

Babcock, Lisa J.

From: Babcock, Lisa J.
Sent: Monday, November 05, 2001 10:55 AM
To: McCade, Kathleen
Subject: RE:

Kathleen,

Besides what we provided you previously I have from my notes: DOJ now has a new standard to defend agencies in FOIA matters:

1. sound legal basis
2. unwarranted risk of adverse impact on the ability of agencies to protect their important records

The new Attorney General's memo now allows low 2 protection; the previous Atty General's memo had made low 2 ineffective. As for High 2, the courts recognize that "Congress did not really know what is was doing." D.C. Cir. en banc 12/81 Crooker v ATE, Congress did not intend for FOIA to undermine law enforcement. High 2 protects anything that can allow someone to breach the law.

As for Ex. 5, DOJ no longer affirmatively encourages discretionary disclosure; this should address your concern about Loan Officer's Reports. As always, it is better to error on the side of caution, especially at the initial level as the requester still has two more levels of review available.

Here is DOJ's FOIA website: <http://www.usdoj.gov/foia/>. Let me know if you have any questions.

Lisa Babcock

-----Original Message-----

From: McCade, Kathleen
Sent: Friday, November 02, 2001 4:30 PM
To: Babcock, Lisa J.
Cc: Larkin, Janie W.; McCade, Kathleen
Subject:

Please provide guidance on the meaning of "sound legal basis" as it applies to FOIA disclosures. In our office, we are mainly concerned with how the new standard applies to analyzing documents that could arguably be released or protected under exemption 5. We are particularly interested in knowing how the exemption should be exercised regarding first party requests for internal documents such as Loan Officers' Reports, which show the loan officer's analysis of, *inter alia*, financial and credit information.. We will continue to safeguard documents (or portions thereof) that we believe are legitimately entitled to protection under exemptions 4 and 6 - unless and until you advise us to the contrary.

Are we still to use the "discretionary disclosure" boilerplate language in our responses?

Kathleen McCade
Administrative Attorney
Disaster Area 4
(916) 566-7584
(202) 481-2873 (fax)