



Homeland Security

Privacy Office, Mail Stop 0655

August 26, 2009

MEMORANDUM FOR: Distribution

FROM: Mary Ellen Callahan
Chief FOIA Officer and Chief Privacy Officer

SUBJECT: Proactive Disclosure and Departmental Compliance with
Subsection (a)(2) of the Freedom of Information Act (FOIA)

On January 21, 2009, President Obama issued two important memoranda to the heads of Executive Departments and Agencies concerning government transparency. In one memorandum the President committed his administration to an "unprecedented level of openness in government," and in the other he stressed the importance of the Freedom of Information Act (FOIA), stating that it is "the most prominent expression of a profound national commitment to ensuring an open government." Critical to ensuring the Department of Homeland Security (DHS) successfully meets the President's standards is compliance with the transparency requirements outlined by 5 U.S.C. § 552(a)(2) of the FOIA. Under subsection (a)(2), federal agencies must make four distinct categories of records affirmatively available for "public inspection and copying."¹ Agencies must satisfy this provision of the FOIA by promptly making the records available, either by proactively publishing records electronically to the Department's website or in a combination of electronic and conventional "paper" reading rooms. The Department maintains the designated records in electronic reading rooms on the DHS Headquarters and component websites.

Per the requirements set forth in the Attorney General's May 30, 2008, report to the President on agency progress under Executive Order 13,392, "Improving Agency Disclosure of Information," DHS and its components certified compliance with the minimum requirements with subsection (a)(2) October 31, 2008. Though the Department has taken numerous steps to improve its FOIA

¹ The four categories of records to be made available are:

- A. final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- B. those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;
- C. administrative staff manuals and instructions to staff that affect a member of the public; and
- D. records disclosed in response to a FOIA request that "the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records."

program, including making the electronic reading room more robust, the current Presidential initiatives require an even greater degree of openness.

As Chief FOIA Officer, I direct the Department and its components to include the following categories of records on their agency websites and link them to their respective electronic reading rooms:

1. Historical daily schedules of the most senior agency officials (notated to reflect that officials may have deviated from the posted schedule and abridged as appropriate for security and privacy concerns)
2. Executed contracts & grants
3. Management directives and instructions
4. Congressional correspondence under DHS control
5. FOIA logs
6. Any records released pursuant to a FOIA request that have been, or are likely to become, the subject of three or more requests²

All of the aforementioned items are being proactively disclosed at the discretion of the Department in an effort to comply with the President's memoranda. All of the aforementioned items are frequently the subject of FOIA requests, and are not usually subject to FOIA exemptions. However, nothing in this memorandum is intended to limit components' ability to proactively post additional records beyond those suggested consistent with FOIA and other disclosure laws. A component may choose to post documents specific to its function in order to further advance transparency. For example, FEMA may choose to proactively post disaster related records in order to obviate the need to process these commonly requested records. In an effort to implement these recommendations, I have asked Mr. William Holzerland, Associate Director of Disclosure and FOIA, at 703-235-0790, to be available to advise the components in this effort. Please ask your FOIA Officer to contact Mr. Holzerland within 20 days to provide him a timetable for completion of these electronic reading room upgrades, and to keep Mr. Holzerland apprised of component progress. Mr. Holzerland will be reporting to me on this effort.

Thank you for your continuing efforts on behalf of the Department's FOIA program. I look forward to working with you on this and other FOIA initiatives to fulfill the President's commitment to transparency.

² 5 U.S.C. § 552(a)(2)(D).

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