Freedom of Information Act
Advisory Committee

December 9, 2021

Welcome

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Welcome

Chat How-to

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Classification Subcommittee

Kristin Ellis
James R. Stocker
Subcommittee Co-Chairpersons
That OIP issue guidance to government agencies that they use the internationally recognized nomenclature of “neither confirm nor deny” (NCND) to refer to Glomar responses.
That OIP require standardized tracking and reporting procedures for NCND [“neither confirm nor deny”] responses.
Government agencies should be required to track & report annually:

- The total number of NCND responses issued
- Whether these NCND responses were in whole or in part
- The relevant FOIA exemptions that justify Glomar responses and the number of corresponding cases in which these were used \[e.g., (b)(1), (b)(3), (b)(6), (b)(7)(C)\]
- The number of NCND responses that have not been affirmed on administrative appeal
- The number of NCND responses that have not been upheld by a court in litigation

DOJ should annually report aggregated date on NCND responses
That government agencies provide information to requesters on their websites regarding circumstances that will likely result in an NCND response, and, where possible, recommendations on how to avoid such a response.
That relevant organization 1) conduct a review of the use & practice of NCND responses across government and 2) formulate a set of recommendations to ensure that these responses are being used in a manner consistent with the goals of the FOIA.
Technology Subcommittee

Allyson Deitrick
Jason Gart

Subcommittee Co-Chairpersons

National Archives Identifier 594262
FOIA Advisory Committee

is on a break: back soon!

Legislation Subcommittee

Patricia Weth
Kel McClanahan

Subcommittee Co-Chairpersons
Process Subcommittee

Alexis Graves
Michael Morisy

Subcommittee Co-Chairpersons
Records relied on by any agency that affect eligibility for benefits or adversely affects an individual in proceedings should be made automatically available and not require first-person FOIA practice.
Records access should not discriminate against *pro se* parties.

*Pro se* = Latin for “on one’s own behalf.” Anyone who appears before a court without an attorney is considered *pro se.*
Agencies should use technology to leverage their efforts to make first-person agency records more easily accessible outside of FOIA.
Agencies that receive frequent first-person requests can benefit from identifying the most commonly requested records and developing processes for processing such records to promote efficiency and good customer service.
Agencies that receive frequent first-person requests should consider the costs and benefits of moving to proactive systems for disclosure, such as those modeled by other agencies, such as the IRS and SSA.
Public Comments

https://www.archives.gov/ogis/foia-advisory-committee/public-comments
Mark your calendars!

Next meeting:
Thursday March 10, 2022