

# Controlled Unclassified Information *and the Freedom of Information Act (FOIA)*

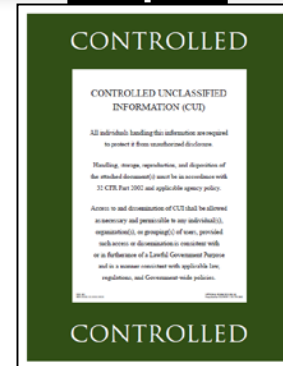
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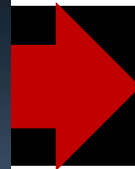
Information Security Oversight Office (ISOO)

# CUI and FOIA

- The Freedom of Information Act (FOIA) and how it relates to the Controlled Unclassified Information Program



FOIA.GOV



# How do you see the connection between the Freedom of Information Act and the CUI Program?

## How do you see the connection between the Freedom of Information Act and the CUI Program?

- *The Freedom of Information Act and the CUI Program have different origins.*
  - *The Freedom of Information Act is a statute that allows for the release of information from the federal government to the public.*
  - *CUI Program is established by an Executive Order, and the basis of it is to allow for the controlling of information that is unclassified but that needs types of protection or limited dissemination.*

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## Does the fact that information is controlled and marked as CUI mean that it's automatically protected?

- ***No, just because information is marked in a certain way, that alone is not sufficient to exempt information from disclosure in response to a FOIA request.***
  - ***An independent determination has to be made in response to each and every FOIA request that comes in, as to whether a specific FOIA exemptions applies, or not.***

**Does the fact that something is marked as CUI change what I can request in a FOIA request?**

## Does the fact that something is marked as CUI change what I can request in a FOIA request?

- ***No. You can still submit your FOIA request for any information that you're looking for, that you feel like the government may handle or possess, and if it falls under an exemption, that could be a valid legal reason for the government not to disclose that information to you, whether or not the information is CUI.***
- ***CUI Program allows for the agency to protect information as it needs to do so but it doesn't affect requests for information to be release under FOIA, or decisions about what to release.***

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**What happens if a decision is made to release CUI pursuant to a FOIA request? Does an agency still have the obligation to protect the information?**

- ***It depends. Generally speaking, if the information qualifies as CUI, it qualifies as CUI because of a law, a regulation, or Government-wide policy that says that you have to protect that information or limit its dissemination.***
- ***A release under FOIA doesn't change the agency's obligation to protect the information that it has in its possession.***

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**When we were establishing the CUI Registry, we had a number of agencies that submitted the FOIA as a basis for defining something as CUI. Can the FOIA be used as the basis for protecting information?**

- ***No. The Freedom of Information Act is a public release, or disclosure statute. It is not a statute that authorizes information to be controlled.***
- ***In 2014, ISOO issued a joint memorandum with DOJ OIP that specifically spells out some of these issues, one of which is that the Freedom of Information Act itself is not an authority to control as CUI, but some CUI may be withheld or controlled in response to individual FOIA requests because it falls under a valid FOIA exemption.***


# The Point

**Any record can be requested through FOIA. The ability to withhold information is based off an exemption. Information is not exempted from the FOIA process, it can still be requested by any individual. The information then has to be reviewed to see whether or not an exemption can apply.**


**The CUI marking may inform their decision as to whether or not an exemption applies, but won't automatically apply that exemption.**

# The memo

- Available from the CUI Registry.
  - <https://www.archives.gov/cui/registry/policy-guidance>
- A marking may serve to inform a FOIA reviewer of the type of information in the document but no marking excludes information from the FOIA review process (to include CUI markings).

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July 3, 2014

**Memorandum for:** Senior Agency Officials for Controlled Unclassified Information (CUI)

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**Subject:** Revised Guidance regarding Controlled Unclassified Information and the Freedom of Information Act

Executive Order 13556 (the Order), "Controlled Unclassified Information," dated November 4, 2010, provides guidance regarding the relationship between information disclosure laws, including the Freedom of Information Act (FOIA), and Controlled Unclassified Information (CUI). The Order states: "The mere fact that information is designated as CUI shall not have a bearing on determinations pursuant to any law requiring the disclosure of information or permitting disclosure as a matter of discretion, including disclosures to the legislative or judicial branches" (Order at Section 2b).

The Information Security Oversight Office (ISOO), which exercises the responsibilities of CUI Executive Agent under the Order, and the Department of Justice's Office of Information Policy (OIP) issue this joint guidance in response to agencies' inquiries and to provide clarification regarding the relationship between FOIA and CUI. This guidance supersedes the joint issuance of these offices dated November 22, 2011.

Specifically, this guidance contains additional clarification on the applicability of the statutory exemptions contained in the FOIA and prior markings or designation.

- The FOIA should not be cited as a safeguarding or dissemination control authority for CUI. The purpose of the FOIA is to open agency activities to the public.
  - The FOIA gives the public the right to request and receive federal agency records unless those records are protected from disclosure by one of the Act's exemptions.

