery System	840 ARL
PA Division of Public Affairs	3359 MIB	MAHR Division of Fish and Wildlife Mgmt. Assistance & Habitat Restoration	840 ARL
CLA Division of Congressional & Legislative Affairs	3038 MIB	FPA Division of Federal Program Activities	400 ARL
NCTC National Conservation Training Center	3012 MIB	EQ Division of Environmental Quality	322 ARL
NAL Native American Liaison	3251 MIB	AES ASST DIRECTOR - ENDANGERED SPECIES	3242 MIB
RC Research Coordinator	850 ARL	DAES Deputy Assistant Director	3242 MIB
ABMO ASST DIRECTOR - BUSINESS MANAGEMENT & OPERATIONS	3022 MIB	OPS Office of Program Support	330 ARL
CGS Division of Contracting & General Services	212 ARL	DCC Division of Conservation & Classification	420 ARL
IRM Division of Information Resources Management	340 ARL	DCHR Division of Consultation, HCPs & Recovery	420 ARL
DF Division of Finance/Payroll	380 ARL	OPO Office of Partnerships and Outreach	420 ARL
ECN Division of Economics	224 ARL	AIA ASST DIRECTOR - INTERNATIONAL AFFAIRS	3245 MIB
BES Branch of Engineering Services	300 ARL	DAIA Deputy Assistant Director	700 ARL
DSHA Division of Safety, Health and Aviation	300 ARL	DIC Division of International Conservation	730 ARL
1 [REDACTED]	[REDACTED]	DMA Division of Management Authority	700 ARL
HR Division of Human Resources	3458 MIB	DSA Division of Scientific Authority	750 ARL
DP-W DP - Operations	308 WEBB	AMBS ASST DIRECTOR - MIGRATORY BIRDS & STATE PROGRAMS	3250 MIB
DB Division of Budget	3559 MIB	DMBS Deputy Assistant Director	560 ARL
3 [REDACTED]	[REDACTED]	MBM Div. of Migratory Bird Management	634 ARL
DCR Division of Diversity and Civil Rights	300 WEBB	BHC Div. of Bird Habitat Conservation	110 ARL
PES Planning and Evaluation Staff	3012 MIB	FDSD Federal Duck Stamp Division	2058 MIB
CNWR CHIEF, NAT'L WILDLIFE REFUGE SYSTEM	3251 MIB	FA Division of Federal Aid	140 ARL
DNWR Deputy Chief	670 ARL	CPLD Conservation Partnerships Liaison Div.	132AWEBB
RE Division of Realty	622 ARL		
DNR Division of Natural Resources	670 ARL	FW ASST SECY FOR FISH & WILDLIFE & PARKS	3156 MIB
DCCP Division of Conservation Planning & Policy	670 ARL	SOL-CW Solicitor, Div. of Conservation & Wildlife	6560 MIB
DOB Division of Nat'l Wildlife Refuge System Budget	670 ARL	SOL-GL Solicitor, Div. of General Law	6531 MIB

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|-------------------------------|--------------------------------|--|
| ____ Region 1-FWS/Portland | ____ Region 5-FWS/Hadley | ____ IRM Field Operations-Denver |
| ____ Region 2-FWS/Albuquerque | ____ Region 6-FWS/Denver | ____ Div. of Engineering/Jefferson Ave. |
| ____ Region 3-FWS/Twin Cities | ____ Region 7-FWS/Anchorage | ____ Dam Safety Office/Jefferson Ave. |
| ____ Region 4-FWS/Atlanta | ____ Finance Center-FWS/Denver | ____ Environmental and Facility Compliance/Jefferson Ave |

REMARKS:

FROM: _____ TELEPHONE: _____ DATE: _____