



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 20 2001

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: New Attorney General Memorandum on the Freedom of Information Act

TO: Assistant Administrators
General Counsel
Inspector General
Acting Chief Financial Officer
Associate Administrators
Regional Administrators
Staff Office Directors

The purpose of this memorandum is to transmit to you Attorney General John Ashcroft's memorandum on the Freedom of Information Act (FOIA), dated October 12, 2001. This new statement of Administration policy on the FOIA supersedes the FOIA policy memorandum that was issued by former Attorney General Janet Reno in October 1993, and the memorandum transmitting it from former Administrator Carol Browner on January 18, 1994. The Ashcroft FOIA Memorandum was effective immediately upon issuance, and the presidential statement on the FOIA that was issued in October 1993 remains in effect as well.

The Ashcroft FOIA Memorandum emphasizes the Administration's commitment to full compliance with the FOIA as an important means of maintaining an open and accountable system of government. At the same time, it recognizes the importance of protecting the sensitive institutional, commercial, and personal interests that can be implicated in government records – such as the need to safeguard national security, to maintain law enforcement effectiveness, to respect business confidentiality, to protect internal agency deliberations, and to preserve personal privacy.

In replacing the predecessor FOIA memorandum, the Ashcroft FOIA Memorandum establishes a new "sound legal basis" standard governing the Department of Justice's decisions on whether to defend agency actions under the FOIA when they are challenged in court. This differs from the "foreseeable harm" standard that was employed under the predecessor memorandum. Under the new standard, agencies should reach the judgment that their use of a FOIA exemption is on sound footing, both factually and legally, whenever they withhold requested information.

Significantly, the Ashcroft FOIA Memorandum also recognizes the continued agency practice of considering whether to make discretionary disclosures of information that is exempt under the Act, subject to statutory prohibitions and other applicable limitations. It also places particular emphasis on the right to privacy among the other interests that are protected by the FOIA's exemptions.

The Department of Justice's Office of Information and Policy has issued additional guidance at <http://www.usdoj.gov/oip/foiapost/2001foiapost19.htm>

Accordingly, each office should begin applying the new "sound legal basis" standard contained in the Ashcroft FOIA Memorandum in responding to FOIA requests and, for the Office of General Counsel and the Office of Inspector General, in deciding FOIA appeals.

As stated in my memorandum of September 25, 2001, proper administration of the Agency's FOIA responsibilities is essential. I urge you to disseminate this memorandum both promptly and widely within your offices. If you have questions concerning the implementation of the policy, please contact Patricia K. Hirsch in the Office of General Counsel at (202) 564-5462 or the appropriate Office of Regional Counsel.



Christine Todd Whitman

Attachment

cc: Eileen McGinnis, Chief of Staff
Ray Spears, Deputy Chief of Staff
Betty Lopez, Associate Dir. FOIA Operations
Regional FOIA Officers
FOIA Coordinators



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.